Response to the LETR discussion paper - Key Issues (1): Call for Evidence

Junior Lawyers Division

28 May 2012

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Introduction:

This response has been drafted by the JLD Executive Committee. We are in the process of consulting widely with the JLD membership. In the meantime we set out our initial thoughts which are the result of discussions with the JLD National Committee at our meeting on 29 April 2012.

The JLD Executive and National Committee were divided on a number of issues and we set out the various comments and responses in this paper.

1. Summary of questions set out at Paragraph 98:

1.1. The Qualifying Law Degree – are the Foundations still a sufficient knowledge base? Should any 'subjects' be prescribed, or should its outcomes be redefined in terms of cognitive and other skills? Has its mission and focus changed so much that it is no longer adequate as an initial stage of training?

1.2. The GDL or equivalent – could there be a larger range of possible entry qualifications for those without law degrees?

1.3. The LPC / BPTC – is the LPC now so broken up into specific courses serving different hemispheres that the idea of a common core is gone? Does the BPTC provide sufficient training for any of those actually beginning pupillage, and if not should there be another form of course or qualification which would also suit those who will not achieve pupillages? Are either the LPC or BPTC necessary or desirable elements of the qualification pathway?

1.4. The Training Contract / Pupillage – are these now such bottlenecks, so totally controlled by the existing professionals, that they fall foul of any attempts to achieve fair access? Are they insufficiently regulated to assure the quality of training? Or are they the best possible training for those who will be our professionals of the future, already well-funded by those organisations benefitting from them?

1.5. The 3 year rule and tenancy– even if the apprenticeship bottleneck disappeared, barristers would have to be selected for tenancies and solicitors would have to practice under others for 3 years before they could put up their own brass plate. Is this still necessary?

1.6. CPD – is this one area where there is a broad consensus for reform? Is there particular agreement on the need to move away from input-driven approaches? Is sufficient emphasis being placed on 'CPD' for the growing numbers and greater range of paralegal staff?

1.7. Mobility within the sector – where are they key restrictions on mobility? Are the pathways within and between occupational groups within the sector sufficient

and sufficiently transparent? What more should be done to facilitate career mobility?

2.1. The Qualifying Law Degree – are the Foundations still a sufficient knowledge base? Should any 'subjects' be prescribed, or should its outcomes be redefined in terms of cognitive and other skills? Has its mission and focus changed so much that it is no longer adequate as an initial stage of training?

The JLD suggests that other organisations are better placed to analyse the merits of the QLD, nevertheless we set out some preliminary views.

Our findings were that the QLD should be retained and the majority of our Committee wished for it to be retained but with a few small amendments.

The JLD submits that the QLD should form one of many flexible and different routes into the profession. Currently the QLD and GDL are the only routes into the profession and the only ways in which students can become eligible for the LPC (save for the CILEX route). The JLD suggests that the LETR considers whether there can be other more flexible, cheaper routes into the profession in addition to these. This will increase access to the profession.

Are the Foundations still a sufficient knowledge base?

The seven Foundation subjects for the QLD presently are as follows:

- "Obligations" including contract, restitution and tort (split into Obligations I and II)
- Public law (including constitutional law, administrative law and human rights law)
- Criminal law
- Property law
- Equity and the law of trusts
- Law of the European Union

In addition, students are expected to gain appropriate expertise in legal research skills and the English legal system.

The JLD suggests better focus on ethics in the LPC and suggests that this might be included in the QLD either as a subject or as a pervasive element. The JLD will also suggests that drafting skills are focussed on to a greater extent at the vocational stage. Whilst we are aware that the QLD is not always taken by those intending to practice law, we suggest that some or greater emphasis on practical skills including drafting could benefit students.

Further, the JLD also notes that concerns have been raised by members of the JLD and practitioners as to the general quality of written work by those entering the profession. This is not only in regard to drafting skills, it also refers to grammar skills and the simple task of writing and formatting a letter. We submit that this is clearly something to be taken into account at the vocational stage.

Should any 'subjects' be prescribed, or should its outcomes be redefined in terms of cognitive and other skills?

The JLD does not feel that at present it has sufficient information to respond to this question.

Has its mission and focus changed so much that it is no longer adequate as an initial stage of training?

