

To:	Legal Services Board	
Date of Meeting:	24 July 2013	Item: Paper (13) 54

Title:	LETR briefing
Workstream(s):	Workforce development
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Status:	Protect

Summary:
<p>This paper provides the Board with an update on the Legal Education and Training Review (LETR) following publication of the final report on 25 June. It sets out our initial analysis of the report's recommendations, stakeholder reaction and next steps.</p> <p>The full LETR report can be found here.</p>

Recommendation(s):
<p>The Board is invited to:</p> <ul style="list-style-type: none"> (a) Note the briefing on the LETR and discuss the analysis provided (b) Ask the executive to prepare draft guidance for discussion at the September Board with a view to consulting thereafter (c) Agree that the approach is based on the principles outlined at paragraph 33

Risks and mitigations	
Financial:	None at this stage
Legal:	None at this stage
Reputational:	LETR has received a relatively muted response so far but there is potential reputational risk to the LSB if none of the recommendations are implemented given our role in calling for the review and public comment on the need to reform education and training
Resource:	None at this stage, proposed work can be delivered within existing resources

Consultation	Yes	No	Who / why?
Board Members:		✓	
Consumer Panel:		✓	The Panel has not been consulted formally on this paper but ongoing discussions are taking place with the Consumer Panel Manager regarding its initial reaction to the LETR and our emerging strategy
Others:			

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
20, second and third sentences	Section 44 - restricted information obtained by the Board in the exercise of its functions [and therefore] must not be disclosed (s167 LSA)	

LEGAL SERVICES BOARD

To:	Board		
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Board update on LETR – July 2013

Executive Summary

1. This paper provides the Board with an update on the Legal Education and Training Review (LETR) following publication of the final report on 25 June. It sets out our initial analysis of the report's recommendations, stakeholder reaction and next steps.
2. Publication of the report is a clear milestone but the focus must now be on action and we have a relatively narrow window to influence before the Boards of the commissioning regulators agree next steps. Regulators must make progress having spent three years since the LSB Chair gave his Upjohn lecture laying down the challenge to reform¹. The LETR report makes clear recommendations for action not just for the commissioning regulators but for the sector as a whole and underpinning all of the recommendations is the need for greater flexibility.
3. Legal education and training is directly linked to the regulatory objectives in the Legal Services Act 2007 (the Act) and in particular to the need to protect and promote the interests of consumers and to ensure an independent, strong, diverse and effective legal profession. There is also a clear link to securing the wider benefits for consumers of market liberalisation. The independent and academic evidence base set out in the LETR points to the potential risks to the regulatory objectives of an unreformed system of education and training. In the light of our duty to assist in the maintenance and development of standards in relation to education and training² we need to consider how the regulatory objectives can best be secured and how we can influence the regulators most effectively. It is clear from both the report and the responses so far that we cannot rely solely on the LETR.
4. We therefore propose to return to the Board in September with more detail on proposed draft statutory guidance (for consultation) and proposals for stakeholder engagement. It is suggested that statutory guidance is a clear and transparent way to set out the LSB's thinking in this area while also providing a solid basis for which we can review progress or take action in the future. Where regulators decide not to take action guidance can act as a framework for them to justify

¹

http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de_lord_upjohn Lec.pdf

² Section 4 of LSA 2007

those decisions. However guidance cannot be an end in itself and we will need to continue active engagement with all stakeholders whose participation will be central to a more flexible approach to legal education and training.

5. In considering this paper and recommendations, the Board may wish to ask itself whether:
 - It supports our view that the recommendations in the LETR report present both opportunities and risks for the reform of education and training
 - It agrees that we should articulate clearly our views on education and training, particularly in the light of the regulatory standards framework that has been developed since the LETR began in 2009
 - It agrees with our assessment of the need for statutory guidance in this area

