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By email

Dear Professor Webb

Response to LETR Discussion Paper 01/2012 - Call for Evidence

The purpose of this paper is to set out the views of Herbert Smith LLP to the questions posed by the LETR Research Team in Discussion Paper 01/2012. Queries on this paper should be addressed to Liz Bryne (liz.bryne@herbertsmith.com) or Richard King (richard.king@herbertsmith.com) in the first instance.

As we are a law firm, the majority of our comments will inevitably focus on the education and training of solicitors, although we will also comment on some broader issues affecting the legal services sector.

In common with many other respondents to Discussion Paper 01/2012, we support the aims of the Legal Education and Training Review ("the Review") in looking at the future of education and training for the entire legal services sector. Having said that, we think it is important to recognise that the legal services sector is diverse and that, necessarily, expectations may differ across the sector. This is not to suggest there should be any lowering of standards within certain parts of the sector or that there should not be a common standard for all at the point of qualification, merely that we should recognise the very different types of firm in practice and the broad range of services they provide. As the focus of our practice is international in nature, and with a strong culture of technical excellence in traditional legal disciplines that we have inherited from partners in the mould of Francis Mann and Lawrence Collins, we have a distinctive view which we anticipate is also representative of other leading firms serving global commercial clients.

Education and training must play its part in assuring the quality of legal services provided to a broad and varied consumer base. We believe that excellence in technical capability is pre-

eminently what has brought this firm success, and this should not be compromised if we are to retain the premier reputation enjoyed by the English legal profession and its tradition. However, it is not sufficient in an increasingly global marketplace where the role of "legal adviser" has extended far beyond just advising on the law, for lawyers to be technically excellent alone. The modern international lawyer needs a high degree of intellectual capability and professionalism coupled with a broad range of skills including client service, business and cultural understanding and management skills (both people and project management). We are looking for a legal education system to support the development of these qualities, but to do so in a way that is not obtrusive or costly to the efficient running of a modern, international business.

We will now turn to some issues of particular concern to us:

1. Access to the profession

We endorse the Review's focus on social mobility and, along with many other City firms, are strongly supportive of initiatives which encourage talented students from a wide variety of backgrounds to consider a career in law. Our own Networked scholarship scheme is an innovative five-year programme including careers days, mentoring, work placements and personal development training that provides experience, support and guidance to talented local students who aspire to a career in a professional services environment. We are also participating in the PRIME initiative together with a large number of other law firms.

We watch with interest the rising profile of legal apprenticeships and non-graduate entry schemes, such as FILEX. We can certainly appreciate that with rising university tuition fees and a rapidly changing legal marketplace (where not all work needs the attention of a "solicitor"), there is a need to offer alternative pathways into the profession. We also can appreciate that not everybody who works in the legal services sector has ambitions to be a "solicitor" and that this does not mean they are in any way less committed to their career or less concerned about providing a quality service to their clients. We support the retention of these schemes for the benefit of the sector overall.

We are however more cautious about supporting any initiative which might have an adverse impact on the reputation of the "solicitor" brand. If we are to retain consumer confidence in the title of "solicitor" and maintain the very high international standing that the English qualification currently enjoys, we should be very careful not to prejudice the demanding standards required to qualify as a solicitor. We firmly believe that entrants to the solicitor's profession ought to hold either a degree or other academic qualification of comparable status or have reached equivalent standards of achievement through professional training and experience.

Finally, we are aware that there has been some debate about whether the regulator ought to consider introducing a quota system to address issues of access to the profession. We cannot support any initiative which seeks to manipulate the market artificially. Would-be employers should have total freedom to manage their recruitment processes to suit the needs of their business. In our firm, we already need to recruit and manage legal staff in different legal markets globally to meet the varied requirements of our international business, and flexibility to meet those demands is vital. Artificial constraints will not assist the workings of our business or the employability of graduates as lawyers.

2. The Academic Stage

Currently law degree or GDL courses must meet the standards set by the Joint Statement of the Joint Academic Stage Board. We support a review of the Joint Statement at this stage, to ensure that the requirements are fit for purpose and aligned with modern legal practice.

While the Statement lists the seven "Foundation" subjects (contract, tort, crime, etc.,) which all "Qualifying Law Degrees" ("QLDs") and GDL courses must cover, it does not specify the syllabi in any detail. We would welcome a revised Statement which allowed for more consistency of teaching across institutions so that all students study, for example, contract law with the same breadth and depth.

In terms of the Foundation subjects themselves, we would welcome more business focus and would support the introduction of company law as a Foundation subject.

We understand that other options being considered by the Research Team include law becoming a post-graduate degree only (following the US model). Whilst we can see certain advantages to this option, we believe that to adopt a US-style system would ultimately defeat our objective of having newly qualified solicitors who are both technically excellent and highly skilled. It is our understanding that some US firms recognise that their law school graduates benefit from time improving their skills and practical application of legal knowledge before deciding where to specialise and accommodate this in the workplace because there is no alternative. We believe the LPC represents a unique opportunity for domestic trainees to hone their craft before entering the workplace. It would be highly unlikely that any law firm could provide the same learning experience in-firm or replicate the number of teaching hours the LPC offers and which learning and refining a skill demands.