The QLD should form one of many flexible routes into the profession. It should also be noted that a student studying a law degree does not necessarily intend to pursue a legal career.

The JLD would recommend the inclusion of practical experience within the QLD which would give students valuable work experience in the legal profession and could help career choice and obtaining a training contract.

As a final comment on this topic we should point out that this is not an area in which the JLD has done a lot of work in canvassing opinion compared to the GDL and LPC.

2.2 The GDL or equivalent – could there be a larger range of possible entry qualifications for those without law degrees?

The JLD sought clarification from LETR in regards to this question and has been informed that LETR are seeking views on the liberalisation/deregulation of the academic stage prior to 'entry' – being commencement of the LPC/BPTC.

The JLD has sought the views of the National Committee and are seeking views of its membership. Our preliminary view is that the GDL is the first barrier to access to the profession particularly in respect of the cost of the course. The JLD submits that entry to the profession is insufficiently flexible as the requirement to commence the GDL is a degree. Whilst the JLD believes that future lawyers should have a high standard of practical and academic skills the requirement of a degree to commence the GDL is a clear barrier. It is clear that flexible routes into the profession are possible, as seen from the CILEX route which is designed for those without A levels or degrees who wish to pursue a legal career.

The JLD suggests that LETR should consider alternative routes that are comparable to the GDL which allow those who are, for example working as paralegals and legal executives, to progress and carry out studies and exams at the same time as working. This allows them to pursue their legal career via a more affordable and flexible route, at a level equivalent to the GDL.

We are aware that one concern with increasing access to the profession would be an increase in the number of people finishing the academic stage and vocational stage without a training contract. Nevertheless we suggest that if the academic stage was more flexible and less expensive then students would have more flexible entry to and exit from the profession i.e. times they can leave the vocational stage of their career without having expended significant sums of money. Our concern is that the high cost of the GDL and LPC effectively lock students into this career path. We are not aware that students are ever refunded course fees if they decided to drop out at any stage. The

GDL and LPC are also unnecessarily rigid and given the criticisms of both these courses we submit that they are not fit for purpose and should be replaced.

We also believe that the failure to incorporate practical experience in the GDL and LPC results in many students not being prepared for the reality of practice. If those students had they been given that opportunity at an earlier stage, they would have had the chance to reconsider their career choice prior to spending a considerable amount money and often without any security of a job at the conclusion.

During a period of studying and working, students might decide that a career in law is not for them and wish to leave to pursue alternative careers. With a flexible route to complete an equivalent GDL rather than the rigid GDL course, they would not be at the disadvantage of having paid out a lot of money for fees and perhaps feel locked into a career route which they are having second thoughts about. The initial financial commitment to study the GDL might force students to continue with a legal career because they have invested a large amount of money. We submit that cheaper more flexible routes and alternatives to the GDL will not only allow better access but better exits.

The JLD submits that an academic grounding in law is important but recognition of the barriers to access to the profession mean that more flexible less costly routes are needed. This is imperative in encouraging diversity in the profession as the cost of studying and now undergoing the training contract has become increasingly tailored towards groups from higher economic backgrounds and those who will be implementing the recommendations of LETR should be mindful of the costs when encouraging diversity.

2.3 The LPC / BPTC – is the LPC now so broken up into specific courses serving different hemispheres that the idea of a common core is gone? Does the BPTC provide sufficient training for any of those actually beginning pupillage, and if not should there be another form of course or qualification which would also suit those who will not achieve pupillages? Are either the LPC or BPTC necessary or desirable elements of the qualification pathway?

The JLD has for many years raised the issue of the high cost of the LPC and the fact that many courses are not relevant to students pursuing different legal careers. The LETR needs to seriously consider whether the LPC is fit for purpose, can be reduced in time and cost and whether a model of work based learning would be more appropriate to reduce the cost of the LPC and incorporate training into work as is done in other professions.

On the one hand there are still elements in the core compulsory modules and the core skills that remain essential and universal. The JLD Executive Committee are divided in opinion on whether all LPC students should study and pass modules in Business Law and Practice, Property Law and Practice and both Civil and Criminal Litigation. The JLD supports the existence of a range of electives and suggests that core modules might be

reduced in place of more freedom to choose electives and shorter courses given the reduction in core modules.