The report

6. This report concludes the research phase of the LETR which began in July 2011. Although the report recognises that the current system is for the most part fit for purpose, it identifies a number of areas where developments are needed to ensure it remains so. Particular emphasis is given to:
 - Moving towards outcomes and standards, increasing consistency across regulators where possible
 - Structural changes to enhance flexibility and moving away from models dominated by time served
 - Increasing access to the profession through a 'mixed economy' of routes including apprenticeships, work based learning and paralegal routes
 - Filling perceived content gaps in existing legal education and training, notably professional ethics, commercial awareness and legal research/writing skills
 - Greater focus on assuring continued competence, mainly through enhanced CPD
 - Greater consumer input into the ongoing review of legal education and training
 - Establishment of a Legal Education Council to provide a forum for the coordination of the continuing review of legal education and training

A summary of the recommendations is included within the **appendix** to this paper.

Our assessment

7. The final report starts from the position that the current system of education and training is fit for purpose. It therefore proposes incremental change, backed up by the necessary infrastructure to enable more significant change over time. This conclusion has been reached on the basis of the evidence provided to the review which focuses heavily on the views of the profession. While we would support the need for evidence there is a perception that the report and its conclusions rely too heavily on the views of the profession and do not give enough weight to the consumer perspective (as is the view of the Legal Services Consumer Panel).
8. The report is very long and detailed, with a total of 26 recommendations. Due to the breadth of the report, its core message is diffuse and the information and evidence contained within it therefore has the ability to be used by different stakeholders for different purposes. This presents both opportunities and risks. From the specific perspective of our wider work on the cost and complexity of regulation, while there are opportunities for deregulation cited specifically in the recommendations, there is a significant risk that the report could lead to more rather than less regulation and there is little discussion around the need to target towards risks.
9. In the following paragraphs we set out for the Board our analysis of the report's findings in relation to the key issues.

Outcomes and greater flexibility

10. At its core, the report has the potential to put in place fundamental building blocks towards greater flexibility in education and training requirements. The case for outcomes is made and would constitute a significant change towards greater flexibility, particularly if backed up by a move away from time served models. Importantly the report actively endorses multiple routes to professional titles, including apprenticeship routes. However in places there is a risk that the detail has the potential to limit such positive developments by continuing to advocate a „top down' or „permission based approach' whereby the regulator sets out the approved ways of doing things as opposed to setting up outcomes and letting the market decide how best they can be delivered. Further, it appears that the „day one outcomes' will be focused on current roles within the legal services market rather than building in flexibility for future changes or diversity of business models.
11. The report focuses predominantly on authorisation for professional titles and gives little consideration to the prospect of separating titles from authorisation. It sees this as a broader issue that must be considered in the context of the debate around the structure of regulation and the merits of a single legal services regulator. The report does not therefore address the issues around linking authorisation more closely to education and training, what has often been

referred to as ‚activity based regulation’. While we do not disagree with the complexity of the issues, this is perhaps a missed opportunity for the LETR.

The role of entities

12. From our perspective, another missed opportunity in the report’s core recommendations is a greater focus on entities rather than individuals. In line with wider developments in respect of risk and entity based regulation we might expect that regulators look at whether assurance of competence can be provided by employers rather than regulators. The report touches on this but not in any comprehensive way. It also makes a specific recommendation regarding the licensing of individual paralegals which cuts across both entity regulation and the boundaries of regulation. While the report acknowledges that this could be a voluntary quality scheme, it is our view that this is not a role for regulators in the currently regulatory framework nor is sufficient evidence of the risks arising provided.
13. Since the report’s publication, Professor Julian Webb has remarked that increased entity responsibility for developing an appropriate workforce training strategy (supported by targeted supervision from regulators) is central to the report. This emphasis has not been shared by others in their initial responses to the report. We will need to review the evidence further but this is an area where we are likely to focus in developing guidance.

Common training across professional titles

14. Consistency and harmonisation of standards is a core theme in the report, both in relation to the standards that are set and consistency in assessment. During the review there has been extensive debate as to whether the training for solicitors and barristers should be joined-up for longer to enable the decision regarding specialisation to be made later. Greater common training and a more flexible, outcomes approach to authorisation may also facilitate easier transfer between professional titles after the point of qualification. While the report is very much in support of greater consistency across the different branches of the legal profession it does not go as far as recommending greater shared training. However as with outcomes, the potential is there if the regulators chose to take it forward.

