



Legal Education and Training Review

Discussion Paper 01/2011: Project scope, research questions and assumptions

The Review process commenced in late May 2011 and is scheduled to complete by the end of November 2012. The scope of the Review is wide, encompassing the work of lawyers and paralegals across the entire legal services sector. It will also look comparatively at developments in other Common Law jurisdictions, and make comparisons where appropriate with other UK professions – primarily medicine and architecture, but also accountancy and financial services.

The project itself falls broadly into two parts: (a) scoping the current and likely future legal services sector to 2020, and (b) identifying the key skills and training needs within the sector, making recommendations for legal education and training (LET) accordingly. These parts further divide into four phases:

- (i) Literature review (UK and comparative)
- (ii) Contextual analysis of the sector
- (iii) Workforce development research and analysis
- (iv) Final reporting and recommendations

The research process will not be as linear as this suggests. Research for stages two and three will overlap, using much of the same fieldwork. Key milestones are identified in the Appendix to this document. The project timeline will be maintained on the proposed project intranet and periodically reviewed against actual progress.

The work of the Review Team will be overseen by the Review Executive. There are more or less quarterly meetings with the Consultation Steering Panel planned, which will act as the main advisory body for the Review. Other stakeholders will be consulted as part of the research process.

The Review Team is committed to the Review being conducted in a manner that is transparent and encourages participation. A project website is under development and this will be a primary vehicle for disseminating information on the progress of the Review. Work in progress, interim consultation papers and draft recommendations will be published on the website.

All recommendations will be assessed in terms of their

- Likely impact on competition
- Proportionality
- Cost-benefit
- Equality impact, and impact on social mobility
- Consistency with (other) Better Regulation principles

2. Research questions

We have derived a set of key research questions for the project from the initial tender document. They are:

- (i) What legal skills, knowledge and experience are required of different kinds of lawyers and other emerging roles currently?
- (ii) What legal skills, knowledge and experience will be required of lawyers and other key roles in the provision of legal services in 2020?
- (iii) What kind of LET system(s) will support the delivery of high quality, competitive legal services, with high ethical standards, *and* will deliver flexible education and training options, responsive to the need for different career pathways, promoting mobility within the sector and encouraging social mobility and diversity?
- (iv) What characteristics/processes will enable qualification routes to be responsive to emerging needs (e.g., of students, training organisations, consumers)?
- (v) To what extent, if any, is there scope (and might it be desirable) to move towards sector-wide LET outcomes?
- (vi) To what extent, if any, should LET regulation be extended to currently non-regulated groups?

Questions for the Panel:

- (a) Do these research questions sufficiently capture the issues that are central to the Review. Are there any major issues that have been overlooked?
- (b) Are there any questions which appear superfluous or should be considered outside the scope of this Review?

3. Research methods

The research specification set out by the original tender is complex, and this will be reflected in the range of research methods used, including

- Questionnaire studies (including client perspectives)
- Focus groups of students, academics, trainers and practitioners
- Individual interviews with key stakeholders
- Documentary analysis (e.g. meta-analysis of LET standards across a range of jurisdictions)
- Workforce projection
- Cost-benefit analysis of recommendations

4. Some assumptions

There are four central assumptions which underlie the Review Team's work and help set the parameters for the Review. We invite comments and questions on any of these assumptions.

(a) Recommendations for change must, so far as possible, be evidenced-based.

This underlies the funders' whole rationale in appointing the Review Team. Previous reviews of LET have commissioned relatively little research. Much of the debate about the fitness for purpose of the current LET regime has proceeded by assertion, based often on little or no evidence. The Review Team's approach will be to draw on a meta-analysis of existing research and data wherever possible. It will also, as indicated above,

undertake new research as necessary to inform its recommendations, though the timing and time constraints of the project will impose some limits on the range of research that is possible.

(b) The focus of the Review is on assuring competence to deliver legal services.

The Review is not concerned with the intrinsic quality of any stage of legal education and training (LET) as such; its focus is on how the regulators might assure themselves and the public that those delivering legal services are (initially) competent to practise, and continue to be competent to practise.

Broader questions about the values and purposes of LET, e.g., as a liberal higher education or as preparation for employment outside the legal services sector, will only be addressed by the Review insofar as they are relevant to assessing the effectiveness, proper scope and proportionality of regulation.

The current LET regime does not focus exclusively, nor perhaps even sufficiently, on competence. Competence is currently assured by the regulated professions through a mixture of conduct of business and training regulation. The effectiveness and balance of this regulatory mix will be a significant issue for the research, particularly in the context of moves towards more outcome-focussed regulation (OFR). Insofar as competence is assessed, it is generally by outcomes - the ability to do the things that make up the job. However, there are significant concerns about the suitability of a purely competence-based approach in the context of higher learning (see Agenda Item 4). This issue will be explored primarily through the project literature review. Another underlying question for the research is therefore whether, and to what extent, there needs to be prescription of *input* (e.g., contact hours or notional study time; CPD hours, etc) and/or *process* (e.g., how courses should be taught or assessed) and/or *structures*, and, if so, what inputs/processes/structures should be prescribed.

(c) The Review is shaped by the new regulatory context.

Moves to bring in alternative business structures and the shift to greater use of OFR are critical contexts for the research. In addition, the Legal Services Act 2007 has signalled a shift in LET discourse, marked by a sharper professional focus on the need to regulate. The frontline regulators must ensure that their systems of education and training meet the regulatory objectives of the 2007 Act, and the Legal Services Board, as oversight regulator, has a statutory obligation under s.4 to assist the frontline regulators in the maintenance and development of standards in relation to LET.

The regulatory context is also critical in that any recommendations of the Review regarding LET regulation must:

- themselves be consistent with the regulatory objectives of the 2007 Act;
- be proportionate;
- enhance equality and diversity
- be consistent with EU policies on free movement (etc), and
- must not be anti-competitive (both as regards individual access to the profession(s), and access to the legal services market.)

(d) The Review is sector-wide in its scope.

As already noted, the Review is not limited to examining LET in the professions that are funding the Review. It is the funders' intention that the Review should be sector-wide in scope. This makes sense in the context of moves towards more market-based, sectoral, regulation, but also raises significant challenges in terms of capturing a

representative range of activity across the sector within the limited timeframe of the Review. In practice the actual scope of the Review will need to be assessed and reviewed as work progresses.

A key issue for the review will be to examine the appropriateness of and balance between sector/activity-based regulation and standard setting, and maintaining discrete standards for different occupational groups.

Appendix: Key project milestones

	Proposed dates
Stage 1 (literature review)	
working final draft	January/February 2011
draft interim recommendations/ consultation paper 1	March 2011
Stage 2 (contextual analysis)	
working final draft	June 2012
draft interim recommendations/ consultation paper 2	July 2012
Stage 3 (workforce development)	
working final draft	September 2012
draft interim recommendations	October/November 2012
Stage 4 (recommendations)	
working final draft	August - November 2012
final recommendations	December 2012