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# RESPONSE TO THE CALL FOR EVIDENCE BY THE EXECUTIVE OF THE LEGAL EDUCATION AND TRAINING REVIEW

This submission is written on behalf of the City of London Law Society. It is submitted in response to discussion paper 01/2012 "Call for evidence" by the Legal Education and Training Review Executive. It should be seen as supplemental to, and to be read in the context of, our earlier submission dated 17 February 2012 (the "First Submission"). As mentioned therein, we represent about 15,000 lawyers through individual and corporate membership, including some of the largest law firms in the world. We are not seeking to change what we said in our First Submission, although this paper goes over some of the same ground in response to the contents of the "Call for evidence".

Whilst we expect readers of this paper to be familiar with most of the terms we use, there is a glossary at the end of this document.

**Introductory remarks**

Before we turn to those specific points, we would like to make some more general comments about the "Call for evidence".

The first is that we see it as a significant contribution and a careful, thoughtful piece of work. We accept, and in any event have long believed, that there is a significant case for change in legal education. The "Call for evidence" raises important issues.

We are pleased that the review is to be evidence based and adhere to the normal rules of good regulation. There have been comments from regulators that legal education needs radical change. We, like you, are open minded on that, and like you we are keen to see the evidence. We hope that the review team will not recommend change merely for its own sake or to placate people at any regulator who may have made statements about the need for radical change, which in our eyes is very close to prejudging the outcome of the review.

The bulk of this submission deals with specific points raised in paragraphs 98, 100 and 101 of the "Call for evidence", in the order in which they are raised. Before that we pick up one or two specific points and mention some issues of particular importance to us. We also annex a note (Appendix A) on the issues raised around the "New York LLM" mentioned in paragraphs 81 - 84 of "Call for evidence" and one (Appendix B) on the differences between the current legal education systems in the United States and Australia on the one hand and England on the other.

In relation to the first of these, we put the view that there is no need for regulatory intervention. In relation to the second, we note that the legal education requirements for solicitors or their equivalent in those countries are not less onerous than that applicable in England.

We would also like to touch on paragraph 97 of the "Call for evidence" and the background to the current educational regime. We are not entirely sure that what has occurred is a "patch up" (as claimed in that paragraph) at all. Certainly as far as the solicitors' profession is concerned, which is and has been for a long time by far the largest of the legal service professions in the United Kingdom, the reality is that well into the second half of the twentieth century, the overwhelming majority of solicitors did not go to university. Indeed, prior to the 1960s, the percentage of the overall population of the United Kingdom which went to university was very low. We think that what has happened is a reasonable and logical reaction to the development of potential solicitors beginning to go to university in substantial numbers (meaning that long periods of service under articles were no longer appropriate or acceptable to many people joining the profession). The LPC was then introduced as a way of bridging the learning gap between the general academic way in which university law degrees were taught and the practical needs of being a solicitor.

The sequence of degree, GDL (if the degree is not a QLD), LPC, training contract and CPD makes perfect sense to us. Nor is the time spent on academic study out of line with what other professions in England require of their entrants. But, as set out, below we are more than happy to see alternative entrance routes to our profession introduced provided they require candidates to achieve the equivalent of a university degree at an appropriate standard. The key, as we set out in the First Submission, is not to reduce overall standards.

Following on from that, our vision for the future of education and training in the legal services sector is for there to be a series of integrated, graduated developmental pathways. These must ensure individuals working in the different segments of the sector are properly trained to perform their particular roles while allowing them to move through the sector, albeit with progression determined by suitably rigorous assessments.

As we also said in our First Submission we believe strongly in a period of work based learning as part of the qualification process (noting the alternative ways in which this might be done, as set out below). Carrying on with the comparison between England, the United States and Australia (Appendix B), our member firms employ people who have been through these systems, and we do not believe that someone who qualifies here is in any way inferior to the products of the other systems. But the difference between the men and women we employ between the time they commence their training contract and the same people at the end of it is remarkable.

The work based learning period (which we will illustrate by reference to a training contract) serves a number of purposes. Critically it shows lawyers embarking on a career how the knowledge they have acquired is applied in practice. By trainees moving around the firm they see how different areas of practice work. They are socialised into what we as employers believe to be appropriate legal behaviour. They begin to acquire some of the "soft skills" which are so important in practice; how to deal with clients; how to write in a practical way and for different types of recipient; how to use the technology we all rely on; how to behave in meetings; and a lot more. The experience for most is transformative.

