

**Solicitors Regulatory Authority  
Consultation on  
"A new framework for work based learning"**

**Response of the Training Committee of the City of London Law Society**

**1. Introduction**

- 1.1 This Response has been prepared by the members of the Training Committee of the City of London Law Society (the "Committee"), the largest local Law Society in England and Wales and the Society whose members currently employ the majority of trainee solicitors.
- 1.2 If the profession is to maintain its reputation, both nationally and internationally, the training framework must give all solicitors a solid foundation of knowledge and skills on which each solicitor must build post-qualification. The profession must be accessible to all suitably capable prospective entrants, irrespective of their background or circumstances. The current framework, though by no means perfect, broadly achieves the first objective. The Consultation Paper (the "Paper") refers to research which indicates the second objective is not being achieved. We support any change to the framework which addresses that issue. However, we have real doubts that the proposals contained in the Paper will necessarily improve the position for disadvantaged or underprivileged would-be entrants to the profession. With that in mind, the Response below both explains our concerns and makes a suggestion for an alternative approach.
- 1.3 The SRA has launched reviews of both the LPC and the work based learning element of the training framework. It is essential that those pieces of work are integrated into a coherent whole. Therefore, while the Committee will be submitting a separate Response on the "Future structure of the Legal Practice Course" Consultation Paper, the comments below reflect the Committee's thinking on the training would-be solicitors receive through both the LPC and their work based learning.
- 1.4 We are not in a position to comment definitively on the approach all of the CLLS member firms will take if the framework envisaged in the Paper is implemented. However, we would envisage that the bulk of the member firms will seek accreditation to provide work based learning training schemes. Be that as it may, the Response below includes our views on the effectiveness of the "non-accredited" route.
- 1.5 Many of the CLLS member firms recruit lawyers who qualify via the QLTT. The impact of any change to the training framework on that qualification route is, therefore, of considerable interest to the Committee. We have not, however, pre-empted that review by making any link between the current work based learning review and the QLTT qualification route in the Response below.
- 1.6 The Paper makes it plain that there are some elements of the framework (for example, the end of work based learning assessment) which have yet to be developed in detail. We would ask that the SRA keep the profession fully informed as its thinking on these elements develops so that the profession at large can comment on possible changes before any final decisions are taken.
- 1.7 One element which is clearly missing from the Paper is any reference to the current Professional Skills Course (the "PSC"). We are aware that the PSC is being reviewed and including the current

work being done on it in this Paper would have given the respondents an opportunity to contribute to that work. As it is, we will consider contributing separately.

- 1.8 The Response below sets out our comments on the explanatory paragraphs in the Paper together with cross-references to the Questions in the Paper which we have answered in the attached Consultation Questionnaire.

## **2. Purpose of the New Framework**

- 2.1 The Paper makes it plain that the proposals are intended to ensure that newly qualified solicitors all meet certain "standards" and that access to the profession is open to individuals from a wide range of backgrounds and experience. The key to the continued future success of the profession is that all entrants, irrespective of circumstances, must meet and be seen to meet suitably rigorous standards. For the qualification to maintain its status, **every** entrant to the profession must have met a common "core" set of standards while allowing flexibility to recognise sector-specific skills/knowledge (see para 3.2 below for our views on that flexibility). The framework must be designed to ensure that all entrants have met those standards, irrespective of the qualification route they have followed or their current/past personal circumstances. The Paper states that the current framework is seen as representing a barrier to entry to the profession by certain groups so the Committee agrees that any possibility of exclusion (other than on the basis of lack of ability) should be avoided. However, the lack of detail on the assessment regime under the new framework makes it almost impossible to comment definitively on whether the new regime will remove that "exclusion risk".
- 2.2 Aside any issue of "exclusion" under the current regime, there is a proportion of the current LPC graduates who are unable to qualify by reason of not being able to secure a Training Contract. The Consultation Paper makes it plain that the SRA does not see it as part of its remit to limit the number of students entering the training continuum and we see that the accredited/non-accredited routes may have the (desirable) effect of increasing the numbers of capable students who qualify as solicitors. However, there is nothing in the proposals (and we recognise there probably can be nothing) which will increase the number of positions for qualified solicitors. In our view, if the proposals work, they will change the current position of there being a significant minority of LPC graduates unable to find work in the profession (many of whom will have taken on a heavy burden of debt to fund their studies) into a situation where a number of solicitors (perhaps with similar debts) are unable to find work in the profession. It may be true that the qualification will enable them to obtain work which will help them service that debt. That particular result would be something of undoubted personal benefit to those individuals but, from the profession's viewpoint, hardly a desirable outcome for a supposed improvement to the current training regime.
- 2.3 See the Committee's answer to **Question 1**.

