

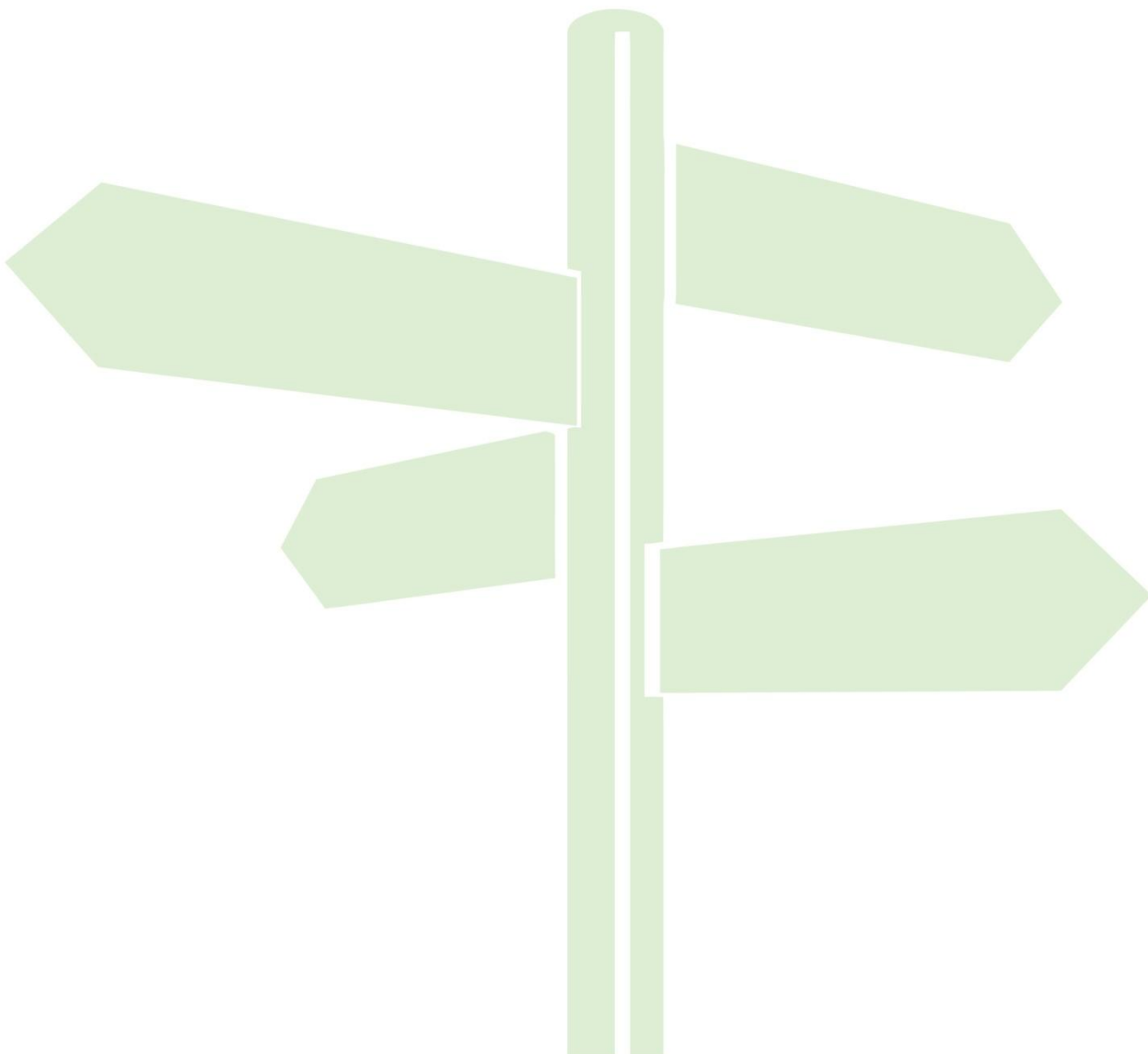


The Law Society

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

Response - Junior Lawyers Division

October 2012



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).

The proposal by the LETR for 5 key areas as follows is largely supported as this appears to cover all of the main core areas that need to be dealt with at this stage of training. However it is noted that there remains the question of how core subjects and key skills will be taught and assessed as this is key to ensuring quality of education. Below is a list of the proposed core topics. Within these topics are key areas listed which it is submitted should be covered as standard within this syllabus.

Regarding key skills, it was noted that writing (but not drafting) should be taught as a pervasive skill rather than a specific subject with an emphasis on teaching coherent analysis and argument. There was also support for teaching interpreting and using legislation as a pervasive core skill.

1. The relationship between citizen and state (principles of constitutional and administrative law, criminal justice, and human rights) ethics and legal values should be included as part of this topic, but with an emphasis on the law and legal frameworks, rather than in light of the professional practice of law given that not all QLD graduates will go on to become lawyers. There is strong support for inclusion of constitutional law.