The period of a training contract is currently two years. There is no magic in two years, and when the SRA proposed a minimum 16 months for work based learning, we did not oppose it. That said, two years does feel about right to us. The fact that the appropriate period of work

based learning is not scientifically capable of precise verification does not, of course, undermine the principle.

General statements about existing quality such as ours about newly qualified solicitors are capable of being seen as no more than a conservative defence of the current system of legal education. We are not, however, using them to deny that legal education and training, including as to the solicitors' profession, do need change. We submit, though, that change which undermines the standards now achieved would be extremely detrimental and not just to our member firms. But specifically in relation to City solicitors, it could profoundly undermine the ability of our members to compete internationally. We believe young English lawyers are as good as any group of young lawyers in the world, but that has to remain the case. Any regulatory change which undermines the competitiveness of our legal system would not bring credit to anyone involved.

Moving on to what might change, whilst we appreciate that the LETR is carrying out a "root and branch" review of legal education, we think that a starting point has to be that English universities are not going to change fundamentally in the nature of the way that law is taught merely because the legal services professional regulators think they should. Nor is it likely that different criteria for student selection to that applied across the university sector generally would be accepted. This is not to say, of course, that legal services professional regulators could not unilaterally drop the qualifying law degree (to which we return to below) but it is highly unlikely that English universities would be prepared to accept the degree of prescription over the undergraduate law degree that the regulatory bodies impose in the United States and Australia. That said, we would expect that recommendations about some aspects of the qualifying law degree, both what is taught (see our First Submission) and whether, for example, there should be more concentration on writing skills or even some aspects of "soft skills", might well be generally accepted by universities. We would urge the LETR executive, which is well placed to do so, to engage with universities to see what proposals for change are realistic.

In England, we are aware that there have been objections to the campaign of The Law Society to have legal ethics (in some form) included within the qualifying law degree, and these objections are quite often based on the need for academic freedom. University teachers in the United States and Australia would not recognise that criticism. We think the English approach to teaching undergraduates has substantial implications for the whole of English legal education and training.

None of this is to imply that we have changed our mind about non-graduates being able to enter our profession (again, see our earlier paper). There are those on our Committee who can recall working with non graduate solicitors, many of whom were clearly above the quality of some of the university entrants. Because universities themselves have an institution to set out and enforce standards, some sort of system would have to be developed to deal with the standards of non-graduates (as ILEX does now for its members or, depending on one's view of it, the assessments that form part of the QLTS although something specific for solicitors would be needed).

Our final preliminary thought is this. The "Call for evidence" is right to refer to the regulatory objectives set out in the Legal Services Act. But what we do not detect is a sufficiently clear understanding that this involves a balancing exercise. The more restrictions there are to entry to a profession because of the need for qualifications the more competition might be impacted. But no one wants to eliminate qualifications. There is, like it or not, a trade off between cost and quality of service. Any rational policy making balances the

competing requirements. We would urge the LETR executive to be as open as it can about how it has approached the necessary balancing act when making its recommendations.

**Para 98, QLD**

We point out above how difficult it may be in practice to persuade universities to change the way in which law is taught in a radical way. If the universities were not prepared to accept significant change, the regulators can abolish the QLD. But if that made someone who wanted to do both a degree and become a solicitor spend another year and more money in the process (degree, then GDL), it is bound to have adverse consequences from an equality and diversity prospective. An attempt to give credit at the GDL level for specific courses at specific universities would be very administratively demanding and may still fail the basic test of fairness (as well as still adding to some extent to the cost of qualifying).

In our First Submission, we suggested some greater degree of regulation of the content of some courses, the incorporation of an ethical content (which could be done by inserting this into existing subjects) and some teaching of the law of organisations (by which we mean some company law but also a broader understanding of the nature of "entities" which are not human beings (such as companies, partnerships, LLPs, local authorities, charities etc.) entering into transactions, how they act, how they may have "intentions", legal capacity etc.).

We believe, and we accept that the evidence is anecdotal, that too many new trainees lack adequate writing skills (paragraph 63 of the "Call for evidence"). Whether this is the fault of universities or of the LPC providers (or indeed schools) is not something on which we can comment. We would note that in our firms ensuring adequate writing skills is a key part of the training process.

