

<b>To:</b>	Board
<b>Date of Meeting:</b>	29 January 2014
<b>Item:</b>	Paper (14) 03

<b>Title:</b>	Increasing flexibility in legal education and training
<b>Workstream(s):</b>	Developing research and public legal education strategies
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<b>Status:</b>	Unclassified

<b>Summary:</b>
<p>The LSB's consultation on proposed statutory section 162 guidance for regulators in relation to legal education and training closed on 11 December 2013.</p> <p>This paper sets out the key issues raised by respondents, the Executive's proposed response and the next steps for the project. A draft summary of responses and decision document is provided at Annex 3.</p>

<b>Recommendation(s):</b>
<p>The Board is invited:</p> <ol style="list-style-type: none"> <li>(1) to agree to issuing statutory guidance on education and training in mid-February</li> <li>(2) to note the planned timetable with a view to receiving a more detailed update about regulators' progress in reviewing their education and training arrangements after they have been submitted to the LSB in April.</li> </ol>

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	N/A
<b>Reputational:</b>	There is a risk that our consultation and plans to issue guidance will be presented by some as duplication of effort with the approved regulators. However, this risk should be mitigated by allowing commissioning regulators of the LETR to continue to make progress in the broad direction of the guidance, while allowing those regulators that did not commission the LETR to submit their reports to the LSB at a later date. This staged approach reflects the fact that non-commissioning regulators are less likely to have developed their thinking in reviewing their regulatory arrangements.
<b>Resource:</b>	Considered sufficient at this time. Staffing changes will require this work to be balanced with other priorities and refined in light of the business planning process for 2014/15.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>		✓	
<b>Consumer Panel:</b>		✓	
<b>Others:</b>			
<b>Freedom of Information Act 2000 (Fol)</b>			
<b>Para ref</b>	<b>Fol exemption and summary</b>		<b>Expires</b>
Annexes 3 and 4	Section 22 – information intended for future publication		

## LEGAL SERVICES BOARD

<b>To:</b>	Board		
<b>Date of Meeting:</b>	29 January 2014	<b>Item:</b>	Paper (14 ) 03

### **Increasing flexibility in legal education and training: consultation on proposal for draft statutory guidance to be issued under section 162 of the Legal Services Act 2007**

## **Executive Summary**

### **Recommendation(s)**

To agree to the issuing of LSB statutory guidance on education and training in mid-February; and

To note the planned timetable with a view to receiving a more detailed update on regulator progress in April.

### **Background**

1. The LSB's consultation ran between 18 September and 11 December 2013. The draft guidance and consultation paper sets out our views on how legal education and training needs to change in order to deliver the regulatory objectives. The Board reviewed and commented on these documents at its September 2013<sup>1</sup> meeting. This followed Board discussions that took place in August 2012<sup>2</sup>, November 2012<sup>3</sup> and July 2013<sup>4</sup> and the paper published during our seminar series in early 2012<sup>5</sup>.

### **Context**

2. In the 2010 Upjohn Lecture, David Edmonds laid down the challenge for regulators to reform their education and training regulations in the face of a changing legal market<sup>6</sup>. Following this, three of the approved regulators – the Solicitors Regulation Authority (SRA), the Bar Standards Board and Ilex Professional Standards (IPS) began the Legal Education and Training Review

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<sup>1</sup> Board Paper (13) 58, Legal education and training – consultation paper, 11 September 2013.

<sup>2</sup> Board workshops on education and training held in July and August 2012

<sup>3</sup> Board Paper (12) 76, Update on Legal Education and Training Review, 28 November 2012

<sup>4</sup> Board Paper (13) 54, LETR Briefing, 24 July 2013

<sup>5</sup> [http://www.legalservicesboard.org.uk/Projects/workforce\\_development/pdf/20120221\\_education\\_and\\_training\\_its\\_role\\_in\\_regulation\\_final.pdf](http://www.legalservicesboard.org.uk/Projects/workforce_development/pdf/20120221_education_and_training_its_role_in_regulation_final.pdf)

<sup>6</sup> [http://www.legalservicesboard.org.uk/news\\_publications/speeches\\_presentations/2010/de\\_lord\\_upjohn\\_lec.pdf](http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de_lord_upjohn_lec.pdf)

(LETR) in 2011. Progress was slow but the LETR report was published on 25 June 2013<sup>7</sup> (see appendix 1 for further detail).