3. The Legal Practice Course

Like many other large City firms, we work in partnership with our chosen LPC provider to offer a tailored LPC which we believe gives our future lawyers the best possible preparation for joining our firm and working with our clients.

It is possible for law schools to offer flexibility in delivery of the LPC – for example, there is a "City LPC" and a "High Street LPC", there are options to study face-to-face in traditional lecture and small group sessions or to study by distance learning. There are "accelerated LPCs" and part-time LPCs. It is also possible to detach the Stage Two subjects, so that these are taught within the Training Contract period, with the benefit to the trainee being that they are able to study a subject at the same time as they gain practical experience in that seat (although this does not suit every firm due to need to release the trainee for study time). With the new Combined Study Training Contract developed by Eversheds and BPP, there are even more options on the table. This wide variety of options has the advantage of allowing firms to choose the best LPC for them and their recruits. We would be strongly in favour of retaining this flexibility.

We appreciate that there is the potential for this situation to cause confusion for students, particularly those without the benefit of a secured Training Contract prior to taking their LPC. We believe one element that would assist students would be the quality assurance previously offered by the Legal Practice Board on individual LPCs, which led to ratings being assigned to different

courses and the institutions offering them. This also afforded the opportunity to bring out and share best practice between institutions. We believe this should be one of the roles of the regulator and it would afford both firms and students confidence in the courses they select for their future career development. Were we to return to the rating of courses, we would recommend that enough scope for differentiation between courses is allowed – which would suggest a 5-point grading structure.

Turning to the cost of the LPC, we wonder whether there is some scope to manage fee levels so that there is not such a barrier for those who do need to self-fund or who come from a less affluent background. We understand that the practical nature of the LPC makes it a costly programme to run but it seems to us that there is a very big difference between the lower end of the costs scale and the higher end. If we took the full-time LPC as an example, costs range from £6,500 up to £13,180 depending on where you study. In the cause of protecting student interests and maintaining access, there should be greater transparency and publicity of the varying fee levels at different institutions, in conjunction with more detailed, more consistent and earlier careers advice. This may not result in consistency in fee levels, but it would help individuals considering a career in law to make an informed decision about their career prospects before incurring significant debts, and it would put the onus on providers to justify high charges.We do not however believe it is the job of the regulator to involve itself with the number of LPC or Training Contract places available. This should be driven purely by market forces. In addressing the current imbalance between the number of LPC graduates and training contract places available, one suggestion (which has gained a degree of momentum due to the press coverage it has received) is to allow people to "qualify" on completing their LPC. We strongly oppose this proposal. Having the solicitor title at an earlier stage will not necessarily guarantee employment as a solicitor, as this is fundamentally dependent on labour market conditions. Such a step may only move the current "bottleneck" to a different point in the student's career track. We are also concerned about the proposal on the grounds that the Training Contract offers a crucial foundation in the development of the qualified solicitor, and this would be lost if this proposal was pursued (see below).

There has been an argument that we would attract more talented international law students to qualify as English lawyers rather than New York lawyers if the need for the Training Contract as a formal part of the qualification process was dropped, and this would be a benefit to English law and lawyers in the international markets. We can see the force of this, given the difficult process of re-qualification that now faces overseas qualified lawyers under the QLTS. However, we believe it would compromise quality unacceptably to waive the Training Contract requirement, and in the long run, this would work to the disadvantage of the reputation of English law. It is therefore for us a higher priority to maintain the Training Contract than to make the badge of qualifying as an English solicitor superficially more attractive by allowing it upon completion of the LPC.

4. The Training Contract

We strongly believe, for the profession as a whole, that a period of practical, supervised work experience must continue to be a feature of any future education and training continuum, whether it is called a Training Contract or something else.

We consider this period as crucial to the development of well-rounded, competent solicitors. Having the opportunity to apply the knowledge gained from academic study in a "live" but

protected environment is invaluable, as is the opportunity to learn from more experienced colleagues.

In our view, a fee-paying client is entitled to expect that their "solicitor", be they newly-qualified or more experienced, has some practical experience to draw from and that they have the necessary skill-base to efficiently manage their client's case or transaction.

We have heard, throughout the course of this Review and, indeed, the Training Framework Review which preceded it, the Training Contract period referred to as the "jewel in the crown" of a solicitor's training. We should not sacrifice it lightly.