But in our view the key benefit that universities confer on their graduates is an organised approach to the development of cognitive skills. Because of the complexity of so much of what our firms do, and the way in which the law and businesses' needs change so rapidly, our members need employees with sophisticated cognitive skills who are able to deal with that complexity and those changes. That is why our members are more than happy to take a significant number of trainees who have not studied law at university; we are seeking out people who can think creatively and develop over time, not just those who have some specific body of knowledge. We would not support changes which undermined the current virtues of a university education or, of course, entry requirements which required lesser academic achievement (accepting that there may be multiple ways of demonstrating that achievement).

So fundamentally we support the current QLD, whilst wishing to see some change.

**Para 98, GDL**

The GDL supports a wider degree of possible means of entry into the profession. It is also clear that the GDL is important to persons who may wish to change career. It is a key element supporting a diverse profession.

Our members collectively take a substantial number of GDL graduates, and find them no less satisfactory than graduates with a QLD, taken in the round. There is perhaps some anecdotal evidence that some GDL graduates possess less technical knowledge of law than a QLD graduate, but this is not regarded by our members as a major problem for people who are joining as trainees. As we said in our First Submission, it is necessary to ensure that GDL graduates achieve the same overall standard as QLD graduates in the relevant subjects.

While the GDL must cover the same ground as the QLD (assuming it is retained), the nature of GDL students may allow some flexibility in the approach to teaching and/or content. They will all be graduates (rather than school leavers) and so likely to have well developed cognitive skills. Some degree of reshaping of the GDL for entrants changing career may further improve the quality of entrants to the professions who have followed this particular route.

**Para 98, the vocational stage; the LPC**

The most important point is that we believe that there should be a common core of knowledge and training across the profession for there to be one single qualification for a solicitor. We believe that this should be sufficient to qualify each solicitor to function, at least initially, in all the regulated activities (we address below the issue of separate training for each regulated activity). So it is critical that, to the extent that teaching is needed to achieve this and is not delivered in the QLD or GLD , it needs to be provided at the LPC stage.

We think it unlikely that the whole English & Welsh system can be fairly regarded as devised for the benefit of City firms. However, we entirely accept that the interaction between our members and the LPC providers to develop on the new freedoms which arose from the most recent changes under the SRA to LPC provision has been a major driver of change.

We welcome that freedom implied by recent changes. The concept of a core LPC programme for all dealing in particular with the "restricted activities", coupled with optional courses which can be crafted towards the expected careers of students, seems to us to be a model of the type of flexibility that is needed in modern legal education. If some common education with barristers or other legal service providers, which reflects this modular approach, works for other stakeholders we would welcome it.

The relationship between some LPC providers and our member firms have allowed our firms to monitor more closely the nature and quality of the training of future trainees, which is very welcome. We are more than conscious that this benefits a minority of LPC students (albeit a substantial one these days). We believe that there is little practical monitoring of the performance of LPC providers by the SRA and they are of course outside the scope of the universities quality assurance schemes. It seems to us that, in the interests of the profession as a whole, there is a need for an enhanced degree of supervision of LPC providers to ensure that they are serving the needs of their students effectively, particularly having regard to the costs incurred by those students in doing a LPC course. We also think that regulators could and should look harder at whether LPC costs are too high and if that is a problem for social mobility.

**Para 98, Training contract**

We believe very strongly in work based learning being a necessary qualification for solicitors (and indeed we see a benefit in some form of supervised training for everyone providing legal services, whatever their role). We know that there are those who argue to the contrary and advocate the awarding of the title of "solicitor" on completion of the LPC (a point we return to below), but when examined it will become clear that many who make this case have a commercial interest in doing so. We would not want to see, for example, a student being encouraged to take a relatively expensive LPC course to become a solicitor to find that he or she pays the fee and graduates as a solicitor but is not capable of obtaining work as such. We do not necessarily object to a different name to "trainee solicitor", but one which implies that

such graduates are “solicitors” will actively mislead the public about their capacity, which would pose a clear regulatory risk.

Training contracts have served and continue to serve our members well. But we entirely accept, as we said in our First Submission and above, that a training contract should not be the only way of undertaking a period of work based learning. In addition to advantages listed in the “Call for evidence” we would add that work based learning permits both employer and employee to make informed decisions about how the employee’s career might develop.

