Review of the Regulatory Framework for Legal Services in England and Wales

Consultation Paper

Evidence Submitted by the Society of Legal Scholars

Background

The Society of Legal Scholars (SLS) (formerly the SPTL - the Society of Public Teachers of Law) is a learned society whose members teach law in a university or similar institution or who are otherwise engaged in legal scholarship. Most members of the Society are legal academics, though members of the judiciary and members of the legal professions also participate regularly in its work. The Society has nearly 2,500 members consisting of academic and practising lawyers in a wide variety of subject areas. The Society was founded in 1908 and is the oldest professional association of academic lawyers in the U.K.

Introductory Remarks

The Society has a number of members whose academic expertise encompasses the whole range of issues raised in this Review. However, the expertise of the Society as a whole lies in legal education, particularly with university legal education, and it has therefore confined its response to those issues raised in the Review which have a direct bearing on some aspect of legal education.

The Society supports in principle the formation of a coherent and independent system of regulation for the legal profession.

Chapter A - objectives of a regulatory system for the legal profession

The Society would wish to make the following observations in relation to the possible considerations to be borne in mind when considering the regulation of the legal profession (set out in paragraph 12 of Chapter A).

- The Review has identified, in the opinion of the SLS, the most important considerations relating to the regulation of the legal profession. In particular, the Society believes that a rational system of regulation has a crucial part to play in maintaining the rule of law, promoting fair competition, and in consumer protection.

- In relation to the objective of promoting public understanding of the citizen's legal rights, the SLS would wish to point out that Professor Hazel Genn's *Paths to Justice* study[1] has indicated that the lack of public understanding in this area is considerable, making any amelioration of the situation a very large task. In addition, Professor Genn's research indicates that mere provision of information about legal rights is likely to be ineffective, since what is needed is 'active advice', with the advisor acting as facilitator for the resolution of a legal problem, not merely an information provider.

[1] H. Genn (1999) *Paths to Justice: what people think and do about going to law* Hart Publishing, Oxford.

> The implications of Professor Genn's findings, in the context of the current Review, are that any obligations placed upon a legal services regulator to promote public understanding of the citizen's legal rights need to be properly understood and adequately resourced. While the promotion of such understanding is a desirable goal, it should not, in the view of the SLS, be allowed to distract any legal services regulator from their main task. It may be that while this laudable function is not being carried out by any other agency, it is preferable to give it to a legal services regulator than not to have it carried out at all. However, in the view of the Society, it is such a large task that it would be better to give this function to a separate agency, whose primary concerns (and expertise) would be the promotion of public understanding of the citizen's legal rights.

Chapter B - Regulatory Models

The Review identifies (in paragraph 4 of Chapter B) five core functions of regulation, including entry standards and training. It is with this core function that the Society of Legal Scholars and its members are directly concerned. Before commenting on the issues raised in Chapter B, the Society feels that it might be helpful to the Review if it explains the current relationship between university law schools and the legal professional bodies (the Bar Council and the Law Society) as regards entry standards and training.

At present, university law schools are mainly involved in the academic stage of legal education, providing law degrees which are recognised by the professional bodies as 'Qualifying Law Degrees' (QLDs) for the purposes of entry to the vocational stage of training for the legal profession. Some law schools are also involved in the provision of vocational legal education. There are regulation issues which arise in relation to both forms of legal education; the university law schools and the legal professional bodies have differing interests in relation to each.

With respect to the Qualifying Law Degree, the universities, with their independent degree-awarding powers, see the law degree as primarily offering a liberal education in law, rather like a degree in history or geography. This is in part because a majority of university law students do not go on to join the legal profession. It is therefore the task of university law schools to ensure that law degrees, while fitting students for entry to the vocational stage of legal education (if that is what they wish to do) also provide a rigorous general education in law which is consonant with other university degrees, for those students who are not going into the profession. The interest of the legal professional bodies, on the other hand, lies solely in ensuring that law degrees provide an appropriate education for those wishing to enter the legal profession. These competing interests (which in part amount to competing perceptions of the public interest) are handled primarily through a process of negotiation, in which the parties are the Law Society and the Bar Council on the one hand, and university law schools on the other hand, represented by the relevant professional associations (the Society of Legal Scholars, the Committee of Heads of University Law Schools and the Association of Law Teachers). These parties periodically enter into a process of negotiation which results in the production by the legal professional bodies of a document known as 'the Joint Statement' (a copy of the current document is appended to this response as Annexe A). In addition, the professional bodies produce a document called the 'Academic Stage Handbook' which contains further requirements relating to the academic stage of legal education (a copy of this

document can be found on the Bar Council's education and Training website at http://www.legaleducation.org.uk/Degrees/ddownloads.php).

