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

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Name of organisation (If responding on behalf of an organisation): University of Huddersfield Law School

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Are you responding as a:

☐ Barrister

☐ Barrister's clerk

☐ BPTC/LPC student

X BPTC/LPC tutor

☐ Chartered legal executive

☐ Claims manager

☐ Client/consumer of legal services

☐ CPD provider

☐ Law student (undergraduate)

☐ 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).

This Law School firmly believes that the LLB is much more than an entry to the professions. It is an academic discipline in its own right. As such, we would be concerned by a move towards any form of outcomes focussed regulation of the law degree or GDL which would move the academic study much more towards "training". Whilst it is acknowledged that the LLB/GDL forms the"academic stage" of training, the fact remains that this is an academic programme.

We believe that the current foundation subjects are about right to focus students on the discipline of law and to develop critical thinking and depth of knowledge in a range of areas so as to meet the requirements of the Law Benchmark Statement. The foundations form the basis for a number of other law modules and should remain as they are.

We note the suggestion of ethics as an additional foundation subject and feel that there is scope for its inclusion in the curriculum without compromising or reducing the current foundations. For example, at Huddersfield we run a core module at intermediate level, Administration of Justice, which incorporates critical thinking in ethical matters and an introduction to professional conduct. This in turn provides a solid foundation for the vocational stage of our integrated exempting degree.

Our view is that there are a variety of ways in which to introduce other concepts within the medium of an exempting degree, without compromising on the foundation subjects nor devaluing the discipline itself.

We would also argues that the GDL is fit for its purpose. We would not agree with the comment that the GDL undermines the legal profession and would firmly agree with the comments in paragraph 33 of the Paper, that the value of the GDL is not only in the maturity of GDL graduates but also in the richness they bring by having studied another subject or discipline prior to embarking on the GDL.

We would not agree with the student comments in paragraph 30 that skills and employability should necessarily be backfilled into the degree in order to reduce the cost or length of the LPC. This paper points to evidence of the number of law graduates that enter into the professions as being relatively low. The law degree is seen by many as a good degree to have for many non-legal careers, developing as it does critical thinking and other transferable skills. It is valued in the market place and should not be used as a back fill for vocational courses.

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?

We consider that there may be some merit in the introduction of such a system, the benefit of which would be to ensure that the academic rigour and discipline of the law degree/GDL remains intact and subject to the quality mechanisms of the academic institutions at which it is studied. To to an extent, the GDL is already allowing for the development of an approach that is akin to ICAEW by allowing exemptions for up to four of the Foundation subjects. We can see how such a system would go some way to ensure the consistency and quality of the qualifications of non-graduate entrants into the professions but would comment that there are many entrants into the professions who have legal qualifications and any such system being developed would need to account for all

such qualifications within its exemption process.

Associated risks include consideration of which body would administer such a centralised scheme. In addition, law graduates who would be able to apply for exemptions may have obtained their qualification through innovative means of assessment, not necessarily relying on one end of module examination, for example, courseworks, in class tests and the like. For others who do not possess a degree or GDL, this centralised examination would be their only means of assessment and may result in unfairness between entrants.For a profession which encourages equality and diversity to return to such a rigid method of assessing seems to be a backward step.

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?

The LPC in its current form is an odd fit. By attempting to divorce the electives from the core areas of the course, the regulators must have predicted that some students would indeed enter into legal practice after completion of the Stage 1 cores and to return to study either some or all of theelectives at a later date, presumably taking time out of work to do so. In reality, this has happened in very few cases, the majority of LPC students have preferred to study both Stages 1 and 2 of the course before embarking on a training contract or paralegal role. It is suggested, therefore, that generally students of the course like the continuity of vocational study in one continuous period whether on a full or part time basis. By moving towards the integration of certain areas of the LPC into the training contract, this appears to conflict with the current evidence as to students' preferences. Our experience in this area is direct; when LPC3 came along, Huddersfield validated a course specifically designed to study Stage 2 electives at a different time from Stage 1 – but no LPC students under the new structure have ever done so.

It is suggested that the LPC is a safe environment for the development and practice of legal skills,prior to the move into workand is also a safe environment to develop emerging skills as a practising paralegal (part time LPC). By reducing the content of the course, there is a danger that the ability to use this method of transactional learning will be undermined. Many LPC providers are developing innovative ways of ensuring realism within this safe environment, whether by the use of virtual law firms or transactional cases studies and this innovation should be encouraged and motivated, rather than reduced.

