

This response is made on behalf of the Association of Law Teachers. The Association has a membership largely comprising academics in higher education institutions, with members also drawn from private providers of legal education, further education and tertiary education. The Association and its members have a particular interest in the teaching of law at all levels, whether as part of a formal education and training process for a particular professional activity, as part of a liberal higher education or as part of the education of those for whom law will be professionally relevant but who will not become legal professionals.

1) Do you agree that these outcomes are the right ones?

i. Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation

This is clearly a very important reference point. It is the obvious point at which threshold competence should be measured. However, much depends on whether the “point of authorisation” authorises the individual to operate independently. If such an individual must still operate under the auspices of an entity, then the principle of entity regulation, and the requirement for the entity to ensure that work is done by those competent to do it should meet much of what is required.

It may still be appropriate to treat the point of authorisation as the measuring point, but equal attention needs to be given to the process whereby the individual reaches the point of authorisation. Recognised and accepted educational processes themselves provide some assurance of consistency and effectiveness of education. In particular a law degree which covers the relevant areas of legal method, academic, intellectual and transferable skills, and appropriate subject matter may well be an effective underpinning for more specific subsequent vocational education or training. Similar frameworks could be developed at other levels. The outcome of a law degree is a qualification at Level Six of the National Framework. A Level Three qualification could be developed around the existing CILEX qualification, and/or A Levels. There is already considerable flexibility in the delivery of degree modules, and in some instances a full degree would not be required. This is currently the case for the CILEX Level Six qualification.

ii. Providers of education and training have the flexibility to determine how best to deliver the outcomes required

This is essential in order to allow a full range of alternative methods of delivery and also provision of content in appropriately targeted ways.

iii. Standards are set that find the right balance between what is required at entry and what can be fulfilled through ongoing competency requirements

As noted above, the point of entry may or may not be hugely significant in terms of what the individual can undertake autonomously. There is certainly an important part to be played by the continuing development, whether in terms of the maintenance of currency, or in terms of the acquisition of specific additional credentials building on the initial certification.

iv. Obligations in respect of education and training are balanced appropriately between the individual and entity, both at the point of entry and ongoing

Agreed

v. Education and training regulations place no direct or indirect restrictions on the numbers entering the profession

Any form of accreditation or regulation places a restriction, since those who do not meet the requirements are excluded. We accept that such regulations should not place unnecessary, discriminatory or otherwise inappropriate restrictions. Care must also be taken to ensure that regulations applying to specific professions do not have the result that an unregulated shadow profession develops providing services without the protection of regulation.

2) Do you think that all of the outcomes should have equal priority?

The first outcome is probably the most significant as well as the most sensitive. It effectively defines how a particular regulated profession is made up, and in particular the core skill set and competences for that profession. However the outcomes are interdependent, and in particular (i) and (iii) are clearly linked. The focus should be coherence rather than priority.

3) Do you agree with our guidance that a risk based approach to education and training should focus more on what an individual must know, understand and be able to do at the point of authorisation?

There is some merit in this, as noted above. The point of authorisation is a convenient one to carry out an audit and assessment of the individual's suitability. There will be an agreed body of competences and knowledge. Some of these will be at a general and transferable level. E.g. any legal professional should understand the importance of statute as a source of law, the principles of statutory drafting and interpretation and the impact on statute of EU law and the Human Rights Act. Similarly, the basic principles of legal ethics, such as the responsibility of the lawyer to the client and to the court or other public authorities are fairly generic. However, others will be quite specific. Knowledge of the law and legal processes relating to a particular topic, such as Will writing, are relevant only to those professions engaged directly or indirectly with this activity. One difficulty here is that some professions are very tightly defined, and there is a clear set of specific knowledge which can be confidently prescribed, while others are broad-based and contain individuals who only in practice deal with a small proportion of the practice areas which are open to the profession in principle. There is also the point that the point of authorisation is not in all cases the same as the point where the individual is allowed to practise independently. Accordingly, requiring at that stage competence in such matters as practice management, business development etc. will represent a significant over specification. In addition the entity in which these individuals are operating will itself be responsible to a significant extent for ensuring the quality of the individual's work.

