

## **Second Consultation on a New Training Framework for Solicitors**

### **Response of the Society of Legal Scholars (SLS)**

#### **Introductory Remarks**

The Society of Legal Scholars is broadly supportive of the approach being taken by the Law Society in its Consultation Paper, believing that the flexibility introduced under the proposed new qualifications framework would have considerable benefits for the profession, including the facilitation of entry to the profession by a greater diversity of applicants.

Before responding to the specific questions posed in the Consultation Paper, the Society of Legal Scholars wishes to comment upon some matters included as background to the substantive issues. The Consultation Paper says (in paragraph 17) that ‘issues about the quality and standards of qualifying law degrees are raised from time to time by both LPC providers and those who employ trainee solicitors’. No details are provided about the nature of these concerns, and no evidence is offered to justify their existence. The Society has grave concerns about the way in which criticisms of the quality of qualifying law degrees are repeated by the Law Society without any attempt being made to justify or explain them. It is impossible for the Society or its members to respond to such unspecified criticisms. In this context, the Society would wish to remind the Law Society of the rigorous quality assurance regime (under the auspices of the Quality Assurance Agency) to which institutions of higher education are subject. This process has, to date, failed to uncover any serious concerns about the quality of legal education offered by universities; on the contrary, it has drawn attention to multiple examples of good practice in the delivery of that education. As the Law Society implies in the next paragraph of the Consultation Paper, since less than half the students studying for qualifying law degrees will go on to join the legal profession, it may be that concerns arising solely from the perspective of legal practitioners are misplaced, when considered in the context of the broad nature of the legal education which contemporary institutions of higher education offer all their students.

#### **Question 1.**

##### **a) Are these principles appropriate to underpin any qualification scheme?**

The key principles set out in paragraph 44 of the Consultation Paper are, in the opinion of the Society of Legal scholars, appropriate principles to underpin a qualification scheme.

##### **b) Are there any other principles that should be reflected in the scheme?**

The principles as they are set out at present do not contain any reference to professional ethical conduct, although this is mentioned in paragraph 46 as one of the things a solicitor should understand at the point of qualification. The Law Society may wish to consider the desirability of a principle aimed at ensuring that new entrants to the profession are equipped to act independently and with integrity in all aspects of their work.

## **Question 2.**

### **a) Does this statement capture at a high level the essential requirements for a solicitor at the point of their qualification?**

The SLS agrees that the statement set out in paragraph 46 of the Consultation Paper broadly encapsulates what all solicitors should be able to do at the point of qualification.

### **b) Is there anything you would wish to see added to, or deleted from, this statement?**

If the solicitor is expected to 'evaluate and implement legal and non-legal options', the Law Society may wish to consider a slight adjustment to the first bullet-point so as to include some reference to the ability to 'diligently conduct legal, factual *and other appropriate* research'.

## **Question 3.**

### **a) Is this categorisation helpful?**

The categorisation of the outcomes to be demonstrated by qualifying solicitors into five key areas is helpful, and allows consideration to be given more effectively to the different outcomes involved.

### **b) How might it be modified?**

The categorisation adopted appears to the Society of Legal Scholars to be appropriate as it stands. Breaking down categories into smaller units would not, in the opinion of the Society, be particularly helpful.

## **Question 4**

### **a) Do these requirements capture what a solicitor should know, understand and be able to do at the point of admission?**

The Society of Legal Scholars believes that the outcomes listed in paragraphs 49-53 of the Consultation Paper are appropriate for a solicitor at the point of admission.

### **b) Should the requirements be modified? If so, how?**

In paragraph 50, one of the aspects of 'core legal knowledge' is specified as 'the legal protections available to the individual in society'. Arguably, this could be interpreted as encompassing the whole of domestic and E.U. law (i.e. all law except international law). It is unrealistic (and, in the view of the Society, unnecessary) for a solicitor (at any stage of their career) to have knowledge of the entire gamut of domestic law. The Society would therefore suggest that this bullet-point be re-drafted; a more appropriate formulation might be 'knowledge of the range of legal protections available to the individual in society'.