## **3. Purpose of the period of work based learning**

- 3.1 The Paper envisages the continuation of the current three-stage process for qualification (the law degree/GDL, the LPC and the work based learning element), an approach we whole-heartedly support. There are sound pedagogic reasons for combining formal study with practical experience

and that approach (which the profession has followed for many years) has contributed to its current status, both nationally and internationally. Looking at the proposals from an international perspective, the current framework is unusual among global legal professions and in some jurisdictions it is seen as producing inadequately trained lawyers. However the profession may be able justifiably to dispute that allegation, nothing in the new framework must be capable of supporting that adverse view. Therefore, we would not support any plan to reduce the overall length of the "formal" academic training for a "fully qualified" solicitor (see para 7 below), however that training was structured (for example, disengaging the Electives from the Compulsory courses in the LPC is potentially acceptable but dropping them altogether may not be). We would also urge caution over any possibility of reducing the current length of the work based learning element or changing its current character. We see it as essential that not only must the work based learning element be experienced in a legal environment, the would-be entrant to the profession must work primarily for a solicitor.

3.2 As we have said, we support the proposal that appropriately rigorous and transparent standards be set for the benefit of the profession, would-be entrants to the profession and the public at large. Our concern with the "work based learning standards" and the "Day One Outcomes" attached as annexes to the Paper is that they represent a "one size fits all" approach. The Paper makes it plain that the SRA is trying to establish a *common* set of standards for all newly qualified solicitors. While we agree that there are core skills/knowledge which all solicitors should possess, this "one size fits all" approach completely fails to recognise the considerable divergence which has grown up within the profession. Looking at the "Day One Outcomes", the "headlines" of the outcomes are not contentious but the detail does not reflect the reality of life in the modern profession. Is it realistic to expect that newly qualified solicitors (whatever practical experience they have received) will *all* be able to complete the legal transactions and resolve the legal disputes set out in the list of outcomes? Similarly, while the list of professional, personal management and client relationships skills covers a sensible list of skills for a newly qualified solicitor, the wording of some of the items listed does not reflect how many of the member firms of the CLLS are managed. For example, while it is entirely appropriate for newly qualified solicitors to have the ability to *recognise* ethical dilemmas, how many firms (whether members of the CLLS or not) would be prepared to allow a newly qualified solicitor to *resolve* an ethical dilemma?

3.3 See the Committee's answers to **Questions 2 - 6**.

#### **4. The period of work based learning**

4.1 As we have said, we whole-heartedly support the proposal to retain a period of work based learning but we have issues with the likely length of that work based learning and the environment in which it is experienced.