Any version of the Joint Statement inevitably reflects a degree of prescription over the content of the QLD and with it, issues of cost and length which in turn have a potential impact on access to the legal education and to the legal profession. (It also impinges on the academic freedom and educational expertise of legal academics). Formerly, the Lord Chancellor's Department effectively had to give its blessing to the Joint Statement, thus exercising a degree of regulatory supervision on the whole process. However, with the abolition of the Lord Chancellor's Advisory Committee on Legal Education and Conduct this task will now pass to the Department of Constitutional Affairs, which has limited expertise in the field, and possibly little interest. The Society of Legal Scholars is therefore concerned that the existence of the Joint Statement, and its current system of negotiation, will become an informal, fragile and unregulated process. The system of negotiation presently undertaken depends solely on the goodwill of the parties concerned. In the view of the Society, this is too important a matter to be left to goodwill, and it is in this context that the SLS welcomes the opportunity to express its view that the process of regulation of the academic stage of legal education should be put on a more formal footing.

In relation to vocational legal education (the Legal Practice Course and the Bar Vocational Course) the SLS accepts that there is an even greater interest on the part of the professional bodies. However, here as in the undergraduate degree, there is a paramount need to ensure that the standards set by the professional bodies as to e.g. curriculum and forms of training, entry specification and (in the case of the LPC and BVC in the past) entry quotas, do not act as unjustifiable or anticompetitive barriers to entry to the legal profession. We accordingly agree with the Consultation paper where it states (at para.18) that "The setting of [entry] standards requires careful judgement between setting the standard too high, and restricting entry, and setting the standard too low, and not maintaining proper levels of competency". We would add, however, that the setting of entry standards (including any which directly or indirectly impinge on the numbers of those who are admitted to legal profession) is a matter of importance not just to the professional bodies but also to the providers of vocational legal education and to the Government.

The Society of Legal Scholars would accordingly argue that, contrary to the thrust of Chapter B in the Consultation Paper, Entry Standards and Training should not be seen as a matter primarily for self regulation but rather an area for co-regulation, as in New Zealand and most of Australia, where admissions and educational standards are in the hands of an independent body chaired by a judge, with representatives of the profession and the universities sitting on it. Recent moves by the professional bodies to gather all their legal education functions under the aegis of their Joint Academic Stage Board do not address the issues which the Society is raising here, since all the members of that Board (including the academic members) are appointed by the professional bodies.

If these matters are outwith the remit of the Review, then the Society would indicate that while it would be keen to see the negotiation of the 'Joint Statement' put on a firmer footing, it would strongly oppose the imposition of yet another layer of regulation upon university law schools, given the multiple systems of quality control to which they are subject. The role of the legal services regulator should be, in the view of the SLS, merely to ensure that the negotiations leading to the production of the 'Joint Statement' are conducted fairly, and in the public interest.

If it would be of any assistance to the Review Team, the Society would be willing to discuss the matters raised in this response further. It is also in a position to put the Team in contact with experts in legal education belonging to the other academic professional associations in law.

Contact details:
This document has been drafted on behalf of the Society of Legal Scholars by Professor Fiona Cownie, Chair of the Legal Education Committee of the Society, and by Professor Alan Paterson, Vice President of the Society.

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ANNEXE A

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A JOINT STATEMENT ISSUED BY THE LAW SOCIETY AND THE GENERAL COUNCIL OF THE BAR ON THE COMPLETION OF THE INITIAL OR ACADEMIC STAGE OF TRAINING BY OBTAINING AN UNDERGRADUATE DEGREE.

1. Under the Courts and Legal Services Act 1990 (as amended) the Law Society and Bar Council are responsible for laying down the qualification regulations in respect of those seeking to qualify as solicitors and barristers. The Law Society and Bar Council have agreed to act jointly in respect of the first or academic stage of training where that stage is satisfied by the completion of a degree or approved CPE course. This document sets out the conditions which must be satisfied in respect of undergraduate degree courses[1].

2. Following consultation with the Association of Law Teachers (ALT), the Committee of Heads of University Law Schools (CHULS) and the Society of Public Teachers of Law, (SPTL) the Law Society and Bar Council (the professional bodies) will recognise a course of study leading to the award of an undergraduate degree as satisfying the requirements of the initial or academic stage of training if:

i. The institution providing the course of study satisfies the professional bodies that adequate learning resources are provided to support the course of study, the professional bodies having regard to any advice of the Joint Committee on Standards in Legal Education or similar successor body.

ii. The higher education institution awarding the degree of which the course of study is part has degree awarding powers conferred by the Privy Council.

iii. The standards of achievement expected of students undertaking the course of study are set at or above the minimum level of performance as set out in the

[1] The CPE courses, Senior Status law degrees and mixed degrees will be dealt with in a separately.