2. Obligations arising between citizens and how legal disputes may be resolved (principles of contract and tort, rights over property – personality and realty, remedies and restitution, the civil courts and alternative dispute resolution). Tort, contract and Equity and trusts are fundamental subjects and should be covered in full. An outline of legal methods and the legal system is also supported as part of this.

3. The role of law in the regulation of economic activity (formation and types of business entities, consumer protection, regulating markets and competition). Basic commercial awareness should be included as part of this topic on the GDL, although there was mixed support for including this as a part of the QLD.

4. The role of law in regulating international relations (key institutions of private and public international law). There is strong support for inclusion of EU law.

5. The relationship between law and the moral order (e.g., the values of law and lawyering, justice and rights, the 'moral foundations' of criminal and civil law).

There was a mixed response towards including criminal law. It was felt that if this is to be included it should be limited in its scope at this early stage of learning. There was more support for including this as part of the QLD rather than the GDL.

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 proposal is not supported given that the CILEX route already more than adequately covers this training route option. It was also noted that the risks outweigh any benefits. It is submitted this would lead to confusion of the 'branding' between different types of legal service provider. It is also noted that it would lead to confusion as to what level of expertise

a partially qualified person was practicing at, both from the point of consumers and providers of legal services, which is to the detriment of the public and wider profession. Existing partially qualified people may find that their academic achievements to date are put at risk of becoming irrelevant, with the result that they may have to start afresh to gain new qualifications to perform services they already provide. This creates unnecessary confusion and cost and cannot be in the public interest when existing CILEX structures provide for the proposed benefits of such a route more than adequately.

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?

In general it was felt that the core of the LPC should be retained but assessment should be reviewed. More vigorous assessment at an early stage is supported. In particular, it was noted that attention to detail when assessing drafting should be carefully performed.

Advocacy, if it is to be included as a core subject, should be taught in more detail and assessed more carefully, in particular with regard to assessing wider communication skills, argument and preparations. It is proposed that elements of advocacy currently taught during the PSC should be moved into the LPC as current teaching is not adequate or, if it is, is only provided at a late stage of learning when the student may already be providing legal services on a paralegal basis, including advocacy at hearings. Alternatively, if there is not space in the core LPC to provide such in depth teaching, it is proposed that advocacy should be moved out of the core LPC and made an optional in-depth elective so that students who want to learn about this will receive adequate teaching but others to whom advocacy has less relevance would not be burdened by the subject taking time out of their syllabus.

There was criticism of the current tuition of interviewing. It is proposed that this should be integrated fully into wider teaching of client handling and management. Current assessments are not assessed vigorously enough and are unrealistic, with little practical application.

There has been some (disputed) argument raised to add property and probate as core subjects.

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?

Not answered as irrelevant to JLD members.

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?

Not answered as irrelevant to JLD members.

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?

In general, integrated training is not supported. It is proposed that all options proposed would provide an initial qualification that lacked sufficient quality or skills to students. Existing paralegals that have already completed the initial stage of training would also be put at an unnecessary disadvantage compared to newer entrants.

Although it is noted that some options would provide an initial 'paralegal' qualification, it is noted that the LPC already provides this and, save for some changes argued for above, functions reasonably well for this purpose.

It is noted regarding option 2 that this is particularly unlikely to work in practice because of the workload that most trainees undertake. It is unrealistic to expect a trainee undertaking a full time workload to complete additional training at the same time at this level. It was also noted that firms are unlikely to want entrants trained in this manner as increasingly employers look for a basic level of skill and/or experience to build on from day 1, rather than an entrant who has little or no training or experience.

If the proposal is made with a view to creating a fused profession, this is not supported. It is submitted that the current system of training with different professions enables legal advisers to provide better legal services to the public.

It is also noted that by providing initial broader training, with the ability to specialise later on, qualified solicitors are able to consider all legal and commercial considerations of a client and provide constructive solutions in the light of this.

It is submitted that a better solution to the proposal would be to provide for better training in core skills and ethics during the GDL/QLD/LPC, as detailed in responses to the questions above.

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 received an example from a junior lawyer working for an insurance company in PI. He said he often saw the work of Tesco caseworkers and that it was as good as the work produced in his own legal department. However, it is felt that if people are only trained in a specific area there is the danger of missing broader legal issues and this failure to recognise and deal with broader issues would be both detrimental to the consumer and to the profession. It is therefore suggested that these regulated professions will still need a broad skill/training base.

Question 8: As a matter of principle, and as a means of assuring a baseline standard for the regulated sector, should the qualification point for unsupervised practice of reserved activities be set, for at least some part of the terminal ('day one competence') qualification at not less than graduate-equivalence (QCF/HEQF level 6), or does this set the bar too high? (Note: 'qualification' for these purposes could include assessment of supervised practice). What are the risks/benefits of setting the standard lower? If a lower standard is appropriate, do you have a view what that should be (eg, level 3, 4, etc)?

