

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

Name of responding person: James Hand

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:

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Are you responding as a:

- | | |
|---|---|
| <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 |
| <input checked="" 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).

I support the continuance of the existing foundations and agree they are at least a “good proxy” for those areas that all [rounded] lawyers require some working knowledge of’ (although there is a sound case for e.g. licensed conveyancers and limited practice CILEX not to be required to have such knowledge).

For the foundations to have any worth, it is inevitable that the wide range of other topics – to quote Peter Birks the “hundred others” that the professions “could not care less about” and including “very important subjects” which he feared could be “starved to extinction while all available energy is applied to the sustenance of the subjects which are strong and abundant” – build on at least one of the foundations (thus, labour law is founded on contract and tort (with some public law), company law on equity and contract, etc.). While we may all have topics we would wish to promote, the requisite foundation subjects should be just that. Accordingly, Commercial law – which may be a highly popular option – should remain as that, building as it does on the foundations. Commercial awareness is highly important and a course which did not include some focus on it could suffer in the marketplace but that, and the range of options, should be a choice for the individual institution (which may seek to cover broader markets through a number of specialised LLBs).

However, in order to create more space for various options in the QLD, the requirement that they comprise no less than 180 credits could be relaxed and still offer a common foundation, some familiarity with which allows a broader appreciation of the multitude of topics that flow from them. This could also allow for more curricula innovation in the GDL (para 40) by creating space for one more optional subject.

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?

As an Accounting graduate, the accounting approach to exemptions or accreditations seemed confusing and prone to uncertainty. There are, of course, a number of other accounting bodies (e.g. ACCA, CIMA, AAT) with each exempting a different range of units or combination of units. Furthermore, the status of the exempting units were subject to regular change requiring a close eye to be kept by both staff and student. If this proposal led to the disbanding of JASB with the Bar, the SRA and IPS having their own lists of exempting units that would be something to be deprecated.

A benefit of such a system could be argued to be that it would ‘help to open up the market to other (eg non-graduate) entrants who can demonstrate competence by passing the assessments’. However, the existing scheme of exemptions from the GDL does this to some extent and this could perhaps be modified slightly to better achieve the aim.

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?

As one goes on through the legal training process (including CPD), the level of specialisation naturally increases. The LPC core can thus reasonably be more specialised than the LLB core but having said that it should still be broad enough to allow diplomates to take a range of paths (so as not to close off opportunities) and to prepare for the range of seats in the TC. There should be some contentious and some non-contentious elements. I would contend that commercial awareness and practical elements are more important at the vocational training stage than the academic stage (although nonetheless valid at UG level particularly if they are transferable given the sizeable percentage who intend the LLB to be part of a liberal education).

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?

No comment

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?

No comment

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?

No comment

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.

No comment

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)?

No comment

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?

Yes and yes.

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?

Bringing individual paralegal recognition (not necessarily training) within legal services regulation may serve to make the situation clearer for all concerned although by their nature paralegals are different from CILEX or other lawyers and that would need to be reflected.

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)?

I should prefer (b) (but only marginally over (a) and (c)). While it is hard to argue against coverage of ethics, I would contend that is not on a par with Tort, Equity, etc. and should not be 'lumped in' with them. The relationship between morality and law is something which fits well with the initial introduction and which can possibly be demonstrated through the other subjects. Ethics in practice is more important at the vocational stage – where in my experience pervasive coverage can work well – and the reference to 'the role of lawyers in relation to those values' could be interpreted as better belonging at that level

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?

Scrutiny of behaviour in practice (or mock practice) is probably more important than a compulsory examination on the underlying values for all authorised persons. Signing up to the values may, however, have some value (not least in setting expectations and aiding scrutiny).

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?

I agree with para 110.

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)

No comment

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 accept there may be gaps but answers to earlier questions apply here. While the UG curriculum can focus on commercial skills, client relations/communication skills, ethical awareness and organisational skills any element of mandatoriness is better suited to the vocational part. I disagree that there are 'gaps' in core knowledge at the academic stage for the reasons given above.

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.

No comment

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?

Yes – of the sort in Appendix D to the JASB Handbook (2010). It balances discretion with a general expectation.

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?

It is not necessarily in the public interest to create a brightline separation. The current system allows for qualifications to be linked to the NQF which would seem to address many of the points listed (particularly (c), (d), (e)).

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.

No comment

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.