Within the last LPC review, the importance of Probate and the Administration of Estates was not recognised. Foryears there has been a shortage of private client lawyers as this area is not perceived to be as "sexy" a subject as other areas. At Huddersfield both the exempting degree and the LPC place emphasis on this area. On the exempting degree, this is taught as a linear year long module and student feedback year on year is that it is an interesting and valuable subject which provides an opportunity to practise a number of lawyering skills. We would suggest that this area should be included in a greater way into any new style LPC, although we recognise that bespoke LPC providers of city based LPC s will not see the relevance of the subject to their courses.

Our view is that, as the LPC is the vocational stage of training, it should not be reduced. To reduce it would be to reduce the amount of opportunity to develop legal skills and understand the importance of the transaction, concepts which only really come from face to face learning. Reducing the LPC would mean that providers would simply be unable to fit in an appropriate amount of face to face training to adequately develop students into well rounded and employable postgraduates.

Further, Huddersfield's exempting degree makes much use of linear year long modules to ensure an

optimum level of face to face training and transactional-based learning is undertaken.

We feel that, if there are gaps in the training of would-be lawyers, such as commercial skills and client care skills, then it is the LPC and BPTC, that is, the vocational courses, where these gaps should be filled, not the academic degree nor the workplace initially. Recognition of this fact would not suggest a reduction of the LPC but an extension, although we recognise that, given the cost of the current LPC/BPTC, this may prove economically unsound for some graduates.

Our view is that this is where the flexibility of an exempting degree with multiple exit points can bring much benefit. The cost is lower as the course is charged at an undergraduate rate, that is, within the deferred fee scheme, it fits into a university's systems in a much easier manner than an LPC does, there is ample scope for developing and delivering modules within the structure without lengthening the course and the multiple exit points allow students to exit with whatever qualification they wish to gain, should they decide a legal career is not for them. It is our view that such courses have the necessary foundations, together with sufficient flexibility, to develop in order to meet the objectives of the LETR.

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?

At present, Huddersfield is one of the few providers of legal education which offers an exempting degree, blending the academic stage with the vocational stage. Our view is that a blending of these two stages works very well in preparing students for legal practice. The outcome of the 4 year course is an individual who is well rounded, equipped with both knowledge-based and practical skills and is able to either go into a paralegal role or a training contract – or indeed a non-legal field with transferrable skills. From our experienceswith this course, it is our view that it is important to retain a taught vocational stage. This is the arena where students learn the **practical** knowledge and how to put into practice that knowledge. It is our view that the classroom environment provides a safe arena for developing and practising the skills that a student will then take with them into practice and we would question whether a student who has come through 3 years of pure academic study would then be ready to go into practice after 15-18 weeks of vocational study.

We have already commented that we feel strongly the degree should be retained as an academic programme, not least because many students, as has been seen by the statistics produced by the LETR, read law as a stand alone activity, not intending to go into legal practice and, therefore, the integrity of the academic nature of the degree should be maintained. If its nature is changed, it is in danger of becoming no more than the first part of the training course for would-be lawyers and not an academic subject.

Therefore, following this argument, if training needs are to change, they should change from the point of the vocational stage onwards. If it is felt that additional training is required, then a vocational course which is fit for purpose should be developed, as opposed to these additional training needs being pushed down into the academic study and a shorter LPC delivered. This seems to make little sense to the point of producing a lawyer who is fit for practice. Blending the academic and vocational stages does produce such a person in our experience. If anything, within the exempting degree, students have increased classroom contact time and benefit greatly from this.

It is our view that any attempt to blend the vocational stage with the training contract should proceedwithcaution. It is noted that CILEX does offer a flexible alternative but those people who move through this route have commenced in a junior position within an organisation, perhaps as a secretary and have moved up to the position of fee earner through years of experience. This must be contrasted with a 22 year old who has studied a degree full time for 3 years, perhaps with some employment experiencebut not necessarily in law and has then studied an LPC for 18 weeks. This type of entrant into the profession is in complete contrast to the CILEX worker who has spent years learning "the ropes" on their way to a fee earner's position.

Similarly, to contrast with the medical profession is to assume that all students embarking on a law degree do so because they wish to become a lawyer. A law degree is a separate 3 year academic course of study which many choose to do. The study of medicine at university is part of a holistic course of study which is fully integrated from the start. A student would only choose to study medicine because they wished to become a doctor – this is not the case for law as a degree.