We do not accept that anything less than a level 6 would be acceptable. Again, this will help to give the consumer some protection. Without this level the standards may differ and in theory dozens of unskilled people could be working on regulated activities with perhaps only one sufficiently qualified person overseeing their work. This can only lead to a lowering of standards and may not be acting in the best interest of the consumer.

Further to this, we feel that a structured training requirement and a high standard of supervision in the regulated professions is vital.

Question 9: Do you consider that current standards for paralegal qualifications are fragmented and complex? If so, would you favour the development of a clearer framework and more coordinated standards of paralegal education?

We are unclear as to the definition of Paralegal- do you mean those already regulated via Legal Executive route? If not then we are unclear about the system of paralegal qualifications and would have to say yes the qualifications may be fragmented and complex as there are a number of paralegal 'courses' and 'awards' which have no clear value. They can often exploit the desperation of those in low paid paralegal roles hoping for progression without actually giving them anything of value that would be recognised by current or prospective employers.

Paralegals are often caught in a stage of never ending search for a training contract, with no clear career progression.

Given the projected increase in paralegals and the probability that many won't get training contracts, they need career paths (e.g. following the CILEX model) that allow them to climb the ladder, something to acknowledge and formally certify their abilities and experience, and protect against exploitation and low pay by providing empowerment through knowledge of self-worth.

We would welcome a clearer framework. A streamlined grading system identifying to the consumer the level of expertise or a length of experience for a paralegal would be useful. A national scheme which sets a benchmark for core competencies would be one way of achieving minimum standards as well as allowing paralegals to progress.

Question 10: If voluntary co-ordination (e.g. 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?

This area should be more closely regulated. We understand that this may cause issues for the Law Society and or the SRA in recognising the regulation of paralegals, but if we are to display to consumers, national and international markets that we can deliver high quality legal advice then paralegals should have regulations to adhere to in reflection of their legal responsibilities. This will further serve to protect them and the consumer, as well as ensuring better coordination and understanding of this growing part of the legal work force.

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 (e.g. the law of organisations or commercial law)?

We wish to see either (c) or (d). Ethics are an intrinsic part of the law and we can see no reason why therefore they should not be taught as early in the pursuit of a legal career as possible- i.e. QLD.

We consider this to be a higher priority than the topics suggested as aforementioned it underpins the law and our relationship with the 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?

Yes. There should be no separation of the two.

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?

We are unclear how the LETR can be conducted without the public interest been paramount to its investigation. This question is slightly ambiguous in that it is unclear whether you are talking about an actual test and whether this is before, during or after LETR? In any event the public interest cannot be ignored.

In protecting the public the setting of minimum standards and supervision for regulated professions and paralegals as well as introducing ethics into all legal training would all help to support the public interest test. Outcomes focused regulation confuses consumers and providers of legal services. Despite numerous talks and discussions it is still unclear.

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)

a. There is some evidence emerging of a mismatch between current training requirements and the skills sets required in both the current and future legal services market. Substantial evidence exists of failures in the domestic market amongst at least some parts of the regulated professions to meet existing consumer expectations as regards the visible quality of service delivered. There is only very partial evidence of technical competence problems, but sufficient examples of quality failures to raise it as a matter of concern. A number of gaps, particularly with respect to client relations/relationship management, project management and more general team and individual management skills have been identified. These gaps are likely to become more critical as legal functions diversify.

- This depends on the different streams of work, clients, law and law firms that exist in the legal system.
- The JLD is not sure a “one size fits all” approach is appropriate and is unsure whether all skills can be taught within the teaching program.
- For example, a networking based skill cannot be taught. There is no substitute for actual experience and development, according to the training your firm provides or wants you to complete.
- For example, building up a client database is also firm specific and is subject to not only the firm you train with, but also personal style and preference.
- There is no substitute for on the job training where you can organically learn according to a variation in learning styles by watching people do the tasks i.e. interact with clients and then put this into practice.

b. There is too great a reliance on initial training as a guarantor of generalist or broad based competence. The risks to consumers created by increased segmentation of the market and growing specialisation are not sufficiently addressed by regimes that place the onus on what we will define as primarily 'passive' competence, weighted towards training undertaken at the earlier stages of a career.

- The JLD is unsure who is reliant upon the LPC. It is not explained whether this is people completing the training (students, trainees and qualified solicitors), employers or consumers.
- The LPC is supposed to prepare individuals for Day 1 of their training contract.
- It is a stepping stone to ensure that individuals are fully equipped to start their training contract.
- It depends upon the firm and its expectations of whether the LPC is fit for purpose.
- The JLD believes that the competency based skills are taught merely as a tick box exercise and that there is too much emphasis on these skills having been obtained once a competency test has been passed.
- There needs to be greater emphasis on making sure these skills are learnt as a part of each individual's continuous development rather than seen as something that should be passed.

c. There is insufficient recognition currently across a number of occupations of the centrality of ethics and values to the role of a regulated legal services provider.