Further down paragraph 50, one of the aspects of 'core legal understanding' is 'legal personality and business structures'. It is not entirely clear what is meant here; if it is familiarisation with business practice, then that would be best acquired within the context of commercial practice. If, however, it is legal knowledge, then the inclusion of these matters in the 'core' is an issue of great concern to the Society. There is no reason in principle why a particular understanding of legal personality and business structures is necessary for all solicitors, other than the understanding of the function of legal

personality which students will gain during the course of their general legal education. The Society of Legal Scholars does not support the addition of any further subjects to the current 'core' of legal knowledge. The existing 'seven foundations' already curtail the choice of students as to the subjects they can study within their law degree. To decrease their choice further would, in the opinion of the Society, damage the quality of legal education, leading to an unacceptable narrowing of the curriculum. In the context of newly-emerging areas of law and new developments in the ways in which law is taught and learnt, any extension of the compulsory curriculum would constitute a serious threat to the high standards of legal education which are currently enjoyed by students reading law as undergraduates in England and Wales. Furthermore, if the Law Society requires this outcome, the result, whether intentional or not, is likely to be to increase the number of compulsory subjects which *all* law students feel they should study, so as to leave their options open as to whether they join the legal profession or not. It is thus a requirement which will have an effect far greater than merely bearing upon those students who do eventually become solicitors. In turn, this is likely to impose an unsupportable demand upon universities. Company and commercial law are two areas in which law schools struggle to find the high quality staff they need to teach on the existing optional basis upon which these subjects are currently offered in the majority of law schools. An exponential increase in the student demand for places on company/commercial law courses could not be met by university law schools, however willing they were to co-operate with the Law Society. It is the firmly-held view of the Society that there are just not enough academic company/commercial lawyers to meet such a demand, and that, given the difference in salary between academia and practice, it is unrealistic to think that there will be in the foreseeable future.

### **Question 5.**

**Should the Law Society specify in greater detail:**

- (a) The content expected to be covered and assessed in each knowledge area?**
- (b) The essential competencies involved in each skill?**
- (c) The essential component parts of the required transactions?**

Since the Society of Legal Scholars is largely concerned with academic legal education, it will confine its response to this question to the area of legal knowledge.

The question of the desirability or otherwise of the professional bodies specifying in greater detail the content of the 'seven foundations of legal knowledge' has been discussed extensively in the recent past with the Law Society by the Society of Legal Scholars, the Committee of Heads of University Law Schools and the Association of Law Teachers in the context of discussions relating to the current Joint Statement. The Society of Legal Scholars remains unconvinced of the need, in this regard, to depart from the approach taken in that document.

It is therefore the continuing view of the Society that it would not be helpful for the Law Society to specify in greater detail the content expected to be covered and assessed in each knowledge area. Members of the Society have considerable expertise in course design and assessment, which are matters falling squarely within their professional competence. The quality assurance regime in universities is stringent and rigorous, and the Society of Legal Scholars believes that the Law Society would be fully justified in

trusting the combination of the professional expertise of academic lawyers backed up by the quality assurance system operated by the Quality Assurance Agency.

### **Question 6**

**a) More detailed specification could provide greater consistency between courses. Is this desirable?**

It is the view of the Society of Legal Scholars that the proposed qualifications framework already sets out in sufficient detail the outcomes expected of a solicitor at the point of admission. Any attempt to specify these outcomes in further detail would, in the view of the Society, be counter-productive, stifling developments in legal education rather than encouraging them, and damaging the quality of education provided in university law schools.

**b) Or should the Law Society offer guidance on these issues, considering at the stage of course/pathway accreditation whether the overall outcomes would be achieved? Would the greater flexibility and innovation that this would allow be desirable?**

The Society of Legal Scholars believes that it would be much more appropriate for the Law Society to retain maximum flexibility in the delivery of legal education. Innovation, good practice and high standards are much more likely to be achieved if flexibility, rather than over-regulation, is at the heart of the proposed training framework.

### **Question 7**

**Could the draft outcomes be justified objectively as a necessary indication of capacity and competence to practise as a solicitor?**

The view of the Society of Legal Scholars is that most of the draft outcomes could be objectively justified in the way indicated, but that the outcome requiring knowledge of ‘the legal protections available to the individual in society’ is too widely drafted for it to be easily justified, for the reasons outlined in the Society’s response to question 4b above. If that outcome were re-drafted in the way indicated by the Society, then objective justification could be sustained.

### **Question 8**

**What checks would need to be in place to provide confidence that outcomes were being achieved and that standards were consistent?**

As far as qualifications offered by higher education institutions are concerned, the Society of Legal Scholars regards the existing quality assurance regime operating in universities, which includes internal quality audit, the quality assurance regime operated by the Quality Assurance Agency and the scrutiny of external examiners, as providing the Law Society with an ample number of safeguards.

### **Question 9**

**a) Should the Law Society specify a minimum assessment regime?**

It is the view of the Society of Legal Scholars that, as far as qualifications offered by higher education institutions are concerned and in the light of the safeguards which

already operate in the higher education sector, it is not necessary for the Law Society to specify a minimum assessment regime.