It is noted that there is comment as regards the flexibility in-built into the LPC around the split of cores and electives. However, as stated, whilst this split is available, a majority of LPC providers still offer a course which includes both Stages 1 and 2. Huddersfield is one of the few providers who have truly divorced Stage 2 from Stage 1 in order to give student maximum flexibility – but our experience in doing this for the past 4 years has been that the vast majority of students wish to get the study of the electives out of the way with Stage 1, rather than integrating studywith work. This is because the majority of employers of our graduates want someone with a well rounded profile who is ready and fit for practice at the conclusion of the vocational stage.

We would question, if the LETR recommended a more radical integrated approach, who would undertake the training of would-be lawyers. All tutors in the University of Huddersfield are required to undertake teacher training courses for HE and are required to become Fellows of the HEA. This assures our students not only of our subject knowledge as former practitioners but also of our ability as teachers. It is the quality mark for our teaching and training. If the vocational and training contract stages were blended, how would the quality of teaching/training be assured, if some of it were to take place within the training contract? Would this be in-house at legal practices or would students return to university to study for periods, rather like an apprentice scheme? If there were a mix of the two, as suggested, then we would be concerned as to how the quality of teaching could be assured outside of the university environment. In addition, the majority of SMEsmay not have the resources to be able to conduct substantial training in-house – does this mean that those firms would then be unable to take on trainees? Surely this would only increase the bottle-neck at the point of embarking onto a training contract?

However, the scheme of a move away from a training contract and into a period of work-based learning, togetherwith assessment by way of portfolio would, if managed correctly, in our opinion, bridge the gap between the vocational stage and the training contract. Were the regulators to quality assure the portfolio supervisors and assessors, this would ensure maintenance of standards.

Firms could then choose whether to train their employees as supervisors or whether to approach universities to act as external supervisors/assessors. University teachers have much experience, not only in teaching but in one to one supervision and assessment, as this is part of our HE role, to provide supervision to students in dissertation, thesis or workshop file preparation. To move away from training within an HE environment is, to some extent, devaluing the critical role which University teachers play in shaping the lawyers of the future.

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 are unable to provide direct evidence in answer to this question. However, as the LETR group is aware, Huddersfield is one of only a few Universities to offer a CILEX accredited LLB(Legal Executive) route to qualification. This is the second year we have offered this route and it is increasing in popularity. Again, by offering the route within an HE setting, the quality of the course and the teaching on it is assured by our own university processes. In addition, as all students on our exempting degree, 3 year LLB and Legal Executive route commence on a common pathway in Year 1 and then diversify as they move through the course, these routes provide a suite of programmes,which allow for a variety of exit points and are, thus,inherently flexible in nature.

As our Legal Executive route involves the study of "soft" skills such as the Client Care Skills module, it is our view that these type of modules could easily be integrated into both the vocational part of the exempting degree and the LPC in order to provide more focused training that better meets the needs of the profession, whilst still assuring quality as its sits within a formal training programme.

This type of integration would begin to bridge the perceived skills gap for law and LPC graduates – however, this does not allow for the other regulated professions. We note the difficulties involved in common regulation of the workforce but believe that assuring quality and a high standard of education should be at the core of such regulation and that the type of programmes universities such as we offer are going a good way to assist.

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)?

Our view is that, when considering competence to be authorised to practice independently, the bar should be set at graduate equivalence, in order to ensure quality and provide confidence to the consumer.

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?

In response to this question, the development of a clearer framework with more co-ordinated standards would be welcome in our view.

In particular, there appear to be two very different groups of paralegals – those leaving school or

college that may benefit from the apprenticeships described and those leaving the LPC/BPTC who already have a high level of skills and go into a paralegal role whilst they attempt to find a training contract/pupillage. These two groups have manifestly different training needs and there is, therefore a need for a clearer framework.

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?

On the question of pure standards and quality assurance, our view is that there should be some form of individual regulation of paralegals.

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)?

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 view is that there is a role for ethics and values within the law curriculum and indeed within the law degree. However, we would not consider that role extends to ethics as a specific Foundation of Legal Knowledge.

As stated earlier, at Huddersfield, we deliver a core module at intermediate level, Administration of Justice, which deals in part with ethical considerations, the roles and ethics of the professions and the judiciary and the regulation of the market. This module is pitched at intermediate level and its study builds on the core values introduced in the subject of Legal Method and Professional Skills, which is studied at foundation level. It usefully allows students to develop critical thinking and the assessment of the subject as a coursework allows for research at a deep level to be undertaken.