We accept that training contracts can be hard to obtain and may be seen as operating as a bottleneck preventing people entering the profession. The number of training contracts available now, as the “Call for evidence” makes clear, is well down now on what it was 3 or 4 years ago. Part of this is cyclical, because of the severe economic climate since 2008. Some of it may be permanent, reflecting poor prospects for a substantial part of the profession facing continued economic weakness, competition from ABSs and cut backs in legal aid.

This leads in turn to another point. Ultimately market conditions are going to determine how many jobs there are for solicitors, no matter how many qualify. All stakeholders need to be careful about encouraging school leavers to devote many years of study and significant expense to achieving a legal professional qualification and then find that this has not led to employment. It is not the function of a regulator to limit entrance to the profession, but nor should it be blind to the implications of the decisions it makes.

We are concerned that people who undertake alternative means of work based learning (and indeed those who do not do a university degree) may struggle to obtain employment in larger firms. There may be a perception of lower quality. One way to address that, and to deal with criticisms of existing training contracts, is to develop common mandatory outcomes and to test them. The SRA has been working on assessments for non-trainee work based learning, but we accept that it may be appropriate to develop this for training contracts as well. In doing so, regulators will need to be conscious of the need not to place substantial burdens on firms (particularly small firms), not to allow the assessments to become objectives in their own right (“teaching to the test”, which is a criticism that is made of some of the assessments of school students) and not to flout principles of law (such as the confidentiality of the work firms do for their clients). If there were to be assessments, we would wish that one way of carrying them out would be for a regulated firm to conduct the assessment, with the relevant regulator reviewing not the individuals but the performance of the firm doing the assessment, in a non-burdensome and proportionate way.

It is probably right not to leave this discussion without mentioning the Northumbria Law School approach of combining study and practical experience in a simulated environment (in which respect it has something in common with the JD). The costs associated with this are not insubstantial, but is an alternative to more conventional work based learning.

Picking up the debate over when the title of "solicitor" should be awarded, it will be evident from what we have said above that we feel very strongly this should be at the end of a period of supervised training and not on completing the LPC.

We have sympathy with students who complete that course but are unable to complete their qualification because they are unable to obtain training contracts. While alternative means of work based learning may mitigate that problem to some extent, without an alignment of LPC places with "training places" and subsequent employment (something we do not see as feasible), the problem will continue.

Awarding the title of "solicitor" at the post-LPC stage would give the students a (currently) recognised and high status qualification. However, that cannot carry with it a guarantee of employment at the right level in the legal services sector. While it might help to some extent if they apply for work outside that sector, we see no advantage given their legal ambitions will remain unfulfilled.

We see real dangers to the status of the brand of "solicitor" by awarding the title at this stage. "Solicitor" should be an aspirational qualification open only to the very best intellectually who have gone through a thorough training process including supervised work experience. Removing the latter will down grade the qualification and carries with it the risk of confusion so far as the public is concerned as well as damage to the status of the qualification and of English law internationally.

One solution would be to award an LLM on completion of the LPC (as that is also a recognised and high status qualification although the cost implications need to be understood) and to retain the market-driven approach of students in the position of not having a formal "supervised training place" being called paralegals.

**Para 98, CPD**

The “Call for evidence” asks whether there is a broad consensus for reform of CPD. The answer is likely to be yes. The more difficult part is building a consensus for a particular type of reform.

Irrespective of what the rules may say, each individual practitioner should accept a personal responsibility to do whatever it takes to constantly improve his or her skill base. The best way to do that for a solicitor is clearly by doing the work, observing what others do and discussing what you are doing with colleagues and supervisors and to be self critical and strive for better. A solicitor also needs to keep up with developments in law and practice. What most people mean when they talk about CPD is something entirely different, which is what is the minimum that needs to be done to satisfy the regulator that the self improvement/ skill maintenance process is being undertaken. It is important for that purpose, but its practical effect must not be overstated in the context of the overall development of a professional.

Our member firms monitor work quality and performance and we conduct annual (or more frequent reviews) which address these issues and what training needs to be undertaken to support the employee. That is less formal as solicitors become more senior but many of our members assess partners formally, and there is also peer pressure and client pressure. We feel that our member firms are doing what is necessary for monitoring development (whilst accepting that there is scope for improvement). The process often involves the joint (employer/employee) agreement of training goals for the next year, which we think should be encouraged. We do understand that emulating what City firms are doing is more of a burden to smaller firms. We think, nevertheless, that our experience shows an opportunity for “regulation by entity” as part of CPD.