- Whilst the JLD agrees that ethics should be included as part of each individuals continuous employment, it is concerned how this would be taught and whether this would become a tick box exercise along with the other competency based elements.
- There is concern that there would be greater benefit learning about ethics from an academic base rather than incorporating within the professional competencies as this is something that should be inherent from the beginning of legal training.
- JLD considers that this may fall under conduct and a matter for regulation in the wider profession.
- There is also a concern about whether ethics would be compulsory i.e. part of the one year conversion course if it is incorporated into the LLB.

d. The relative fragmentation of standards and the absence of a consistent training framework for paralegal staff is a matter of concern

- There are two types of paralegals i.e. career paralegals and paralegals that are looking for a training contract to continue with training.
- There is a big concern with ABS that law firms will turn into paralegal farms in order to reduce costs.
- Need to have greater flexibility i.e. when it comes to working time.
- Regulation and framework is required for paralegals. We are unsure which body would take over this regulation as no one has stepped forward to take responsibility.
- There is a huge disparity between the training received as a trainee solicitor and that received by a paralegal. Training should be similar to legal executives and be continuous and consistent whether or not the paralegal is seeking a training contract and/or career paralegal.
- It is apparent from current literature and training courses available that there is considerable stigma attached to the training and role of a paralegal.

e. There is a relative lack of flexibility in training pathways and exit points and 'off-ramps' are sometimes treated as incidental or accidental outcomes rather than actively designed into qualifications and awards.

- There is a lack of literature and information provided to inform individuals on the LPC and within their legal careers of the exit points.
- In fact most of the LPC institutions and those involved in the profession have an ulterior motive of keeping their students on courses as they benefit financially from each student enrolled.
- It is such a big gamble to complete the LPC without a training contract and people need to be fully informed of the facts before they undertake that route as it is hard to get off the 'conveyor' belt once people get on.
- More emphasis should be placed on transferable skills and recognising the LPC within other professions. If the legal profession cannot be pursued then it provides an alternative means of pursuing a career.
- The accountants have a good system which is admired in this respect.

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]

We agree with core areas listed, however require further detail of how these skills will be taught in practice and whether these skills will be taught during the degree, LPC and/or training program.

Initial training needs to ensure that trainees attain a reasonable standard of competence to be a potential 'jack of all trades' so that when they qualify there is a platform to start a career.

It is necessary ensure that all skills are completed earlier in the career so that individuals do not specialise too early in their career and can be moulded by the firms that individual works in.

Further soft skills should be taught as a lifelong part of each individual's career rather than emphasised during the LPC. For example they should be incorporated within the training

contract (or whatever replaces the training contract).

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.

Regarding the example provided i.e. X is able to conduct research to progress legal matters; the JLD considers this a more appropriate method of quantifying whether a skill has been completed.

At the moment, skills are assessed as a group, not one to one and there is a complete lack of feedback involved.

We do not consider that this is very different from the current system, but rather reformulated.

Core competencies need to be clearly defined to ensure everyone is aware of their content and how they can be demonstrated.

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?

Each LPC institution has differences and the quality of teaching varies. Often firms vary in their quality of delivery of training contracts and their approaches to CPD. A more standardised and comprehensive approach would be welcomed.

There needs to be a difference between competency-based training and actual experience with training. The LPC is out of context and needs to be attuned to account for more soft skills and ethics.

The JLD considers that work based learning will teach skills which cannot be effectively learnt in the classroom.

Training needs further flexibility and prescriptive elements to ensure that the individual is fully prepared. CPD could be further developed in accordance with this belief.

During the training contract competencies could be more stringently tested, i.e. examined, to show competency has been achieved and/or area has been successfully completed.

Question 17: Would you consider it to be in the public interest to separate standards from qualifications? What particular risks and/or benefits would you anticipate emerging from a separation of standards and qualifications as here described?

We have concerns as to whether the consumer will understand a separation of standards and qualifications.

We are unclear why a distinction between the two is necessary when standards and qualifications are intertwined.

Too many levels of standards could be confusing.

Most clients currently take it as a given that solicitors are up to scratch.

Question 18: Decisions as to stage, progression and exemption depend upon the range and level of outcomes prescribed for becoming an authorised person. A critical question in respect of existing systems of authorisation is whether the range of training outcomes prescribed is adequate or over-extensive. We would welcome respondents' views on this in respect of any of the regulated occupations.

We do not understand the question as it is ambiguous we cannot therefore give an informed or coherent answer.