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QAA Benchmark Standards for Law Degrees in England, Wales and Northern Ireland.[2]

iv. The course of study includes the study of legal subjects for the equivalent of not less than two years out of a three year or four year course of study, (for example, a student must gain not less than 240 credits in the study of legal subjects in a 360 or 480 credit degree programme) but existing mixed degrees that are currently recognised as qualifying law degrees under the Joint Statement of January 1995 shall continue to be recognised for students embarking on such courses before a date to be specified when alternative arrangements for mixed degrees are agreed. Such date shall not be before 1 September 2001.

v. The coverage of those legal subjects referred to in the professional bodies' qualifying regulations as the Foundations of Legal Knowledge[3] must involve not less than one and a half years study ie the coverage of the Foundations shall amount to not less than 180 credits. Courses involving the study of aspects of the English Legal System will be allowed to count towards these 180 credits. The remaining half year or 60 credits in law must be achieved by the study of legal subjects. A legal subject means the study of law broadly interpreted[4]. The professional bodies reserve the right, after consultation with the university law schools to amend the list of Foundations.

vi. The course of study will normally be spread over the full duration of the degree course. Some study of legal subjects will be expected to take place in the final year of the degree course.[5]

[2] It is hoped at all institutions will set their standards above the Benchmark. It should be noted that students wishing to read for the Bar however must have attained at least a lower second class honours degree.

[3] These are set out in Schedule 2.

[4] For example including Criminology and other socio-legal subjects.

[5] This requirement is important for the Bar which expects all those entering the vocational stage of training to have achieved at least a lower second class honours degree.

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vii. The course of study will be one which satisfies the external examiners of the degree programme of which it forms part that, in addition to the Areas of Performance set out in the Benchmark Standards, the students on that course of study should have acquired the knowledge and general transferable skills set out in Schedule One.

3. Any law school which has problems in meeting the requirements of this Statement should contact the directors of training of training of the professional bodies who will consult with the heads of CHULS, ALT and SPTL. Where necessary, the outcome of the consultation will be reported to the respective training committees whose decision will be final.

4. The professional bodies reserve the right to issue guidance, either directly or through the providers of their vocational courses, to persons considering entry to the vocational stage of training of those areas of law that students enrolling on the vocational courses are expect to have current knowledge.

5. The institution offering the course of study will provide the professional bodies with any information about the course they may require to enable them to discharge their responsibilities under the Courts and Legal Services Act and this Statement and will permit representatives of the professional bodies to visit the institution to discuss any aspects of the course with representatives of the institutions, members of the course team and students enrolled on the course.

6. The professional bodies reserve the right to withdraw recognition from any course of study that fails to comply with the conditions set out in this Statement or fails to meet minimum standards prescribed by QAA.

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SCHEDULE ONE

The knowledge and transferable skills which should be addressed in any course of study leading to the award of a degree recognised by the Law Society and General Council of the Bar as satisfying the initial or academic stage of training are as follows:

a. **Knowledge**

Students should have acquired:

i. Knowledge and understanding of the fundamental doctrines and principles which underpin the law of England and Wales particularly in the Foundations of Legal Knowledge;

ii. A basic knowledge of the sources of that law, and how it is made and developed; of the institutions within which that law is administered and the personnel who practice law;

iii. The ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to explain the relationship between them in a number of particular areas;

iv. The intellectual and practical skills needed to research and analyse the law from primary resources on specific matters; and to apply the findings of such work to the solution of legal problems; and
v. The ability to communicate these, both orally and in writing, appropriately to the needs of a variety of audiences.

b. **General Transferable Skills**

Students should be able:
i. To apply knowledge to complex situations;
ii. To recognise potential alternative conclusions for particular situations, and provide supporting reasons for them;
iii. To select key relevant issues for research and to formulate them with clarity;
iv. To use standard paper and electronic resources to produce up-to-date information;
v. To make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question;
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vi. To use the English language and legal terminology with care and accuracy;
vii. To conduct efficient searches of websites to locate relevant information; to exchange documents by email and manage information exchanges by email;
viii. To produce word-processed text and to present it in an appropriate form.
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SCHEDULE TWO

The Foundations of Legal Knowledge are:

a. The key elements and general principles of the following areas of legal study:
i. Public Law, including Constitutional Law, Administrative Law and Human Rights;
ii. Law of the European Union;
iii. Criminal Law;
iv. Obligations including Contract, Restitution and Tort;
v. Property Law; and
vi. Equity and the Law of Trusts.

In addition, students are expected to have received training in legal research