Ongoing competence and reaccreditation

15. The research team finds the case for universal reaccreditation has not been made. This has been highlighted as a “missed opportunity” by the Legal Services Consumer Panel, particularly given the emphasis given to the views of the profession on this issue. In the absence of any persuasive evidence our view would be that requirements for ongoing reaccreditation should be targeted

towards risks. For example, the proposed QASA scheme is based upon a five yearly reaccreditation cycle which reflects the significant risks to consumers of poor criminal advocacy.

16. Rather than reaccreditation the report focuses on reform of CPD as a means of assuring ongoing competence, strongly supporting the adoption of models that require participants to plan, implement, evaluate and reflect on their own development (as IPS is currently planning to introduce). It is left open as to whether this should include a requirement for minimum hours but makes the case that CPD schemes should be audited by regulators to ensure they correspond to appropriate learning outcomes. The report also suggests that consideration should be given to cross-recognition of CPD across the professions. From reaction so far, we expect CPD to be an area where consensus and a degree of consistency can be easily achieved.

Stakeholder reaction

17. As we have said in our press release, the report is an important milestone in the review of legal education and training rather than the last word on the subject. We have made clear to the regulators both publicly and privately that we expect them to respond to the recommendations with practical proposals for action.
18. Each of the commissioning regulators has made an initial public response to the report which are summarised below.

Bar Standards Board (BSB)

19. The BSB has welcomed the report in highlighting challenges for the future but so far showed the least desire to undertake any far reaching actions, underlining the report's positive review of the current arrangements and resisting any more fundamental changes such as common training³.

20. The BSB Board is due to consider the report in full at its meeting in September and will set out a clearer idea of next steps following that discussion. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³ <https://www.barstandardsboard.org.uk/media-centre/press-releases/final-report-of-legal-education-and-training-review-published/>

Solicitors Regulation Authority (SRA)

21. The SRA appears happy with the report and has given the fullest response of all the regulators so far. A full policy statement on its approach will be issued in the autumn. In its press release⁴ the SRA highlights six strategic principles, agreed by the SRA Board, which will underpin its work. Importantly these include:
- Being prescriptive only where necessary, minimising bureaucracy and targeting regulation and resources to areas of identified risk
 - Finding an appropriate balance of regulatory requirements between individual legal services providers, individuals holding specific regulatory roles and the regulated entities within which they work
22. The starting point will be a review of the skills and knowledge required to merit qualification as a solicitor and consideration of non-graduate entry. As with the BSB the SRA has also highlighted CPD reform as an early priority and intends to issue a consultation on continuing competence by the end of the year.

ILEX Professional Standards (IPS)

23. In slight contrast to the other regulators, IPS is satisfied that the report supports the direction of travel it is already taking⁵. In its response it highlights the benefits of non-graduate routes (particularly relating to diversity), the outcomes focussed assessment of competence IPS has recently adopted and the wider benefits of work based learning. The report is also aligned with the changes to CPD that IPS is planning to implement (subject to LSB approval of its rule change application submitted to us on 9 July). IPS also welcomes the balance within the recommendations for regulators to work both independently and collaboratively.

Smaller approved regulators

24. The regulators that were not involved directly in commissioning the review have engaged with the process to varying degrees. For example we know that CLSB is now consulting on changes to its qualifications and appears to have taken account of the LETR. CLC is also looking at reviewing its qualifications and is likely to be looking closely at the recommendations as part of that process. IPReg have engaged in discussions throughout the review, attending the LSB seminar series early last year. It is therefore important that we start to engage with all of the regulators on the issues emerging from the LETR.

⁴ <http://www.sra.org.uk/sra/news/press/sra-response-lettr.page>

⁵ http://www.cilex.org.uk/ips/ips_home/notice_board/ips_responds_to_lettr.aspx

25. The Board may also refer to the articles by [Richard Moorhead](#) and [Legal Futures](#) for a summary of the wider reaction.