The JLD is also concerned that those who have chosen particular electives to suit their career choice find that the reality of working in these specific areas of law is completely different to what is taught on the LPC. Those working in law firms and studying part time particularly raise concerns that they have to 'unlearn' to pass the LPC.

We note that the leading corporate and city firms now have firm specific courses at chosen institutions where their future trainees are required to study in their firm-specific groups and/or with students going or aiming to work in similar firms. There are also a number of pilot schemes in place where firms incorporate a training contract with the LPC; Eversheds and Irwin Mitchell, being two of these. This is not available to anyone else.

The JLD would argue that in light of the range of courses available and electives there have been arguments that the common standard has gone. The JLD submits that this is not necessarily a bad thing.

The JLD believes that there are key practical areas which are badly taught on the LPC including legal drafting, advocacy, interviewing, research and negotiation skills. If these areas are assessed it is not done properly and effectively. Further, core skills are not given as much weight or importance as the core modules. However, these skills form the basis of a good lawyer.

Students may also benefit from focus on soft skills such as time management in the work place and billing (either for private practice or legal aid).

2.4 The Training Contract / Pupillage – are these now such bottlenecks, so totally controlled by the existing professionals, that they fall foul of any attempts to achieve fair access? Are they insufficiently regulated to assure the quality of training? Or are they the best possible training for those who will be our professionals of the future, already well-funded by those organisations benefitting from them?

The bottlenecks which occur are the result of an oversupply of LPC students and lack of training contracts. Fair access to training contracts is affected by a wide variety of reasons including the increasing requirements for work experience which many students, particularly those working full time, are unable to fulfill. We support the findings of the Young Legal Aid Lawyers Report on Social mobility[1] in respect of work experience. It is also affected by the recruitment of trainees from traditional Universities which negatively affects diversity in the profession and reduces the amount of training contracts available for those who have not secured a place before completing the LPC[2].

[1] http://www.younglegalaidlawyers.org/files/YLAL_SOCIAL_MOBILITY_REPORT_FEB_2010.pdf

[2] http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/literature_review_on_diversity2.pdf
http://www.westminster.ac.uk/__data/assets/pdf_file/0020/72353/LSB-Diversity-in-the-Legal-Profession-Summary.pdf

Despite the issues with the 'bottleneck' the importance which trainees attach to the training contract cannot be overstated. Feedback confirms that most pursuing a career in law see this as the most fundamental and important part of their progression to qualification; where they learn real and practical skills that equip them for life. Quality of training is however the key concern.

The regulators need to protect trainees against exploitation and ensure they receive a high standard of training. Economic pressures will impact upon the quality of training, particularly in areas such as legal aid and high street firms. The impact of the removal of the minimum salary on trainees should also be recognised. Trainees often work far more hours than the normal working week as the continued fear that they will not be kept on post-qualification is a driving concern.

The JLD suggests that further improvements which could be made to the training contract include better professional skills course. This is currently viewed by many as a waste of time and irrelevant.

2.5 The 3 year rule and tenancy– even if the apprenticeship bottleneck disappeared, barristers would have to be selected for tenancies and solicitors would have to practice under others for 3 years before they could put up their own brass plate. Is this still necessary?

The JLD represents solicitors with up to five years active practice but does not represent barristers. As a result this report shall only comment on the element of the above question that refers to solicitors. We are concerned that solicitors, even at 3 years PQE, are not experienced enough to set up their own firms.

The JLD submits that the Management Course Stage is not fit for purpose and in no way prepares someone who wishes to set up their own firm. We suggest instead specific courses be held for this.

The impact of ABS's will need to be considered. The JLD invites the LETR to research further the requirements for people wishing to set up an ABS and whether the requirements are similar, less or more stringent for solicitors wishing to 'put up their own brass plate'.

2.6 CPD – is this one area where there is a broad consensus for reform? Is there particular agreement on the need to move away from input-driven approaches? Is sufficient emphasis being placed on 'CPD' for the growing numbers and greater range of paralegal staff?

