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

Name of responding person: Paul Sharpe

Name of organisation (If responding on behalf of an organisation): Institute of Professional Willwriters

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):

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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

☐ CPD provider

☐ Law student (undergraduate)

☐ Law teacher (school/FE)

☐ Legal academic (university)

☐ Legal advice worker

☐ Licensed conveyancer

☐ Other non-lawyer

☐ Other provider of legal activities

☐ Paralegal

☐ Practice manager

☐ Registered foreign lawyer

☐ Regulated immigration adviser

☐ Regulator of legal services

☐ Solicitor/Notary

☐ Trade mark/patent attorney

☐ Trainee solicitor/Pupil barrister

☐ Trainee legal executive

X☐ 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).

We are of the opinion that the days of the traditional lawyer are numbered and therefore general legal education, no matter how wide, is increasingly unlikely to meet the requirements of lawyers who deliver legal services in the future. We also believe that consumers, driven by a market created by new entrants offering specific and limited legal services, will look increasingly for specialists.

We therefore see limited value in general legal training other than in providing a general grounding for those unsure of which area of law in which they might want to develop a career. In this sense any QLD/GDL qualification should be an optional, not mandatory entry into the legal profession.

We have no other comments to make on the QLD or the GLD as they have little relevance to our sector and suspect that will continue to be the case even if Willwriting and/or Estate Administration become regulated.

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?

Our vision is for a wide range of modular legal training which potential lawyers, new lawyers and existing lawyers can select at any time during their careers which are appropriate to their own personal and career needs, those of any firm they may work for and the consumers for whom they carry out work.

This is probably close to the ICAEW model, but not identical in that the accountancy model has specific modules, whereas the legal sector needs to have a flexible approach to the modules according to the wider range of different practice areas in legal services.

For example, we believe that the majority of the core subjects suggested in paragraph 42 of the consultation do not have any relevance to someone electing a career in (or career change to) Wills and Estate Administration.

We also believe that the skills set out in paragraph 133 should be an essential element of all legal training – whatever its aim and subject matter(s) and however it is delivered.

A risk in this system is that practitioners are tempted to provide advice for which they are not qualified – especially if it's the occasional 'one off' job. However this risk already exists where practitioners are qualified by title to provide a wide range of legal services, including those for which they have received no training. This is an issue for the regulators to monitor in ensuring that those that they regulate have the necessary competency. We also believe that the insurance sector is likely to look increasingly at what education and training individuals who deliver any particular service have before agreeing to provide cover. In this sense the system could become self-policing.

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? We believe that the core of the LPC should be removed, and the core subjects moved into modules that are relevant to the modules being studied by the students so that students study only what is relevant to the subjects that they wish (or hope) to work in.
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? We have no view on this.
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? We have no view on this.
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? As stated above, the regulators need to pay more attention to the relevance of training rather than the amount of training when agreeing to approve someone to provide legal services, placing restrictions on certificates to practice where necessary.
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. Our concern is that training should be relevant, and not padded out with irrelevance to build up sufficient hours of study to meet a level provided by an awarding body and required by a regulator. We are aware of a training module in Wills that has a particular standard (level 3) but does not cover parental responsibility and guardians – because it is covered elsewhere in a family law module. We also believe that 'earn while you learn' and practical experience has a great value in achieving educational standards as it requires students to put into practice their theoretical knowledge. We have had recent experience of someone with a qualification in Willsat level 6 from a well-known and respected training provider who was unable to draft a simple mirror will. He knew the theory but couldn't put it into practice without further training.

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)? We believe it is not possible to set a baseline standard in the regulated sector because the sector is so diverse in terms of the services that it provides and the customers to whom it provides services. We would go further and say that it isn't desirable either. It can't be advantageous to anyone to demand that practitioners study unnecessarily to meet an arbitrary standard.
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? We agree with this conclusion and the same applies to the qualifications available to those working in the unregulated sector. We are often confused by the myriad of training and qualifications that are presented to us. It surely makes sense to have a clear framework of standards available to all practitioners. This would make career progression and career change (training pathways, exit points and off –ramps) much more clearer as practitioners would be able to swap and change and use previous relevant training and practical work place experience as credits towards different qualifications. We would like to think that a clearer framework would encourage a wider range of training providers to invest in the delivery of training to a wider audience of lawyers and/or deliver efficiencies – and therefore reduce training costs.
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? Entity regulation would require employers to require their paralegals to have relevant training. While this can be achieved with the existing system, it would surely be easier (and probably cheaper) for all concerned if everyone was working to the same standard – even if that standard was achieved in different ways.