We feel that the inclusion of this type of module as a core for our degree sets our students up well for the later exempting elements of the degree, should they choose to pursue that pathway and for students applying to become advisors in our Law Clinic, which has as its mission statement the representation of ethical values.

We would, therefore, wish to see some way between (b) and (c) which is, to a large extent, how we have developed and are delivering our academic programme in any event.

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?

On balance we see the need for a public interest test and would tend to favour the total welfare standard as set out in paragraph 109.

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 have three observations to make in relation to this evaluation:-

(a) The evaluation of the current method to qualification as a solicitor – namely the training contract and its fitness for purpose. Whilst we understand that this has been the subject of a separate pilot project in recent years, it is interwoven with the key issues as stated in the Paper and our view is that it should form part of the summary of key issues;
(b) We consider that it should be highlighted specifically how these issues can have dramaticallydifferent effects on differing groups, for example the larger firms in contrast to the SMEs.

(c) We note that, given the earlier sections of the report on what should be the focus of initial training, this does not appear as a key issue going forward. The reliance on initial training as an indicator of competence is mentioned – but not the fitness for purpose of the current initial stages of training itself. We feel that this should appear somewhere in this section of the Paper.

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]

Generally we would agree to some extent with the gaps in the vocational/early career stage. Our view is very clear – we feel that the existence of these skills gaps should point to a need to review the vocational and early stage career training to ensure that this stage is fit for purpose – and we fail to see how the shortening of the LPC to a period of 15-18 weeks will meet this aim. On the contrary, we consider that the vocational stage should be reviewed with a view to how we can incorporate additional skills training in a secure environment to cover the gaps, leading to a period of work based learning and the completion of a portfolio for assessment to allow for sufficient practice under supervision. We consider that adequate training needs to be given first and foremost in the classroom and then under supervision.

Moving forward, we feel that a system of continuing competence at stages throughout a legal career, together with an emphasis on reflective thinking and the reflective practitioner will ensure that the profession into which we turn graduates remains fit for purpose.

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. The providers of the academic and vocational stages of training utilise outcomes as the whole basis for designing programmes, modules and assessments and it would, therefore, seem to be appropriate for this to be the basis for assessing competence across the sector. It also fits with the QAA benchmarks.

Graduates coming into the sector are well used to learning and being assessed in this way and to continue to work within an outcomes approach would seem sensible, given this knowledge.

However, we feel that an outcomes based approach will only work if the outcomes are relevant and well designed, for example, the current LPC has as its focus an outcomes approach but the sheer number of outcomes makes it difficult to highlight those that are most relevant. Some of the current outcomes are akin to coverage of a syllabus rather than a pure learning outcome. A more exacting set of outcomes which are suitable and fit for purpose would be preferable and would be the most useful for educators to work with.

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?

No – we consider that the use of model curricula would be a step backwards to the era of centralised

training and examinations – our view is that a regulated legal educator, if provided with a set of clear, relevant outcomes, should be allowed to design a set of curricula and assessments which meet those outcomes. If a course is properly validated and sufficient quality assurance mechanisms are in place, then regulators should be confident in the quality and standards of the course(s) without the need to "over-regulate".

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?

Currently this is the position with the LPC. The regulator is the SRA, the awarding body is the university. The risk with a continuation of the current approach is that, rather than encouraging innovation, there is a tendency to confuse the public and employers. What amounts to a distinction in a PG Dip in Legal Practice for one awarding body may not be the same for the next. An employer looking at the CVs of prospective employees may assume, wrongly, that both qualifications mean the same thing, which is not necessarily the case. Similarly, a member of the public looking at the credentials of a lawyer may not make the distinction. This is the risk inherent in a true separation of standards from qualifications, inevitably different providers will award in different ways .

Whilst we recognise the benefits of such a separation as detailed in paragraph 136, we would advocate caution for the reasons as stated above.

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.

As stated previously, our experience of outcomes focused approach is in the law degree/GDL and the LPC/exempting degree. Whilst the range of outcomes which we have designed for both the LLB and the GDL is, in our opinion, adequate for the needs of the courses, the range of outcomes which were designed as a result of the LPC3 restructure is over-extensive. The number of outcomes is difficult to manage and many of the current outcomes are akin to syllabus coverage. An outcomes based approach will only work if the outcomes are relevant and well designed and in our opinion, the outcomes for the LPC/exempting degree need to be revised and reduced to be truly learning outcomes. A more exacting set of outcomes which are suitable and fit for purpose would be preferable. Outcomes need to be properly thought out – it is our view that, in this case, design is key not the amount of outcomes.

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