The value of “input” based CPD, such as counting hours doing a limited range of things as at present, is that it is easily understood and measured. We are not opposed to “output” based CPD (ie assessing outcomes), and as the previous paragraph shows we believe that in substance this is what our member firms already do. We suspect, though, that it is going to be very difficult to specify output based measures across the profession as a whole that are

consistent, reasonable and proportionate unless couched in the most general terms, but we would be more than happy to consider any proposals that are made.

If a widely expressed output basis is prescribed, we recommend that thought be given to some explicit indications of what is required (we all may deplore it, but lawyers are very rule driven). Such indications could include minimum hours, specific areas to be considered, the types of activities which are included (which would need to be wider than the current requirements) and perhaps reference to the setting of training goals as above.

The "Call for evidence" mentions paralegals. The problem for any regulator is that the term "paralegal" covers a wide range of people doing a wide range of things. Any central prescription is likely to be wrong for as many people (or more) than those for whom it is right. We believe that there should be a specific requirement on firms to take reasonable steps to ensure that paralegals (and indeed all staff involved in regulated activities) are competent to carry out the tasks they are given or closely supervised until they are competent. There will be many difficulties with going much further than this by way of central prescription given the vast majority of different roles that such people carry out.

Taking the last point further, we would not favour reform of CPD which adds more prescription to the content of CPD than is currently the case. For example, no doubt some people will advocate more training in business management. But with the arrival of alternative business structures it may be that fewer solicitors will be involved in business management. We think the key to any successful CPD restructuring will be the need to allow solicitors, and their firms, to be proactive in devising CPD programmes which work for them and allow solicitors to meet their regulatory obligations.

**Para 98, social mobility**

Our member firms share the wider spread concerns in society about lack of social mobility. We want the best people to become solicitors irrespective of background. In addition we would agree with whoever told the LETR executive that firms like ours need to "avoid monoculture" (paragraph 83). To that end, both the CLLS and many of the City's leading firms have been keen to promote the virtues of social mobility. For example, at one extreme, the Chief Executive of the CLLS played a role in the creation of the Social Mobility Toolkit by Professions for Good, a voluntary organisation set up in the wake of the Milburn Commission; the successful outcome of this Professions for Good initiative was launched earlier this year by the Deputy Prime Minister. But far more important is the PRIME initiative of 2011, launched to improve access to the legal profession, which has now grown to involve over 75 of the largest and most significant law firms. Under the PRIME commitment, each firm pledges to provide a number of work experience places for young people from less privileged backgrounds; each place involves a minimum of 30 contact hours. Uniquely, the number of places supported by each firm must be at least 50% of the annual number of training contracts offered by that firm. This demanding commitment means that hundreds of students experience first hand the opportunities and challenges of the legal profession.

We will further address social mobility in our response to the LETR Discussion Paper 02/2011

We mentioned above the importance of the GDL in enabling people to change career, and its potential importance to social mobility. Indeed, alternative methods of entry which involve non-graduate entry into the profession might have a similar effect.

We will be very interested in any other thoughts about how legal education and training can promote social mobility in the context of the overall regulated activities. We would expect to be supportive of anything which did not dilute standards and which was a proportionate response to what we agree is a real issue of concern.

**Para 100, QLD**

See above for our thoughts on the issues mentioned.

**Para 100, national assessment of work based learning**

This is a complex area. The objective of a training contract (or other form of work based learning) is not just to acquire specific knowledge, which could be examined, but also to develop skills about how to deal with clients and colleagues, office and file management, an overall ethical viewpoint from a practical standpoint, how to cope with all the aspects of office life ("socialisation") and how in practice to best serve clients. Setting a national minimum standard might work; national assessment would be expensive and inflexible. The employer is normally best placed to assess these skills. The firm would then have a regulatory obligation to do a proper job, and could be monitored.

We believe that the work the SRA is now doing on work based learning will better inform this debate.

**Para 100, sector-wide national standards**

We have to be clear eyed about this.