4.2 As regards the length of the work based learning period, we acknowledge that there is no period which is ideal for all would-be entrants to the profession. However, from the collective experience of the CLLS member firms over many years, the current period of two years ensures, for the majority of newly qualified solicitors, that they have acquired a sufficient breadth and depth of knowledge and experience to be ready to take on the title of "solicitor". This is not just from the perspective of the employing firms; it is a view many trainees working in those firms share. They see the two year period as giving them time to gain a sufficient understanding of a broad range of

areas of practice. That in turn gives them a better basis on which to take a decision on the area of practice they will join on qualification. We note from paragraph 25 in the Paper that the proposal to recommend a minimum number of review sessions with a specified period between each one is being retained but the number of and time between the sessions will be tested through the pilot phase the SRA is planning. As we said in Response to the initial Consultation Paper last year, while the *intention* is to give flexibility and to recognise that individuals learn at different paces, the reality is that market forces will drive firms in the same sector to require a common (and probably shortest) period of work based learning, so undermining the objective of flexibility. If that has the effect of shortening the "current training period", that can only be detrimental in terms of the quality and breadth of experience of newly qualified solicitors, to say nothing of the adverse impact that may have on the status of the profession internationally.

- 4.3 As regards the environment in which the experience is gained, we support the proposal in the Paper that the experience be in a "legal environment", whether that be with a firm which has applied for accreditation or in some other entity. While we do have concerns about the likely consequences of the accredited/non-accredited routes (see below), those concerns will be at least mitigated (if not avoided) by it being a requirement that the would-be entrants work primarily for a solicitor, whatever the employing organisation.

## 5. Assessment

- 5.1 As the Paper states, the risk that the accredited/non-accredited routes to qualification will lead to a two-tier profession should, in principle, be avoided if the assessment regime is objective, rigorous and common. If that can be achieved, the "two-tier" profession concern disappears. However, we have real doubts that it will.
- 5.2 The broad framework envisaged in the Paper is, of course, common for all would-be entrants but we cannot see that it will be operated in exactly the same way for individuals working in non-accredited organisations as compared to their counterparts in accredited ones. To explain our thinking and by way of illustration, we envisage that an individual working in an accredited organisation (such as one of the CLLS member firms) may experience the work based learning as follows:
- The individual works in a department and creates a portfolio of experience which is discussed at an appropriate interval with a "supervisor" in the same department who will both know the individual and the area of practice;
  - That approach is repeated as the individual rotates round the firm; and
  - At the end of the work based learning period (of whatever length) the individual is assessed by an in-house "assessor" as well as "passing" whatever more general assessment the SRA may put in place.

While an individual working in a non-accredited organisation will follow the same basic path, there could be significant differences with the portfolio element which is at the heart of the proposals. The portfolio will be reviewed/assessed by an assessor *outside* the individual's employing organisation. What structure will the SRA put in place to *ensure* that the portfolio accurately reflects the individual's experience? The only way is by having a representative of

the employing organisation "sign off" on the portfolio but what are the prospects of that happening if the employing organisation has not chosen to go the accredited organisation route? It is fair to say that any "good" employing organisation will organise appraisals for its staff and that may be sufficient to give some credence to the portfolio. However, if reviewing the portfolio represents a greater workload than the employing organisation's appraisal system, the internal review of that individual's portfolio may be cursory at best. Even if that concern is overcome, the external assessor will have no day-to-day contact with the individual and may not (depending on the circumstances) have an in-depth understanding of the area of practice covered in the portfolio. While that would not necessarily preclude the external assessor making a valid judgement as to the individual's general skills development, the individual's portfolio may be seen as of limited value in terms of proving his or her legal-technical knowledge in the eyes of a future prospective employer. Unless the proposals create a system which is sufficiently robust to remove those concerns, the creation of a two-tier profession is inevitable.

- 5.3 Paragraph 27 of the Paper refers to a scheme of monitoring and moderation to ensure that standards are being consistently applied across all routes. While we have difficulty envisaging how there could be genuine consistency across all routes as regards the portfolio, introducing a formal assessment (that is, a test) at the end of the period of work based learning could represent a suitably objective measure of capability. (A point of detail is when that test will be sat. Unless it can be marked very quickly, perhaps by virtue of being online, it will need to be offered some time in advance of the date the would-be entrant is likely to be ready to apply for admission. To ensure that no unnecessary delay in admission is caused by waiting for results, there will be pressure to sit the test some time in advance of that likely admission date which will, in effect, shorten the period of development offered by the work based learning. That may not be significant, but perhaps it will be depending on how the test operates in practice.) On the nature of the assessment, the issue is that while some of the work based learning standards and Day One Outcomes can be "tested", others cannot. If this formal assessment is to be rigorous and realistic, those standards/outcomes will need to be revised.
- 5.4 See the Committee's answers to **Questions 7 - 12**.