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 prority 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?** Some have argued that a requirement to teach ethics is a sad state of affairs, and that it should be given that a lawyer should not need to be told how to act ethically. Its perhaps an inevitable result of the drive to commoditise legal services that those who provide legal services have (and will continue to have to do so) become more competitive and sales orientated. That doesn't mean that all lawyers will inevitably become unethical, but in a fight for (commercial) survival, it is more likely that the boundaries will become blurred. We are therefore encouraged that ethics appears in the list of suggested common topics suggested at paragraph 133. We would therefore recommend option (c). Option (a)does nothing to address the issue, option (b) is too fuzzy and we don't support the idea of a specific foundation in legal knowledge for all lawyers unless it is made up only of the core subject areas of paragraph 133.
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? Anything that doesn't meet a public interest test is doomed to fail as consumers will vote with their feet – closely followed by practitioners who need to follow their customers. We return to our opening remarks. LET should be flexible and relevant to the work provided by the practitioner. The regulator (and the employer) should monitor and ensure the appropriateness of the training (initial and on-going) and act where appropriate training (or experience) has not been provided. Consumers can then be assured that the advice they receive is competent.
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) We believe the summary of the issues in paragraph 127 is particularly succinct. We have no comments to make on supply and demand – other than that a flexible and integrated training regime will allow practitioners to follow demand for work in the legal sector. By widening the market for training to a wide range of legal practitioners it should also reduce costs.

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]

Our view is that the current system of general training providing the right to provide a wide range of legal services by title – irrespective of the relevance of any education and training received, is the core issue that needs to be addressed. It's not surprising that the IFF Research conducted on behalf of the Legal Services Consumer Panel into the quality of Wills found similar proportions of problem Wills in the solicitor market as in the unregulated legal market. Both sectors require the same type of training in Wills to be able to deliver the service – none.

We have tried for some time to encourage legal training providers to produce training that reflects the needs of specialist willwriters but have been unsuccessful. One issue might be that the size of the unregulated willwriting market is not large enough to justify such investment. Another might be that the existing regimes are not flexible enough to enable providers to broaden their scope of how they deliver training and to whom. The LET must ensure that anyone delivering legal services, even if they are unregulated, should be able to obtain relevant training.

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.

Yes we believe meeting relevant outcomes is what defines competence – not inputs which may or may not be relevant.

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?

We have no preference. We believe that regulators should be making it clear to those that it regulates, and to education providers, what subjects need to be covered in order to gain entry to their own regulatory regimes. Where this is through curricula or through a list of topics, or either, or both is less important.

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?

We believe meeting standards (or outcomes) through one or more flexible pathways is more important than achieving a particular badge or qualification. Our view is that consumers are less concerned with how someone has become competent than they are with an assurance that someone is competent.

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.

We are not aware of any qualifications that provide what we believe to be adequate training to provide Willwriting services, which is why the IPW, reluctantly, provides its own training and courses for its members. There are some qualifications which we believe do provide necessary competence to provide probate and/or estate administration services. In some cases study in Willwriting is bundled with training in estate administration. We suspect this is because there is insufficient study content in Wills to achieve a particular qualification level.
We therefore believe that existing training is mis-directed and therefore inadequate in some areas (Wills) and/or over extensive in others (probate and estate administration).

We would like a practitioner to be able to study the subject of Wills, along with the core criteria with provider A – even if this doesn't result in a level 1,2,3 or whatever qualification, provided that core criteria (outcomes) set out by the regulator are met. And then at some point later progress and study probate and estate administration which meets regulatory criteria (outcomes) (without having to study the core criteria again) with provider B. Or a practitioner could go in the other direction by studying probate and estate administration (along with the core criteria) first with provider X and then progressing to study Wills (without having to study the core criteria again) with provider Y.

Thank you very much for your contribution. Please now e-mailyourresponsesto letrbox@letr.org.uk,putting'Developing the Detail response'inthesubjectline.