The JLD is concerned that many of its members have to pay for their own CPD courses rather than these being funded by the firm. There is also concern about the quality of CPD in light of the fact that firms often make entire departments sit through a one day course merely to achieve the necessary points for a cheap rate rather than the CPD

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http://www.lawsociety.org.uk/secure/file/189202/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/BME%20solicitors_final.pdf

being used for its actual purpose of development. In addition, the quality of CPD and training available varies hugely between providers. Furthermore the equal weighting afforded to, for example, writing or reading articles and practical interactive training is unrealistic and does not accurately reflect the respective values of such activities.

The JLD recommends greater regulation of CPD to benefit employees.

The JLD favours continuing professional development to the extent that it benefits its membership however as stated above there are concerns as to whether it actually does. The JLD suggests that the current requirement to obtain 16 hours CPD annually is outdated and of minimal benefit to practitioners and consumers alike.

The JLD believes that ultimate responsibility for professional development should lie with each solicitor. However, a CPD system which allocated points based on learning value rather than time value would provide more incentive for solicitors to undertake genuinely effective CPD training.

In addition, the JLD would welcome enforcing a requirement that solicitors undertake at least a proportion of their CPD in training relevant to their practice areas.

Is sufficient emphasis being placed on 'CPD' for the growing numbers and greater range of paralegal staff?

"Paralegal" is an undefined term which covers a vast degree of ability. It can include those with little or no legal experience to those who are professional career paralegals. The key concern is the increasing exploitation of paralegals. Paralegals need more protection and regulation to prevent against exploitation and to provide meaningful career paths.

Given the range and increasing number of paralegals along with the oversupply of LPC graduates, it is increasingly important for there to be some degree of regulation. Furthermore, the JLD predicts with the growth of the ABSs combined with large numbers of LPC graduates, there is the increasing likelihood that paralegals that are not regulated could be performing regulated work. Therefore the JLD is of the view that there needs to be a clear definition of paralegals and the different types, (i.e. those who have completed the LPC and are seeking training contracts and the "career paralegals") in line to reflect the changes currently taking place in the legal profession.

The JLD suggests exploring whether having paralegals accredited / regulated would prevent exploitation.

2.7 Mobility within the sector – where are they key restrictions on mobility? Are the pathways within and between occupational groups within the sector sufficient and sufficiently transparent? What more should be done to facilitate career mobility?

It is not clear within the discussion paper what aspect of"sector mobility" the is focus of LETR. Therefore, the response will need to cover the following:

- Mobility across professions
- Mobility across specialisms
- Mobility across practice types (i.e. in-house, local government, private practice)
- Social mobility
- Mobility and diversity issues

Where are they key restrictions on mobility?

Again, it depends on what type of mobility is being discussed.

- Mobility across professions
    - Cost and time of retraining
    - Revert to a 'junior' position
    - Salary/fees commanded

- Mobility across specialisms
    - Access to training courses or supervision/support
    - Competition for roles against those with experience
    - Revert to a 'junior' position
    - Salary/fees commanded

- Mobility across practice types (i.e. in-house, local government, private practice)
    - Lack of expertise
    - Access to training courses or supervision/support
    - Competition for roles against those with experience

There are also barriers and issues of social mobility and mobility and diversity issues in the profession, but these are not the focus of the review.

Are the pathways within and between occupational groups within the sector sufficient and sufficiently transparent?

- Mobility across professions
    - There is not sufficient explanation

- Mobility across specialisms
    - No – there is no assistance on this and very much at the discretion of the firm/employer

- Mobility across practice types (i.e. in-house, local government, private practice)
    - No – but query whether this is specifically required

What more should be done to facilitate career mobility?

The JLD has not specifically reviewed the pathways referred to for their fitness for purpose. This should be reviewed and the efficacy of the same assessed.

3. Response to the more radical options set out at Paragraph 100:

3.1 Abolition of the concept of a qualifying law degree

The JLD supports flexible routes into the profession and cannot see any the justification for this being reduced.

3.2 The introduction of national assessments at the point of entry to the profession

The JLD understands aptitude tests have previously been considered and criticised widely.

Nevertheless some JLD members believe national assessments could be a way of assessing standards at entry level. The key issue is what the assessments would involve and how consistency could be assured. The problem is whether students can simply take course on how to pass assessments thus reducing their value.

The JLD suggests consideration of an assessment at entry which would focus on the outcomes identified under the work based learning pilot. One format of achieving this would be through an assessed portfolio of work rather than an external test, for example.

