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

Name of responding person: John Hodgson

Name of organisation (If responding on behalf of an organisation): Association of Law Teachers

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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

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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)

x☐ Law teacher (school/FE)

x☐ 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

☐ 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).

It is important to recall that the QLD is a degree and is therefore securely located within the Academic Infrastructure. In particular HEIs now have clearly articulated statements on graduateness, which reflect the FHEQ. This generic structure should assure most generic intellectual skills and also threshold business and commercial awareness.

It is also important that a significant minority (33% according to Hardee) undertake a QLD without intending to qualify as a regulated professional, and a majority (60% according to the discussion paper) actually do not proceed to the regulated professions. The value of the QLD as a liberal academic qualification, recognised since the period of activity of ACLEC, the Lord Chancellor's Advisory Committee on Legal Education, should not be understated.

Nevertheless, some formulation of the essential requirements for progression to the English regulated professions is needed, not just for the QLD. The same requirements (at least in terms of knowledge and understanding of law and law related issues) are also needed for the GDL and, increasingly, for alternative, apprenticeship or 'in service' education and training models (e.g. CILEX). We agree that these should be articulated at FHEQ Level 6.

There appears to be little appetite for expanding the 'core'. Specific interest groups and practice areas will always argue a case for those topics of primary importance to them, but this does not make them 'core' for all.

We consider that the Joint Statement should be renegotiated, by the appropriate stakeholders, including providers, practitioners and regulators. Our preference would be for a broader, rather than a detailed, specification, with themes rather than subjects (as with the original GDL, as developed at Nottingham Trent and UWE in the 1990s). Three themes relate to the broad concerns of the law –

public law, embracing governance, regulation and the relationship between the citizen and the state. This would include an understanding of the legislative process, nationally and at EU level, the protection of human rights and civil liberties, administrative dispute resolution and the function of criminal justice;

obligations, embracing negotiation and drafting of effective contractual instruments, risk assessment, the economic and social function of contract and tort and relevant aspects of dispute resolution;

property, embracing concepts of legal and beneficial ownership, the particular issues around real property, security and transmission of interests. This should be related to current reality, particularly in relation to commercial trusts.

The fourth theme is an underpinning one, requiring an understanding of ethics as it relates to law and lawyering, the philosophical, economic and social basis of law and fundamental concepts of legality, proportionality and the rule of law, together with a thorough understanding of the nature of research and the modalities of legal research. 'Transferable' skills of written and oral communication and persuasion (interviewing, negotiation and advocacy) also belong here.

What is perhaps more important is that what is taught is delivered in a proper context, e.g. public law in its political context and contract law in a commercial context.

It should be noted that relatively few complaints about the professions relate to inadequate basic legal knowledge (the material in the discussion paper seems to highlight skills and procedural weaknesses). While a sound grasp of general principles underpinning regulation, transactions and dispute resolution is essential, knowledge of specific rules is less necessary – the detail of these rules changes. In any event the content of the rules is generally readily accessible; it is the interpretation of the rules and their application in a particular factual context which is the role of the practitioner.

Properly articulated, such a specification should enable Law Schools to formulate QLDs to their own specification, and will allow GDLs to develop a more intellectually challenging format, thus meeting some of the criticisms identified in the discussion paper. It can also be contextualised for 'in service' routes, with a combination of formal academic aspects and portfolio based assessment.

Overall we strongly favour the approach indicated by the final sentence of para 41 of the discussion paper. Our comments above can be seen as an alternative formulation of the approach in para 42, which we broadly support.

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?

The ICAEW model is based on modules which are typically quite technical. Many are based on specific knowledge, procedures and professional standards. This is not the approach of a degree. There is a danger of such a modular approach failing to provide a coherent academic experience. It would be possible to have such a national matrix at the vocational and practical stages of training, thus allowing greater flexibility, but there seems no pressing need, or significant benefit, in replacing a QLD or GDL with a 'pick and mix' set of non-congruous modules.