The current two-year duration of the Training Contract appears to have worked well for the vast majority of the profession, including the trainees themselves. Feedback from trainees we have spoken with suggests that they value this time to develop their skills, the support they receive from their supervisors and the opportunity to try different areas of law before deciding where to specialise. The required blend of contentious and non-contentious experience often helps individuals identify whether their true talents and preferences lie in disputes or transaction work, an opportunity which would be lost without such a requirement. A two-year training period also allows long enough for the majority of "trainees" to achieve the required skills and knowledge standards. It is, of course, possible that for some trainees two years will not prove enough time in which to reach the required standards whilst others may reach them in less than two-years. We believe that overall it is more important for an individual to demonstrate that they are a competent solicitor than that they have served the required time period but can appreciate that setting a minimum period of training provides some certainty for all parties. We would, therefore, favour continuing with a training period – and two years seems appropriate – which also requires the trainee to demonstrate, by producing evidence, that they are capable of reaching a satisfactory level of competence. This should not be construed as a desire for any overly burdensome or bureaucratic system which results in an administrative workload for any firm or individual which is disproportionate. The focus of the training period should be on obtaining a high quality work experience with access to a wide variety of work, thereby enabling the individual to practise and develop the many skills they will require in their future careers. It seems to us that the current Day One Outcomes outlined by the Solicitors Regulation Authority are a good starting point, although it is important if we are to avoid any "two-tier" system that these are consistently applied across the profession.

In common with the majority of solicitors' firms, we operate a rotational system whereby trainees spend six months in each of four different practice areas. We require them to gain a broad spread of experience across contentious and non-contentious work and firmly believe that this approach produces well-rounded, risk-aware generalist solicitors. We do not favour any approach which encourages any earlier specialisation. Not only would this be, in our opinion, an unsatisfactory outcome for the consumer of legal services, but it would also reduce future mobility within our business and, we would argue, within the profession.

We turn now to the issue of "sign off". We can appreciate the concerns which were voiced at the time of the Training Framework Review about the risks associated with Training Principals alone "signing off" trainees as fit for admission.

One idea, which may not help with consistency but which might alleviate any concerns about abuse of sign-off, might be to introduce an enhanced authorisation process. At the moment, a firm need only fill in an application form and pay a fee to be able to employ trainees. If this process was to become more robust, so that firms were required to demonstrate how they would develop and assess their trainees against the standards required for admission, this would provide the regulator with some assurance that the firm was "low-risk" and operating in a satisfactory manner. A quality assurance mark, akin to the Investors in People or Lexcel standard may then be awarded, allowing the regulator to take a lighter-touch monitoring with that firm and put more resources into monitoring firms who do not have the resources of some of the larger firms.

Finally, we would support a review of the Professional Skills Course. In our opinion, it is possible and desirable for the Advocacy and Finance core modules to be integrated into the Legal Practice Course. The Client Care and Professional Standards course (in whatever form that might take) should continue to be part of the "Training Contract" since this is clearly best undertaken when the individual has some direct experience of working for clients to draw from. We believe revising this course would reduce the costs of qualifying, which we imagine would greatly benefit smaller firms.

5. Continuing Professional Development (CPD)

We feel strongly that the aim of the CPD regime should be to ensure competence within the profession. Indeed, we see this as one of the fundamental roles of the regulator. Ensuring that skills and knowledge are both maintained and developed is essential both for protection of the consumer and to maintain the standing of the profession both nationally and internationally .

We place huge emphasis on the need for all our lawyers to regularly participate in a wide range of professional development activities regardless of whether or where they are qualified. We offer a comprehensive programme of both legal technical and business skills training which we have taken care to design to suit each career stage and which is linked to our performance review process.

We recognise that there are inherent challenges to any CPD scheme. The current approach, i.e. requiring lawyers to reach a minimum of 16 CPD hours in each year, has arguably resulted in an increased focus on compliance over competence. An output-based CPD scheme, where an individual manages their professional education to meet agreed objectives relevant to their role and career stage, would redress the balance in favour of competence.

We would like to see a scheme introduced which recognises that development happens "on-the-job" and seeks to capture that learning and reflection as well as recognising any formal study or classroom-based learning undertaken. A minimum number of education hours per year could continue to be required (this helps to set expectation) although we would favour a minimum of 20 hours, rather than the current 16.

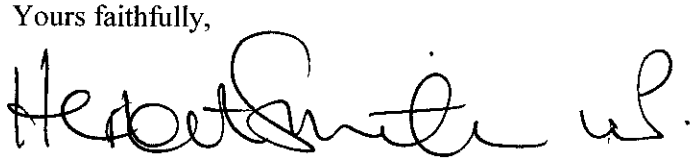
We would also recommend a review of the "Accredited" and "Non-accredited" language. This, in our experience, is generally confusing for people and does not ultimately improve the quality of the learning undertaken. We would favour instead a move towards requiring a certain number of study hours in specific areas (such as ethics and risk management) each year with the rest of the individual's CPD being made up of learning directly relevant to their role and with documented

objectives (as mentioned above). We would not be concerned if responsibility for this fell to the firm rather than the individual.

We also recognise that sometimes a more specialised knowledge is required within a particular discipline. We would support the continued, and perhaps, extended use of accreditation schemes (such as QASA) to address this.

We would be pleased to answer any questions in relation to this submission and to be involved in further discussions during the consultation process. For the sake of clarification, we are also happy for this submission to be published as part of the Review's consultation reporting.

Yours faithfully,



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