Obviously, each regulator in its own way already sets minimum standards applicable to all of its members wherever they practice, by agreeing (in the case of the SRA) what is taught in a QLD/GDL and LPC. Those standards differ from regulator to regulator depending on the precise nature of what is expected of the people it regulates. When we say we need to be clear eyed, we mean that the LETR executive needs to understand that what is expected of a barrister, or a solicitor, and a legal executive in relation to any reserved activity may be very different. To give a specific example, it is reasonable to expect a solicitor to have a wider and deeper knowledge of property law than does a licensed conveyancer.

This approach of course has anomalies (barristers, for example, do not do conveyancing but are authorised to do so by the Legal Services Act, if not their own professional rules). We are however unaware of any damage being suffered by the public as a result.

The difficulty with sector-wide national standards is that they are bound to either reduce the minimum standards expected by some practitioners (solicitors in the example above) or raise those of others (legal executives). We feel that lowering standards is the more likely result, and we repeat that, in general, we are opposed to this.

We have heard reference, in discussions in this area, to "regulatory arbitrage". If that means that, say, because a licensed conveyancer may be able to do a property transfer cheaper than a solicitor can because of a smaller investment in education and training, we would observe that we believe that to have been Parliament's intention in allowing the establishment of licensed conveyancers. We accept, and some solicitors at the time said, that there are risks with this sort of approach, but we are not aware of any hard evidence of damage to the public at this stage.

For the reasons given, we do not support sector-wide minimum standards nor do we believe that there is any evidence to require them.

If there were to be sector-wide minimum standards we would want individual regulators, such as the SRA, to be free to impose higher minimum standards for those whom they regulate. Indeed, this would fit in with our vision of integrated, graduated pathways givng access to different "levels" within the legal services sector.

A move to “greater activity-based authorisation/regulation” (also mentioned) would, of course, be a profound change to the entire English legal sector. It seems to us that there are two separate possible concepts here.

The first is that all that would be regulated would be persons undertaking specific reserved matters, with no regulation of unreserved matters or, presumably, the conduct of regulated persons when undertaking non-reserved activities. On this version, there would be no regulation of solicitors or barristers or legal executives as such, but they would be regulated either by one regulator for all reserved matters or (in most discussions of this that we are aware of such as the LSI paper) a separate regulator for each reserved matter. On the latter basis, most existing firms would be subject to multiple regulation.

The second concept might be that in addition to the existing regulators in our profession there would be imposed new regulation on all or specific reserved matters. This would again subject firms to multiple regulation.

Without understanding better the case for such a change, it is difficult to respond on the question. But there are some observations we would make.

The first is that some of the “reserved activities” are defined in quite a complex way, and this meaning is not always clear. For an example, consider “reserved instrument activities” about which the Legal Services Institute said “the expression is not a familiar one – even to lawyers”. As the LSI went on to say that “for many, it is synonymous with “conveyancing”. However, this would (paradoxically) be both an unduly restrictive as well as a generous interpretation. It is restrictive because the definition in the Act encompasses activities that are not related to conveyancing (such as the transfer of personal property). It is generous because many of the activities carried out as part of a conveyancing transaction do not fall within the definition”.

We set the LSI quote to illustrate one concern. It would be seen as over-regulation to require someone who wishes to draft, say, an assignment of rights over a contract to have to be able to satisfy tests of competence in conveyancing. Other reserved activities may well catch a range of activities. As a result we have concerns with “reserved activity” regulation. These also include that for many of the reserved activities, a lot of what work the practitioner carries out which is related to the reserved activity is not itself reserved so it is not obvious what ill a new regulatory regime might cure. And one does not, as shown above, need to be expert in all aspects of a reserved activity to be competent in some sufficient part of it to carry on one's business.

Whilst it may or may not be right that there is no such thing as a general practitioner or legal practitioner (a statement often made these days) many of our firms and individuals within them practice across a number of “regulated activities”. If there was a separate regulator for each reserved activity, they would be faced by a multiplicity of regulators if this proposal were to be adopted, and a significant number of smaller firms across the country would have the same problem. This is before any decision was made about whether a separate regulator

for solicitors (or barristers or other professionals) was retained. Making a public interest case for such a multiplicity of regulators will be difficult, and that is before the concept of proportionality is engaged.

There is, of course, scope for some "cross regulator" schemes. The current discussion about a common higher court advocacy scheme is an example. But that addresses a particular part of one reserved matter only. It is being done in response to perceived problems in a particular area.

Another example of "cross regulator" schemes is the Joint Academic Standards Board, with both SRA and Bar involvement. To outsiders (such as ourselves) it seems moribund and out of touch, but it does not need to be either.