## **6. Accredited work based learning training schemes and cost**

We will wait for further details of the accreditation and subsequent monitoring process to be announced and would want to comment further once those details are available. In the meantime, we support the idea that a "light touch" be applied to the initial accreditation process and the on-going compliance with/monitoring of whatever regime the new framework introduces. The majority of firms which are currently authorised to take trainees provide excellent training and introducing a system which is seen to place excessive burdens on them may lead to some to decide not to offer "training places" in future. We understand and support the need to protect would-be entrants to the profession from abuse but such abuse as does occur is currently perpetrated by a small minority of firms. Creating a burdensome and possibly expensive system affecting all firms to avoid the wrong-doings of a few represents a sledgehammer to crack a nut. Some of the proposals in the Paper are sound and may not involve any real change in approach. For example, most firms have appraisal systems which may not be

so very different from the reviews envisaged in the Paper. Similarly, most firms will train their "supervisors/appraisers" in-house. While that in-house training may need to be adapted to meet the standards for "supervisors/assessors" mentioned (but not explained) in the Paper, doing so may not be too onerous, especially as it seems there can be a small number of such trained individuals in each firm. However, the portfolio-based system could represent significant extra work. While a "reflective learning" approach is an effective way of encouraging development (and one already adopted in many firms), some portfolio-based development systems are known to be extremely time-consuming, both in terms of their creation and their review. We would urge caution with that idea and applaud the plan to pilot the system to ensure it is workable before considering introducing it into the training framework. A light regulatory touch in respect of accredited firms may maintain (or even increase) the number of training places available though that may not prove to be the case if the cost (in terms of time and/or money) of compliance affects the cost-effectiveness of taking on "trainees". On the question of cost, we assume that individuals following the non-accredited route to qualification will, save perhaps in the minority of cases, bear **all** the costs of qualification - the cost of the reviews with the external assessors and the end of work based learning period assessment (together with the cost of any training leading to that). That could be a real barrier to entry to the profession if those costs are significant.

## 7. **An alternative approach**

The Paper is based on the premise that the qualification of "solicitor" is a common one but that does not reflect the reality of the modern profession. If standards and diversity are at the heart of the proposals in the Paper, there may be alternative ways of achieving the same end result. For example, taking into account the separate Consultation on the structure of the LPC, one approach might be to retain the accredited/non-accredited routes but require individuals going through either route to complete **only** the compulsory elements of the LPC. If they were to do nothing other than complete a satisfactory work based learning period, they could be designated "non-specialist solicitors" (akin to the non-practising barristers) while opening a broad range of career options. This could be coupled with a requirement that such solicitors wishing to practise in the main market sectors into which the profession is, in reality, divided (for example, private client-contentious, private client-non contentious, commercial-contentious and commercial-non contentious) would be required to complete further, specialist qualifications (which could be the LPC electives) before being regarded as "fully qualified". If those specialist qualifications carried with them the obligation to work in a suitable legal practice under appropriate supervision, any concerns about creating a two-tier profession would fall away. Such an approach would open the qualification to a potentially broader range of people while maintaining standards by recognising the differences across the profession.

## 8. **Conclusion**

Whatever changes are made to the training framework, the standards in the profession must be maintained without excluding capable individuals from qualifying as solicitors. The time has passed when it was possible for a "solicitor" to receive a common training (other than at a fairly generic and basic level) irrespective of the area of practice he or she joins. However, it is

possible to create a structure which ensures common general standards while reflecting those differences.

**Training Committee**

**City of London Law Society**

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