### **Question 10**

**Do you agree that some of the outcomes suggested could only be achieved in the environment of a legal practice? If so, which ones?**

It would appear that the following outcomes would be best achieved in the context of legal practice:

- demonstrate appropriate behaviours and integrity in a range of situations in which understanding and knowledge of the rules of professional conduct have been tested;
- demonstrate the capacity to deal sensitively and effectively with clients and colleagues from a range of social, economic and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives;
- the application of techniques to communicate effectively with clients and colleagues;
- the ability to manage workload efficiently and effectively and to maintain files.

Some other outcomes may best be achieved by a combination of work-based and classroom learning, while others can be learnt on a vocational or academic course.

### **Question 13**

**(a) Should a training contract, as a means of regulating the period of learning under the supervision of a solicitor, remain an essential requirement of any pathway to qualification?**

**(b) Should solicitors employing trainees have obligations towards trainees that are greater than those afforded to their other employees? If so, why, and what should these be?**

The Society of Legal Scholars is supportive of efforts by the Law Society to introduce flexibility in relation to training contracts, but is concerned that trainees should receive appropriate supervision and training during their period of traineeship, and that adequate protection of their salaries and working conditions is also provided.

### **Question 15**

**(a) Do you agree that there should be a compulsory course covering professional responsibilities, ethics, values and client care?**

The Society of Legal Scholars would regard such a course as beneficial in principle. As it appears to be envisaged as part of the professional training of solicitors such a course would, in the view of the Society, be a matter for the Law Society and those running vocational training courses, rather than for the majority of university law schools (though some law schools may wish to offer their own legal ethics courses, not exclusively tied to the legal profession).

### **Question 16**

**(a) Do you agree that there should be a new approach to determining an individual's readiness for practice, to come at the end of the qualification period?**

As far as higher education qualifications are concerned, the Society of Legal Scholars would regard official documents issued by universities as sufficient evidence of achievement of the relevant learning outcomes as set out in paragraphs 49 and 50 of the Consultation Paper.

#### **Question 17**

- (a) Are any of the illustrative pathways outlined above particularly attractive?**
- (b) What other pathways might be explored?**
- (c) Would you oppose any of the illustrative pathways?**

The Society of Legal Scholars envisages that the majority of its members will, as now, continue to offer qualifying law degrees which will enable a student to demonstrate achievement of the learning outcomes set out in paragraphs 49 and 50 of the Consultation Paper (with the exception of detailed knowledge of legal personality and business structures). The Society is broadly supportive of the approach taken in this Consultation Paper, and in particular welcomes the way in which the Law Society has resisted the temptation to specify in too much detail the precise content of the curriculum necessary to achieve these outcomes. It would hope that it would be able to be equally supportive of the final version of the Training Framework in due course.

While the Society is not opposed to any of the illustrative pathways, it would suggest that the Law Society might wish to examine closely the way in which all the relevant draft learning outcomes can effectively be achieved by students undertaking a degree followed by the CPE.

#### **Question 18**

- (a) Would the availability of different pathways to qualification be a positive feature of a new qualification framework?**
- (b) Or would the choice and complexity be an undesirable feature?**

The view of the Society of Legal Scholars is that the availability of different pathways to qualification is, on the whole, a positive feature of the proposed qualification framework.

#### **Question 19**

- (a) Do you see in these proposals any unacceptable threat to the standards of education and training of solicitors? If so, what are these threats?**
- (b) Do you see in the proposals any opportunities to enhance the quality of the solicitors' qualification or to secure its standard? If so, what opportunities do you see arising?**

The Society of Legal Scholars is broadly supportive of these proposals. However, it would reiterate its concern about the introduction, in paragraph 50 of the Consultation Paper, of an understanding of legal personality and business structures. If this were interpreted by students (whether that is the intention or not) to mean that company/commercial law is being designated a 'core' subject, the Society is of the view that this change would constitute a serious threat to the standards of legal education. Quite apart from the undesirability of increasing the core curriculum, the Society cannot but repeat its deeply-held conviction, based on the considerable expertise of its members in staffing university law schools, that there are (and will continue to be) too few high quality legal academics whose expertise lies in these areas.

## **ABOUT YOU**

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### **Response made on behalf of the Society of Legal Scholars**

Members of the Society of Legal Scholars are involved in teaching on law degrees and on the LPC.

**The Society does not wish its response to be kept confidential.**