It will therefore be necessary to ensure that all concerned are aware that the point of authorisation has been selected for practical reasons, and that the “day one” requirements must be drafted realistically in view of what an individual at that stage can actually take responsibility for.

4) What are the specific obstacles that need to be removed to facilitate movement across different branches of the profession?

We have in England always treated each branch of the legal profession as essentially independent. If there were a formal recognition of the division between the generic and specific aspects of

knowledge and competence, it should be possible to devise a statement of generic competences suitable for a range of professions at Level Three or Level Six. Each individual profession would have its own statement of specific competences. An individual already certificated in respect of generic competence could move professions by satisfying the requirement of the new profession for specific competence. This is of course a generalised version of the proposal made by the Lord Chancellor's Advisory Committee for a greater degree of common training between the solicitors' profession and the bar.

5) Do you agree that regulators should move away from “time served” models?

Time served alone is not a guarantor of competence. However, there must be some method of ensuring the efficacy of education and training activity. Within higher education this is achieved by credit weighting, specification of learning outcomes and the use of appropriate grade descriptors and assessment criteria. Within reason, the particular activity can be done in a longer or shorter period and under any conditions, whether by attendance at University, by distance learning or by work-based learning. However, whichever method, or combination of methods, is adopted, it will involve a significant input of effort over time. More specifically, where the specified outcome requires competence in a particular technique or procedure – e.g. drafting of formal documents or advocacy, the obvious means of demonstrating competence is over a period of time either performing the task under supervision or in a simulated situation to an adequate standard.

6) Do you agree that the regulation of students in particular needs to be reviewed in light of best practice in other sectors?

If a “student” is merely pursuing a course of education unrelated to a particular profession, ~~and~~ then there is currently, and should not be any form of regulation, so yes. If however the “student” is actually a candidate for entry to a particular profession and undergoing education or training specifically linked to that profession, in particular work-based learning, some degree of regulation may be appropriate as part of the “day one” certification process. The student may be asking for accreditation from time to time in relation to the achievement of elements of the day one outcomes and there needs to be some formal mechanism for this.

7) Do you agree that regulators should allow more flexibility in the way that education and training requirements are delivered by no longer prescribing particular routes?

The critical consideration is that these requirements are delivered effectively. We agree that excessive regulation may exclude emerging models of effective delivery. However excessive deregulation may allow ineffective methods of delivery to emerge. These may over time be found out, but there is a significant risk that students, in particular students from non-traditional backgrounds and may be attracted to an accessible and cheap, but ineffective model of delivery, only to discover that it lacks credibility. Some form of quality assurance of provision is required, but where this is already provided, e.g. by the QAA, it need not be duplicated. Regulators require power to ensure quality assurance where this is not already effectively provided by other established and robust processes.

8) Do you think such a change will impact positively on equality and diversity?

There are far too many variables to express a definite opinion. Elite areas of the professions already select entrants who have undertaken education at elite establishments. The provision of alternatives is unlikely to affect this. In other areas, the ability to undertake targeted education, particularly through work-based learning, may assist students of modest means to join certain professions. However the whole landscape of student funding is likely to be far more influential overall.

9) Do you agree that regulators should review their approach to quality assurance in light of developments in sector specific regulation of education providers?

Yes. As noted above quality assurance is important, but there is no need for it to be duplicated.

10) Do you agree that entry requirements set by regulators should focus on competence?

Yes, so long as this is understood in a broad sense. As we have noted above there are generic aspects of competence in relation to legal method, skills and ethics. In some respects the word “competences” is more apt to describe specific competence in relation to particular activities in the sense of knowing how, when, and why this activity should be undertaken and carrying out the necessary steps effectively. So long as both elements are incorporated we are happy for the word competence to be used more generically.

11) Do you agree with our proposal that there may be areas where broad based knowledge is not essential for authorisation? Can you provide any further examples of where this happens already?

The essential difficulty here is that many legal activities are not ring fenced. The issues raised by a particular client may cross boundaries. The client may seek advice over debts and then disclose and employment related problem which has led to financial difficulties. A debt adviser might have no knowledge of employment law. It is of course unrealistic to expect encyclopaedic competence, but a “red light” awareness so that a client may be appropriately referred on where necessary is required. In other cases it is important to recognise that what is seen as a specific competence, such as Will writing, inevitably requires substantial knowledge not only of the Wills Act and the law of succession, but of other areas of law, such as family law, and trust and equity.