The proposal of national assessments at the point of entry to the profession was discussed at our recent National Committee Meeting in a group of 12 people, of which one was male and the rest were female. This proposal was broken down into several elements.

The first element can be categorised as 'should there be an entirely new assessment at the point of entry into the profession?' Two people were in favour of this with the remaining ten against this proposition. It was agreed that based on previous research into this area an entirely new assessment such as an aptitude test could be discriminatory and prevent access to the profession. We note the varied routes into the professions and the continued prejudice attached to where people studied their degree as set out in your Discussion Paper at paragraph 73. The minority in favour believed a minimum standard should be set and maintained. One person believed it would eradicate the bottleneck.

One person considered that a new assessment should be introduced prior to the LPC due to the lack of training contracts. They thought it would be beneficial for prospective students to take an assessment to ascertain whether they had the skills needed for the profession.

The second element considered was 'what would be the goal of a national assessment?' Certain skills such as grammar, drafting, writing and general communication are required by the profession.

It was suggested that drafting and writing modules on the LPC should be assessed in a more meticulous way. It was also debated that marks should be awarded for grammar throughout education from degree to LPC level in each exam. However, the participants noted the lack of grammar skills in society in general.

A suggestion was that work based learning, such as the Eversheds combined study training contract, might help bring skill sets up to a minimum standard.

The third element was 'if a national assessment were to be introduced to test skills such as grammar, drafting, writing and general communication and this test was to sit within our existing legal education and training framework, where would it be best placed?'

The options put forward were:

1. Prior to the LPC;
2. At the end of the LPC; or
3. Within the training contract.

The JLD invites the LETR to undertake further research into a national assessment that fits within the current legal education and training framework if they are minded to recommend a national assessment. Half of the group said it would be more appropriate if an assessment was introduced during the training contract, in essence within the Professional Skills Course, as opposed to any other stage before entry into the profession. It would enable trainees the chance to rectify any skills that were lacking prior to qualification. Four people said that the assessment should take place at the end of the LPC and two people said it should take place at prior of the LPC.

3.3 The specification of sector-wide national assessments at the point of entry to the profession

See above.

3.4 Removal of at least some of the linear breaks and distinctions between 'vocational courses' and work-based learning, whether through the training contract, pupillage or paralegal experience

The JLD supports the development of more work based learning allowing this to be combined with the training contract so that individuals are putting into practice what they have learned on the vocational courses. A more flexible model could be based on the accountancy training method where students/trainees combine their education with "on the job experience". Students could undertake various training and courses prior to completing a seat in a particular area dependent on the firm's needs and have continued support throughout this from both law schools and their firms. Additionally, if there is a work based learning approach it is arguable that standards will be more consistent across the profession as a whole. We are in favour of a system where more emphasis is placed on the responsibilities of the supervisors so that they understand how best to manage the needs of their trainees.

Increasingly many law firms are looking to recruit trainees who have at least some experience as a paralegal before undertaking a training contract. While there is the option currently that trainees can apply for time to count, this is discretionary on the individual law firm as to whether or not this is granted. Many firms choose not to grant this. Trainees may well have a number of years experience but still undertake a 2 year training scheme in the same way that an individual who has begun a training contract

immediately after completion of the LPC and without any real experience in the legal profession.

A more concrete recognition and formalised regulation of paralegals could assist those who wish to qualify as solicitors **enabling them** to use their paralegal experience to progress in their career along the lines of the ILEX qualification, but aimed at those who have already undertaken the LPC or equivalent.

3.5 Facilitation of greater common training between regulated occupations, both course-based and work-based (insofar as that distinction is retained)

By way of clarification the regulated occupations that we refer to in our answer are the occupations listed in paragraph 28 of the Discussion Paper, namely:

1. solicitors;
2. barristers;
3. chartered legal executives;
4. licensed conveyancers;
5. notaries and scriveners;
6. trade mark and patent attorneys;
7. costs lawyers; and
8. chartered accountants with rights to conduct litigation.

We are not opposed to facilitation of greater common training between the above occupations. This is not a radical proposal to us and we view it as being practical and of benefit to our members.

3.6 Replacement of the pupillage/training contract with a more flexible period of 'supervised practice'

Training contracts are already a form of supervised practice and receive strong support from our membership.