LSB Strategy

26. In line with our expectations for the LETR, the report underlines the need for greater variety and flexibility of approach to ensure that both new and existing lawyers attain and retain the necessary skills to serve the public effectively. It also raises questions about the relevance of some of the existing regulatory requirements which correlate with our emerging views from our work on the cost and complexity of regulation. While the causes may be part of wider issues with the structure of legal services regulation, there are areas where early progress can be made particularly in examining the current requirements in the context of the regulatory standards framework to ensure that regulation is outcomes focused and targeted according to risk.
27. While the report has the potential to put in place the building blocks for these changes and the response of the SRA in particular has been very positive, there are significant risks that it alone will not prompt the required action from all regulators. This inaction has the potential to be detrimental to the regulatory objectives and the better regulation principles.
28. In contrast, there is some risk that regulators might respond to pressure to tackle the perceived „oversupply’ issues that have been widely reported in the context of the review by attempting to cap the number of people allowed on to the vocational courses which are a pre-requisite for obtaining the professional title of solicitor or barrister. The issue of the number of people failing to obtain pupillage or training contracts (and therefore qualifying) despite paying the high LPC or BPTC fees is gaining momentum as a „moral issue’ for the profession to address. Given the evidence of unmet need (both individual and small business consumers)⁶; it would be very difficult to accept any attempts by regulators to control the numbers entering the profession. In fact one of the disappointing elements of the report is its reluctance to question the existence at all of regulatory requirements for vocational training as the only route to qualification as a solicitor or barrister.
29. As part of a wider influencing strategy, it is suggested that statutory guidance provides a clear and transparent way to set out the principles we expect all of the regulators to take account of when reviewing their education and training

⁶ BDRC report for Legal Services Board on individual consumer need (June 2012) <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>; Pleasance and Balmer Small Business Legal Needs Benchmarking Survey (April 2013) <https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf>

regulations. It also provides a solid basis from which we can review progress in the future, and take action if we find there is evidence of detriment to the regulatory objectives or better regulation principles.

30. We therefore propose to develop statutory guidance building from the following principles that have emerged from the LETR and our wider work on regulatory standards:

- **Regulation of education and training to be focused on the entity and not just professional titles** – in authorising entities, regulators need to focus on assuring competence of all those employed to provide legal services and not only those with professional titles. This is likely to require reconsideration of the current arrangements and in particular the balance of responsibility between the role of the regulator and role of the employer. A firm is more likely to be best placed to know what skills its workforce needs than a regulator, although it should be held to account by regulators for the decisions it makes, using a set of regulatory outcomes (including diversity and social mobility) as criteria upon which to judge
- **Education and training requirements to be expressed in outcomes where possible to facilitate greater flexibility and multiple routes to entry** – rather than focusing solely on the inputs of qualifications and time served, regulators need to focus on what is required to be authorised (both as an entity and individual). This would likely lead to the removal of unnecessary prescription and approval mechanisms in the current regulatory arrangements except where it can be justified by risks to the regulatory objectives. Over time this level of flexibility is likely to lead to the emergence of different routes to careers in the law and enable regulators to keep pace with the changing legal services market - and lead to questioning of the regulatory requirement for generalist – and hence costly - vocational training for those whose practice is likely to more tightly focussed.
- **Regulators to target the regulation of education and training according to risk, using detailed and prescriptive requirements only where the risks require it** – by this we mean risks to all of the regulatory objectives and not the professional interest alone. For example, more regulation may be needed in areas of law where individuals or small businesses are infrequent consumers, making a distress purchase or are vulnerable and not empowered to hold providers to account, access redress or alter their initial choices;
- **Regulatory requirements should add to what exists outside of regulation rather than duplicate** – a clear example is higher education where assurance ought to be provided primarily by sector specific regulation provided by the Quality Assurance Agency (QAA) and Higher Education Funding Council for England (HEFCE), with additional requirements by professional regulators needing very specific justification.