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. The LETR report makes clear recommendations for action for the sector as a whole, not just the commissioning regulators.
4. In light of our duty to assist in the maintenance and development of standards in relation to education and training<sup>8</sup> we need to consider how the regulatory objectives can best be secured and how we can most effectively influence the regulators.
5. The Board agreed at its meeting in September 2013 that issuing statutory guidance was the best option for reasons including:
  - To maintain the momentum for reform gained by the publication of the report and to put a clear focus on implementation for all regulators, including those that did not commission LETR, given that it is nearly three years since the challenge laid down in the Upjohn lecture
  - To set out the LSB's expectations in a clear and transparent way, including in relation to our Schedule 4 duty to approve any changes to regulatory arrangements, and provide the basis for reviewing progress or taking future action if required
  - To ensure that education and training reform is not delivered in isolation of the LSB's outcomes focused and risk based regulatory standards framework.
6. Statutory guidance of this nature is proportionate. It is up to regulators to review and reform their current regulatory arrangements in response to the LETR report and the regulatory standards framework. Some of the regulators have already started. On the whole we welcome the direction of travel of the SRA as set out in their policy statement – '*Training for Tomorrow, the lawyers of today have the skills for tomorrow*'<sup>9</sup>, and the BSB, as set out in their vision

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<sup>7</sup> <http://letr.org.uk/>

<sup>8</sup> Section 4 of LSA 2007

<sup>9</sup> Although clearly moving in the right direction, there are some areas within the SRA's policy statement that the Executive has concerns over. We will be writing to the SRA to highlight these in January. The SRA policy statement may be found here: <http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page>

for the future: '*Education Training Strategy*'<sup>10</sup>. IPS have released a press statement responding to the LETR and are currently identifying opportunities to build on best practice<sup>11</sup>. We are not trying to duplicate this work. We are not imposing a particular timetable – we just require them to have one. Regulators that have clear plans against which they continue to make progress in the broad direction of the guidance, or have good reason to vary from it, will be left to deliver. But statutory guidance does provide a clear basis for seeking explanation and taking action if any regulators do not provide one

## Key issues

7. The summary of consultation responses can be found at Annex 3. The key issues raised are listed below.
8. The Bar Council, the Bar Standards Board and the Law Society expressed the view that it was not appropriate or necessary for the LSB to issue statutory guidance at this stage. Some respondents argued that the LSB would be exceeding its powers if it did so. Some argued that it would be proportionate for the ARs to be given the space to review and respond to the LETR findings. Many have begun doing so.<sup>12</sup> It was argued that there is little evidence that regulators are taking no action, or will proceed in a way contrary to, the LETR's recommendations. The likelihood that some stakeholders would present our consultation and plans to issue guidance as a duplication of effort with the ARs was flagged as a significant risk in the September 2013 Board paper. It should, however, be noted that several stakeholders welcomed our proposal to issue guidance.
9. Approximately half of the respondents agreed that on the whole the proposed outcomes were the right ones. Others did not agree with the outcomes, the underpinning reasoning or the way that were drafted. It is difficult to be exact as several respondents did not explicitly say whether or not they agreed the outcomes were the right ones overall but rather commented on individual outcomes in detail. Further, many respondents that explicitly agreed that the outcomes were the right ones also raised specific concerns and/or suggested specific improvements. There was a variance of views about whether or not the outcomes should be ranked in order of priority.
10. Several specific concerns were raised, for example:
  - Some respondents, including the Council of the Inns of Court and the Chancery Bar Association, had an issue with the outcomes as they relate to competence, both being reticent about any move away from traditional 'time served models' of legal education and training. It was argued that it

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<sup>10</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/changes-to-regulation/legal-education-and-training-review/education-strategy-framework/>

<sup>11</sup> [http://www.cilex.org.uk/ips/ips\\_home/notice\\_board/ips\\_responds\\_to\\_lettr.aspx](http://www.cilex.org.uk/ips/ips_home/notice_board/ips_responds_to_lettr.aspx)

<sup>12</sup> For example the BSB, SRA and CILEX/IPS, have already started developing regulation of education and training which is outcome focused and which responds to the recommendations of the LETR.

would be difficult to measure and attain competence without traditional models such as ‘time served’ training and education.

- Some respondents took issue with proposals ongoing competence requirements such as reaccreditation for higher risk activities.
- The City of London Law Society noted that this was the first time the LSB has issued statutory guidance in the area of education and training but that we had not consulted on whether it was right to issue such guidance.