As ABSs enter the market place different kinds of organisations will emerge and it is therefore an ideal time to consider how the training contract could be made more flexible to fit in with the business needs of authorised ABSs. There are already pilot schemes in existence being run by Irwin Mitchell and Eversheds in tandem with law schools whereby students complete their training contracts and LPC equivalent simultaneously.

One suggestion as an alternative to the LPC is a form of supervised practice where trainees work and learn at the same time as stated above. This could mean a longer training stage with students initially undertaking basic core modules before they enter the work place or as part time study. Individuals could then study particular modules relevant to their firm's areas of practice, for example immediately prior to undertaking a seat in the employment department a trainee would be required to have passed an employment law module. The advantages of a work based learning scheme could encourage flexibility and more supervised practice. It could also offer cheaper routes into the profession and widen access.

Trainees would have the benefit of support from supervisors in their firm as well as outside tutors. Such schemes could encourage the equality and diversity, would offer greater flexibility and different entry routes to the profession.

Part-time study training contracts have been in place for many years but their existence is not widely known. Our suggestion is that smaller practices should be given greater incentives to employ trainees under this kind of training contract.

The JLD suggests that in the future there should be the option for the individual to do either the traditional training contract or work based learning scheme.

3.7 Development of a sector-wide CPD scheme or alignment of schemes

By way of clarification we have interpreted sector to mean the legal services sector described in paragraph 28 of the Discussion Paper. More information needs to be provided about the current CPD scheme and expectations of those regulated professions other than solicitors for us to given an informed response to this proposal. As a result the JLD invites the LETR to do the same. We do not currently consider that the each regulated professions' independent training regime causes unnecessary costs. An advantage of the development of a sector-wide scheme would be greater facilitation of information in areas of legal services. If the LETR are seeking to suggest a single regulator model that focuses on monitoring educational outcomes then more information needs to be provided about the prospective costs and willingness of the current regulators to work with one another in establishing and maintaining such a scheme.

4. Rival international qualifications and the ease of "The New York Bar"

We invited responses from people pursuing an international legal qualification in our JLD Update in April 2012 further to this Discussion Paper. We only received one reply but this person highlighted that England and Wales is less attractive and less competitive in comparison to the rest of the world because of the total time it takes to reach qualification as a solicitor.

This person had researched different international qualifications and found that the post LLB requirements for qualifying as the legal equivalent to a solicitor could be reached much sooner in the following jurisdictions:

1. New York, United States of America – a LLB or LLB equivalent is required in addition to passing the New York Bar. The New York Bar can take between six weeks and six months to complete. As a result the total time to qualification is a minimum of 3 ½ years;
2. British Columbia, Canada – In addition to a law degree there is a vocational component of passing legal training course which lasts ten weeks, followed by Articling in a law firm for nine months. As a result the total time to qualification is a minimum of 4 years; and
3. Victoria, Australia – Following a law degree a vocational component of one year clerkship or supervised training or successful completion of a six month programme at a university. As a result total time to qualification is a minimum of 4 ½ years.

This particular individual found the minimum six years that it takes to reach qualification as a solicitor in England and Wales as disproportionate to the above jurisdictions and as an obstacle to access to the profession due to the costs. They linked this review to the SRA's proposals to reduce the minimum wage requirements of trainee solicitors to as low as £2.60 per hour and explained that it is a long period for an individual to cover living expenses and financial obligations. Nonetheless this individual is intending to pursue the LPC despite having strong concerns that they may not be able to commence the course. The individual's main reason for choosing the LPC is that it is that the legal system is similar to their home country's legal system and because part-time study is offered in England and Wales.

In summary:

1. The LETR needs to incorporate the possible and/or prospective changes that the SRA are considering in the consultation on the review of the minimum salary requirement o trainee solicitors. Whilst the LETR commenced prior to this it will impact the profession and responses to education and training. The JLD invites the LETR to read its responses to the SRA's Economic and Equality Impact Assessment at http://juniorlawyers.lawsociety.org.uk/minimum-salary-campaign; and

2. Part-time study is a valuable option to some students and an attractive element of the current legal education and training system.

The JLD recognises the concerns raised by LETR that the New York Bar is becoming the preferred international qualification and supports the requirement for 'solicitor' to be preferred qualification of international students and lawyers.