31. It is not our intention for the guidance to be overly prescriptive as to what regulators should do or provide a detailed assessment of the existing framework. That is for regulators to determine. Our focus will be on guiding responses to the LETR and set an expectation for when we expect regulators to have put in place a credible timetable for reviewing their approach to regulation of education and training in light of both the LETR recommendations and wider developments.

Recommendations

32. The Board is invited to:

- Note the briefing on the LETR and discuss the analysis provided
- To ask the executive to prepare draft guidance for discussion at the September Board with a view to consulting thereafter
- To agree that the approach is based on the principles outlined above

Appendix

Summary of recommendations

The report contains a total of 26 recommendations grouped into the following areas:

- Outcomes and standards
- Content
- Structures
- Information

For the purposes of our internal analysis we have interpreted the recommendations below, grouping them in order to simplify where possible. The full LETR report can be found [here](#).

- Learning outcomes should be prescribed for the knowledge, skills and attributes expected of authorised persons (both at the point of authorisation and for ongoing competence). Outcomes are essential for standard-setting, fair access to the profession and are amenable to flexibility/innovation **See recommendations 1, 2 & 3**
- Learning outcomes should cover post pre and post qualification stages **See recommendations 6 & 9**
- There should be coordination between regulators to ensure consistency in minimum levels of competence so that the public know what to expect. Over time this may result in a common framework across the sector as a whole which would potentially facilitate greater transferability across the different professions **See recommendations 4 & 5**
- The balance between the content requirements in the Qualifying Law Degree and Graduate Diploma in Law should be reviewed in the light of the new outcomes. The Joint Statement needs to be amended accordingly **See recommendations 10 & 11**
- Greater emphasis should be given to professional ethics and wider legal values as well as research and communication skills, with educational providers incorporating a distinct assessment of legal research, writing and critical thinking skills at the pre-qualification stage. Advocacy training needs to prepare advocates for appearing against self-represented litigants. **See recommendations 6-8 & 11**
- The structure of the LPC should be modified to increase flexibility of delivery and specialist pathways. Reduction of the breadth of the required technical knowledge base is desirable but advocacy training and will writing need to be improved. **See recommendation 12**

- Bar Professional Training Course should place greater practical emphasis on Alternative Dispute Resolution (ADR) skills. **See recommendation 13**
- Sequencing of academic and vocational stages should be flexible so as to allow concurrent as well as sequential approach. **See recommendation 14**
- Requirements for supervised practice (period of time, environment, sequencing) should provide greater flexibility so that individuals are able to proceed at the point of meeting the learning outcomes but supervisors should be subject to appropriate training and support. **See recommendations 15 and 16**
- Models of CPD that require participants to plan, implement, evaluate and reflect should be adopted where they are not already in place. This may or may not involve a requirement for minimum hours. CPD schemes should be audited to ensure they correspond to appropriate learning outcomes and consideration should be given to cross-recognition across the professions. **See recommendations 17-19**
- Conduct standards and guidance on the conduct of internships and work placements should be put in place to address issues around fair access and equality of opportunity **See recommendation 20**
- Work should proceed to develop higher apprenticeship qualifications at levels 5-7 as part of an additional non-graduate pathway into the regulated professions **See recommendation 21**
- The development of a single voluntary system of certification or licensing for paralegal staff should be considered to ensure consistency and enhance opportunities for career progression. This may take the form of a voluntary quality scheme. However the report recognises that within regulated entities there is no established need to move toward individual regulation of paralegals. In these circumstances regulators must hold entities to account for ensuring appropriate policies and procedures are in place to delivery adequate supervision and training of paralegal staff. **See recommendations 22 and 23**

NB. This is highlighted as a specific area for the LSB to consider as part of its work on the boundaries of reservation

- Providers of legal education should be required to publish diversity data, by way of information to prospective applicants but also to track the impact of education and training requirements on diversity and social mobility **See recommendation 24**
- A body, „The Legal Education Council‘, should be established to provide a forum for the coordination of the continuing review of legal education and training **See recommendation 25**

- Regulators must incorporate appropriate consumer input and representation into the next phase of the LETR **See *recommendation 26***