So we would submit that, where needed, the existing regulators can co-operate in the public interest. We do not believe that a case for another or alternative regulator is made out.

We have heard suggestions in some quarters that there should be a single regulator for education and training across the whole legal services sector. That has some attractions as a way of ensuring there are integrated pathways covering all aspects of legal services. However, we feel it would be illogical to introduce a single regulator with that specific brief unless there was a single "general" regulator of the legal services market. Given the disparate services, roles and needs of the range of providers of legal services, we do not see that a single general regulator makes sense and so, in our view, the idea of a single education and training regulator also falls away. And indeed there is nothing in the Legal Services Act to require or even support such an approach.

In passing, the abolition of a regulator for solicitors would cause us real damage, both because of the destruction of the brand "solicitor" but also because it is highly unlikely that (to take an example) a "recognised conveyancer" would have any international recognition at all. Without international recognition, some non UK regulators may simply not allow local practitioners to go into partnership with us, which may create significant barriers to English lawyers participating in international firms.

**Para 100, removal of linear breaks**

The SRA rules for the LPC already permit the LPC to be taken in stages. Whilst we are aware that at least one firm intends to mix LPC study with training, we suspect that the "market" (in this case the perceived needs of employers) has been a brake on progress.

But we are certainly not opposed to more flexibility. There is a very honourable tradition of part time study coupled with work leading to qualification in a number of countries. We see no reason why more use could not be made of this is in England. Rule changes which made such arrangements possible (but not compulsory) should in principle be welcomed.

**Para 100, common training**

As set out in our discussion of the LPC, we are not opposed to common training in appropriate cases. But we also make clear above our opposition to reducing the quality expected of solicitors.

**Paragraph 101, regulators**

We do have concerns about the quality of regulation in our sector. The SRA seems to have suffered from significant staff turnover, and no doubt inherited many problems when it was established. Those are good (if not sufficient) excuses. The reality is that the SRA has very limited institutional knowledge of or understanding about legal education and training (LET). The quality of its consultations can be poor (for example, its first consultation on QLTS which had to be withdrawn). It does not yet seem to have found a mechanism for engaging fully effectively with practitioners in this area. Our perception is that it frequently ignores practitioners' views submitted as part of consultation (and not just in the training and education area). No doubt there will be times when a regulator needs to do this but LET in particular should surely represent an area of common, not partisan, interest between regulator and the profession.

We continue to be ready to engage with the SRA to support it in its endeavours in LET, and we have no doubt things can improve.

If we felt that the SRA was sufficiently knowledgeable and responsive, we would have no problem with it being innovative in the way paragraph 101 envisages. We think the way to do that would be to open up new ways of doing things, such as the proposals on methods of work based learning which are alternative to the training contract (commenced before the formation of the SRA). However, the key here is for the regulator to genuinely understand the implications of what it is doing before making change.

**Conclusions**

In paragraph 24 of "Call for evidence" the LETR executive mentions the three topics on which it is particularly interested in receiving views, analysis and evidence:

- The extent to which the overarching structure of LET is or is not "fit for purpose".

  We of course only have detailed familiarity with the situation for solicitors. We have no doubt that the current LET does need review and improvement. But fundamentally we do not accept it is not fit for purpose. We see lawyers from virtually every country in the world, and collectively practise in many of them. An English legal education is a good legal education.

- Any weaknesses that exist in the existing stages in LET, and the extent to which there is willingness to consider radical changes in the LET system.

  We have identified problems already in at least 3 stages of LET as set out above. What we have not seen is an evidence based need for radical change. If such evidence is produced of course we would consider it. But we would be rigorous in seeking to establish that the change would address and improve identified weaknesses.

- The extent to which the objectives and assumption in the Legal Services Act and the moves to OFR may be creating new or additional problems for the regulator of LET.

  Looking first at the Legal Services Act, as we observe above there is a need for regulators to balance the regulatory objectives. On any particular issue the objectives may not all point in the same direction. We have not yet seen any particular recognition or understanding of this by regulators. But in short we do not think that the Legal Services Act necessarily creates new problems in LET.

We are not sure yet whether OFR itself creates new problems. As we observe above about CPD, lawyers tend to be rule driven, which is why we urge at least some clear standards of indicative behaviour as well as broad principles.

