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Response Of The Society Of Legal Scholars To The Bar Standards Board Consultation Paper On 'The Future Of Training For The Bar: Academic, Vocational And Professional Stages Of Training' (July 2015)

The Society of Legal Scholars is a learned society whose members teach law in a University or similar institution or who are otherwise engaged in legal scholarship. Founded in 1909, and with approximately 3,000 members, it is the oldest as well as the largest learned society in the field. The great majority of members of the Society are legal academics in Universities, although members of the senior judiciary and members of the legal professions also participate regularly in its work. Many members themselves have professional legal qualifications and have links with, or are active in, legal practice. The Society's membership is drawn from all jurisdictions in the UK and Ireland and also includes some affiliated members typically working in other common law systems. The Society is the principal representative body for legal academics in the UK as well as one of the larger learned societies in arts, humanities and social science.

The response of the SLS is confined to the first part of the consultation paper which is concerned with the academic stage of training. We are therefore concerned with questions 1-8.

QUESTIONS 1-3

QA1: Does possession of a lower second class degree provide good evidence that an individual possesses the intellectual abilities that are consistent with those described in the draft Professional Statement (paragraph 63 above)? QA2a: If an individual does not hold a degree, or the degree that they hold was not passed at the required level, are there alternative means by which these abilities can be demonstrated? QA2b: If so, how? QA3: Are there any other issues in relation to intellectual abilities and degree classification, as set out above in paras 65 to 74, which we have failed to identify?

While we are not surprised by the evidence (referred to in para 72) that those who are awarded a 2.2, rather than a 2.1, in degree classification, are significantly less likely to succeed in successfully qualifying as a barrister (including obtaining a pupillage), we are not convinced that it is necessary to impose a 2.1 minimum requirement. There will always be those who, unusually, would fare well at the Bar but who, for some reason, do not manage to obtain a 2.1 degree. In our view, therefore, the direct answer to question A1 is that possession of a lower second class degree does provide good evidence that an individual possesses the intellectual abilities that are consistent with those described in the draft Professional Statement.

It is our firm belief that (subject to extraordinary circumstances) it should be necessary for a barrister to have a degree (of at least 2.2 standard). The profession is one that, in general, involves a high degree of intellect and analytical ability both of which are trained and tested at degree level. In addition to those qualities, the ability to think independently is an important element taught at degree level. As Conrad

Russell in his book “Academic Freedom” argues, studying for a degree teaches independence of mind; a characteristic that says “this is what the evidence says, no matter what you the client wants it to say”. This idea that a degree teaches the autonomy that is part of the professional ideal also lies at the heart of Perkins’s argument, in his book “Key Profession”, that universities are where professionalization starts. Given the many difficulties in progressing to a successful career at the Bar, the decision of the BSB not to offer an alternative route for non-graduates seems entirely reasonable.

We therefore regard it as a backward step for the Solicitors’ Regulation Authority to have indicated that it does not regard it as necessary for the knowledge and competences to be demonstrated by those qualifying as a solicitor to be so demonstrated at degree-level, let alone (in whole or in part) by possession of a law degree or degree plus GDL. We would therefore strongly urge the BSB not to follow the SRA down that route which, in our view, is likely to see a downgrading in professional standards. Subject to extraordinary circumstances (for example, a mature student who missed out on university but has spent years in a law firm) we do not think that the intellectual experience of studying for a degree can easily be substituted by other means.

QUESTION 4

QA4: Do you agree that “knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context” provides an essential foundation for the legal knowledge and understanding that our [draft] Professional Statement requires? Please tell us why or why not.

This statement embodies within it an acceptance that law can only be properly understood in its wider context (although one might add that ‘historical context’ is also important). The SLS is content with that formulation which may be thought to be consistent with the recently revised Quality Assurance Agency’s Law Benchmark. Having said that, it is important to recognise that there are widely differing views within legal academia (and hence within the SLS) as to the correct balance that should be struck between, on the one hand, doctrinal knowledge and understanding and, on the other hand, an understanding of context.

QUESTIONS 5-7

QA5: Assuming you agree with the formulation in paragraph 83, which of the above ways (a to e) do you think we should use to make sure that those seeking to be barristers and completing the academic stage have sufficient legal knowledge and understanding to progress towards full qualification as a barrister? Please explain the reason why you have chosen these. QA6: Would your answer be different if a student had taken a non-law degree plus a GDL? QA7: Are there any other ways of doing this that we have not identified?

It is noteworthy that none of the five options in para 89 precisely captures the present position. Under the present position (see the Joint Statement by the Law Soc and the Bar Council on the academic stage of training made under the Courts and Legal Services Act 1990) a list of certain legal subjects (the ‘foundations of legal knowledge’) is prescribed as being necessary for a degree to be a qualifying law degree. This list is consistent with the requirements of the GDL for non-law graduates. But within those foundational subjects, no detail is prescribed (and the time credit requirements are expressed in a very open way). The precise detail within the

subjects is therefore left to law schools to decide (subject to a light-touch overall confirmation by the regulators that it is a qualifying law degree).

While the SLS is content for the universities to be given as much freedom as possible in determining the content of law degrees, we think that, as a practical matter, the BSB will have to give some added guidance (beyond the high-level statement set out in question 4) as to what will count as ‘an approved UK law degree’ (to use the expression given at para 86 of the Consultation Paper). Let us assume, for example, that a university law school seeks BSB approval of a degree course that does not include Contract or Criminal Law. The university will surely need to know in advance whether that is going to be acceptable. We suspect that the BSB would decide that this did not comply with the definition referred to in Qn 4. If that is right, there would seem to be at least an implicit ‘core’. In practice, therefore, there will need to be some guidance as to the subjects that an approved UK law degree should include. In any event, we cannot conceive of a degree being called a ‘law’ degree if it does not contain a substantial number (perhaps almost all) of the present foundation subjects.

Whilst we consider that, in giving guidance about the approved law degree, some foundation subjects will be required, it may be that the present number of foundation subjects could be reduced. We would tend to favour that so as to leave it to a university to choose which subjects, beyond that reduced core, it wishes to offer. If, on the other hand, the BSB is minded to adopt one of the more prescriptive routes summarised in the Consultation Paper, we note that it has produced no evidence to justify greater prescription than that inherent in the present position, which has worked well and has been widely perceived as achieving a reasonable balance between the needs of the profession and the interests of the law schools.

Assuming that there will be some foundation or core subjects, there is the further question of guidance or prescription within those subjects. While one may argue that *guidelines* as to the detail within those subjects would be beneficial (we are neutral on this) the SLS is of the strong view that the university law schools should retain the independence – as to the precise focus within those prescribed subjects – that they presently have. In other words, there should be no *prescribed* detail.

As regards the GDL, if there were to be a reduced number of foundation subjects this would enable the providers of the GDL to focus on those subjects in greater depth than at present and/or to offer a range of optional subjects. That should be a matter for the GDL providers.

QUESTION 8

QA8: Are there any other issues associated with the academic stage of training that we have not identified and to which, given our role as a regulator of barristers, we should be turning our minds?

One issue that the consultation paper does not address is the potential clash with the reforms being pushed through by the Solicitors Regulation Authority. Obviously, if there are inconsistent requirements as between the SRA and the BSB this will shatter the long-standing convention as to a common approach between the two main branches of the legal profession and could present major problems for the law schools. As it is, the SLS has major objections to some of what the SRA propose.

Society of Legal Scholars
October 5th 2015