## LSB response

11. In reviewing the responses, the Executive’s view is that the issues and objections raised by stakeholders do not change the Board’s previous analysis that in light of our duty to assist in the maintenance and development of standards in relation to education and training, the regulatory objectives can best be secured by issuing section 162 guidance to ARs.
12. There was nothing within any of the responses that leads the Executive to believe that substantive change to the proposed guidance is required. However, we welcome the feedback provided by stakeholders and we have made several amendments to the guidance to reflect suggestions made.
13. Our proposed response to the key points made by respondents is detailed in the summary of responses document at Annex 3, this includes an updated version of the guidance with amendments tracked and explained.

## Approval of changes to the regulatory arrangements

14. We have considered how changes arising from the reviews of education and training arrangements can be handled under the Schedule 4 process in order that the requirements for obtaining approval or exemption are not a barrier to change, while at the same time ensuring that the LSB’s duties in relation to alterations are properly delivered. Further details can be found in Annex 2.

## Next steps

Proposed next action	Date
<p><b>LSB to issue guidance for publication</b> Issuing guidance will ensure that regulators can quickly review their education and training requirements, including any changes which they may have subsequently made in response to either our consultation or the LETR.</p>	mid-February
<p><b>Commissioning regulators submit to LSB their plans for reviewing</b> We expect that regulators will act quickly to review their regulatory</p>	April 2014

<p>arrangements against the published guidance. We do not expect to receive detailed plans. Rather, we expect a high level plan that outlines regulators' priorities and timetable, and some consideration of our guidance in respect to their current plans.</p>	
<p><b>Report back to the Board</b>  We will report back to the Board and provide an update on where regulators are up to in reviewing their arrangements. At this point we will provide further detail around monitoring and timetabling matters to the Board.</p>	<p>July 2014</p>

15. The executive proposes that regulators that did not commission LETR should be allowed to submit reports to the LSB at a later date, if they so wish, to reflect that they are likely to have developed their thinking to the same degree. If the Board agrees, we will work out an appropriate timetable.

## ANNEX 1

### Details of the Legal Education and Training Review (LETR)

1. The LETR is an evidence-based review of education and training requirements across regulated and non-regulated legal services in England and Wales. The research phase of the LETR began in July 2011 with the final reporting being published on 25 June 2013. The LETR recognises that the current system is for the most part fit for purpose, but it identifies a number of areas where developments are needed to ensure it remains so. The report was commissioned by the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS).

#### *Summary of recommendations*

- The report contained a total of 26 recommendations which ranged from outcomes and standards to content, structures and information. The LETR report makes clear recommendations for action not just for the commissioning regulators but for the sector as a whole. Below is a summary of the report's main recommendations:
  - 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.
2. The modern, risk based and outcomes focused approach to regulation demands a rethink of the current approach to education and training which was designed around different principles. In undertaking this rethink, the



LETR's recommendations show the need for greater flexibility in current education and training, including the development of multiple routes to authorisation such as apprenticeships.

#### *Outcomes and greater flexibility*

3. 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.
4. 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. The LETR contains little on the actual targeting of risks, and that 'day one outcomes' should be focused on current roles within the legal services market rather than building in flexibility for future changes or diversity of business models.

#### *Response of ARs*

5. Following the publication of the report a number of ARs such as the BSB, SRA and CILEX/IPS, have sought to review their regulatory arrangements in education and training in light of the LETR's recommendations.

## ANNEX 2

### Approval of changes to regulatory arrangements

1. It is anticipated that as a result of the review of education and training, ARs will want to make changes to their regulatory arrangements. Part 3 of Schedule 4 to the Act sets out the requirement that the LSB either approve or exempt from approval changes (including additions and revocations) to regulatory arrangements; without such approval (or exemption) the changes are not effective.
2. We have considered how changes arising from the reviews can be handled in order that the requirements for obtaining approval or exemption are not a barrier to change, while at the same time ensuring that the LSB's duties in relation to alterations are properly delivered.
3. The proposed approach is based on early engagement with ARs as their consultation papers are published, indicating how we might handle changes, and our expectation that we will use the power to direct that an alteration is an exempt alteration whenever appropriate. We will also make it clear that in assessing any applications, we will, amongst other factors, consider the extent to which the change would facilitate achievement by the ARs of the LSB's Outcomes. As this is an indication of how we might exercise our powers, it is technically a policy statement under section 49(2) which needs to be published as a draft and on which we must invite representations.
4. We also propose issuing guidance (under section 162(2)(b)) on the operation of our Rules for Rules Changes so that ARs are clear that since we intend to consider the extent to which the proposals achieve the outcomes, then AR should consider it likely that an explanation of this will be needed as other explanatory material needed for the purpose of rule approval.