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?

It depends on whether there is greater integration of LPC and training contract/work experience. If significant numbers of students are undertaking the LPC before obtaining or embarking on a training contract it needs to remain as a coherent course with a broad core attuned to a range of practice areas. A core of professional ethics, professional standards, client care and matter handling clearly exists. All practitioners need to be able to manage transactions and at least be aware of dispute resolution . However, the particular knowledge and techniques for particular practice areas are either suitable for coverage as options, or may form part of specialised CPD.

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?

The employed barrister (except in contexts such as the GLS) is a by-product of the BPTC, and should not dictate its content or structure. It is not a question of modifying the BPTC. Students on the BPTC will not be aspiring to be employed barristers, and would therefore not value any element specified or perceived as being for employed barristers. It is also difficult to see how the BPTC could be expanded while maintaining its current focus. It is a matter of identifying whether there any systematic shortfalls, and creating a mandatory supplementary course or, more likely, for the employed barrister and the employer to identify training needs as part of CPD.

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 do not have sufficient expertise in this area to 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?

Integration is clearly feasible. It has succeeded elsewhere, in the CILEX context and in relation to the integration of part-time LPC and training contract. Developing expertise in on-line delivery increases the options. The advantages are obvious – opportunities are increased, geographical constraints are minimised, expert and specialised provision can be accessed by all. The principal challenge is to ensure that there is clarity over what is required and rigorous monitoring of each participant to ensure that they have completed all elements.

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.

We cannot comment here

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)?

Level 6 is the minimum. It is the lowest level at which the qualification would be internationally accepted. It is already the accepted standard for the QLD/GDL and is the designated standard for

CILEX.

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?

Clearly 'yes', given that there is no definition of 'paralegal'. It would be desirable for there to be clarity, if only so that paralegals who do not have a QLD or other part qualification can receive recognition and credit towards a full legal qualification. NOS would appear to be an acceptable basis.

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?

Yes, although this may conflict with the government's predilection for deregulation. If services are unregulated, can the service providers be regulated? Perhaps the better question is 'What legal services should be regulated – i.e. delivered only by regulated professionals, and which should be reserved to particular regulated groups with specialised qualifications?'

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?

Our preference is (c) followed by (b). We would be happy with ethics incorporated into a theme of the kind we describe in our answer to Q1, but not as an additional foundation.

Higher, as we support it in principle, but do not support other additions.

Yes

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?

It is the only ultimate justification. Benefit of the regulated (monopoly protection) is not legitimate. The test is essentially 'What knowledge and competences are necessary to practise effectively with minimal risk to the public?'

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 broadly agree. Points b and e in para 127 are particularly important in relation to training.

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]

Many of the problems are with the way practitioners address 'the business of law' – communication, client relations, complaint-handling; this perhaps needs even further emphasis, but the broad assessment is correct.

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. Outcomes measure capacity. The outcome measures need to be appropriate. In particular they need to measure capacity to perform the relevant activities in context.

This is not to say that other forms of certification may not be required ad interim. For example a degree evidences outcomes in terms of knowledge, cognitive and transferable skills, but usually not fully applied. The relevant outcome to assess is the ability to apply these attributes in practice.

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?

This will vary from area to area. Much depends on whether specialist sub-qualifications will be offered, and if so, whether they are mandatory for practice in defined areas.

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?

Qualifications are the certification that outcomes have been met. They are, in that sense, summative. Standards are the reasonable expectation of the public, articulated through the regulator, and are ongoing. One standard ought to be currency of relevant knowledge and skills, which may be a matter of CPD, but could involve periodic revalidation of qualifications (as henceforth in the medical profession).

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.

At present, there is limited over-specification for CILEX and the Bar, but quite extensive over-specification for solicitors, owing to the existence of very many diverse sub-types of practice. This will always be the case if a qualification is generalist, but all practitioners are specialist.

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