We are grateful for the opportunity to contribute to the review. We would be delighted to discuss this paper, or any other matter, with members of the LETR executive or their consultants.

10 May 2012

## APPENDIX A

## Observations on the US LLM

Paragraphs 80-84 of the "Call for evidence" discuss whether US style LLMs and using them to support attempting the state (particularly New York) bar exams pose a threat to the English profession. It seems to us to be odd to discuss this without contrasting it with our own Qualified Lawyer Transfer Scheme. Incidentally, as the representatives of exactly that part of the legal services "industry" which one would assume would be most hurt by the "ease of the LLM", we do not believe that New York law would be more, and English law would be less, successful internationally, because of the "ease" of the US LLM. And we should be taken to know. We certainly would not advocate lowering standards to deal with this "threat".

We made submissions to the SRA at the time it last revised the QLTS to say that the new regime, together with the ability of registered foreign lawyers and registered European lawyers to be managers of authorised bodies, would be likely to reduce the number of foreign lawyers also qualifying in England. Whether it is because of that, or because of the obvious logistical problems with the new scheme, we have observed a sharp drop in our employees using the QLTS. If the view in our previous paragraph were wrong then some adjustment to the QLTS might be the appropriate remedy. There is of course no reason why any British academic institution could not teach an LLM course which included sufficient instruction to prepare candidates for the relevant tests. Indeed, The Law Society's Gazette recently covered a story about a Korean lawyer passing the QLTS whilst studying for a LLM.

But none of this requires or justifies regulatory intervention.

## APPENDIX B

### Observations on comparisons with United States and Australian legal education

The "Call for evidence" refers in various places to LET in the United States and Australia.

The JD in the United States and the undergraduate law degree in Australia involve much more practical legal instruction then a typical law degree in England (the JD particularly so). In both cases students study, for example, the law of evidence which most university academics in England would (we believe) not regard as an appropriate subject to be taught to undergraduates as part of a university degree at all because it is seen as really involving no theoretical underpinning, but being more like just a set of rules that have to be learnt. In both the United States and Australia, the profession's regulators (which of course are very different and often include the judiciary) are much more involved in the detail of exactly what is taught at JD/undergraduate level.

The other point which is sometimes missed in the discourse about legal education in England, in comparison to the United States or Australia, is when the legal studies are undertaken. In the United States, typically the JD is taken at the end of a four year college course. In Australia, an LLB is typically a second degree after a student has studied for another degree, or in some places as part of a combined degree. This means that the average US and Australian potential lawyer has received a broad general university degree before or at the time of specialising in law (which perhaps justifies the more practical aspects of their law courses). We note that this means that entrants to the profession are as a result typically older in those jurisdictions than here, and in our experience additional age does affect maturity and ability to practice.

A typical US sequence is 4 year liberal arts degree followed by 3 year JD followed by the bar exam (7 years). This in reality is longer than a qualification process in England (including work based learning). We think therefore that any submission to the LETR that somehow there would be equivalence between the US and England were there to be some notional system here which would allow someone to qualify here with a 3 (or 2) year undergraduate degree and 7 months of LPC is inexact at best and misleading at worst. We do not think that the education system in England (including a training contract or other form of work based learning) is more burdensome on people seeking to become lawyers than it is in the two systems cited in the "Call for evidence"

## Glossary

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| "CLLS" | the City of London Law Society |
| "CPD" | continuous professional development |
| "First Submission" | the CLLS submission of 17 February 2012 |
| "GDL" | the Graduate Diploma in Law |
| "ILEX" | the Institute of Legal Executives |
| "JASB" | the Joint Academic Standards Board |
| "JD" | (in the US) a doctor of jurisprudence, the degree which is achieved by the US post graduate legal course |
| "Legal Services Act" | the Legal Services Act 2007 |
| "LET" | Legal Education and Training |
| "LETR" | the Legal and Education Training Review |
| "LPC" | the Legal Practice Course |
| "LSB" | the Legal Services Board |
| "LSI" | the Legal Services Institute, which operates out of the premises of the College of Law, an LPC provider |
| "OFR" | outcomes focused regulation |
| "QLD" | the Qualifying Law Degree |
| "QLTS" | the Qualified Lawyers' Transfer Scheme |
| "reserved activity" | an activity which, pursuant to the Legal Services Act, may only be undertaken by an authorised person |
| "SRA" | the Solicitors Regulation Authority |

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