In one sense the problem is the reverse. Solicitors in particular are expected to have very broad-based knowledge, much of which they will not deploy in practice. If the broad-based elements were recast in terms of generic competences, so that the solicitor should understand legal method, the nature of property rights, their creation and transfer, the nature of criminal liability and the criminal process, the dispute resolution process and the principal forms of business organisation, together with legal ethics and the skills of research, interviewing, negotiation and advocacy in broad terms this could be supplemented by certification of specific competence in one or possibly more than one practice area. Other professions could adopt a similar approach, although they might exclude some generic areas if they were entirely irrelevant to the work of that profession.

12) Do you agree that reaccreditation requirements should be introduced in areas where the risks are highest?

There appears to be some ambiguity in the consultation document about reaccreditation. We understand reaccreditation to be revalidation, in other words a periodic review of the continued competence of the individual to practise in the particular profession. This is the model that the medical and allied professions have adopted with a five yearly cycle of continuing professional development closely focused on the revalidation criteria. The arguments for this in the legal context are less convincing. While legal advice is important it usually has financial implications alone, and in any event the pace of development in law is not equivalent to the development of scientific and technical aspects of medicine. We take the view that a conscientious practitioner should take a proactive view of his/her professional development, and should plan this over an extended timeframe. This may or may not involve obtaining further formal qualifications.

The alternative sense of reaccreditation, which we think is the one being used in the consultation document, is that of a further certification. We see considerable merit in this. Within a broad-based profession, ~~but~~ this further certification would indicate the particular areas of expertise of the individual practitioner. Many entities currently use voluntary reaccreditation of this kind in order to market their services. Where a particular area of activity requires particular skills and competences it is appropriate for this to be formally certificated.

13) Do you agree that in most circumstances an entity is better placed than the regulator to take responsibility for education and training?

Not necessarily. Entities vary enormously in size and resources. A large well resourced entity is very well placed to organise much of the education and training for its professionals. In-house continuing professional development is well-established in many larger solicitors firms. The growth of apprenticeships is another area where entities are well placed to take responsibility. However, smaller entities lack these resources. Furthermore, there is a distinction between the initial stage of education which currently is normally undertaken independently of any entity through a law degree or the CPE (although we acknowledge that some larger entities do sponsor students, particularly on the CPE), initial vocational training and continuing professional development. In practice entities are not in a position to monitor most initial education consistently and effectively. Only some entities have the resources to deliver or sponsor initial vocational training. Continuing professional development should be principally a partnership between the entity and the individual, and although not all can be provided by the entity, the entity is well-placed to monitor its effectiveness.

The regulator must therefore have at least reserve powers of quality assurance, although it may not need to take responsibility for detailed design and delivery. There also needs to be some audit of continuing professional development to ensure that this is being undertaken conscientiously and effectively.

14) Can you think of any circumstances in which this may not be possible?

Although there are now relatively few autonomous legal professionals, it should not be assumed that every professional has an entity which takes responsibility for him/her. Furthermore as noted

above, some entities are so small that they lack the expertise and resources to take full responsibility for education and training of their professionals.

15) Do you agree that it is not the role of the regulator to place restrictions on the number of people entering the profession?

It is not the function of the regulation of education and training to act in itself as a restriction. Denying access to a particular stage which is critical to authorisation in order to artificially restrict numbers able to achieve authorisation would normally be inappropriate. However, the existence of professional standards will exclude those unable to achieve those standards because they are not intellectually or otherwise capable of doing so.

16) Can you provide any examples for review where the current arrangements impose such restrictions and may be unnecessary?

The three largest professions have been careful not to impose such restrictions. There are for example adequate numbers of places on the LPC and BPTC for all who wish to apply. CILEX has no numerical restrictions on access to its various qualifications. The real restriction is the number of posts available. We do not have enough information about the many other smaller legal professions, regulated and unregulated, to express a view.

Some current arrangements entail high cost – e.g. the intensive delivery of skills elements of the LPC and BPTC. This cost may be a barrier (not a restriction) impacting on able, but impecunious would-be entrants. The acquisition of such skills and competences, if deemed essential for ‘day one’ authorisation will entail expense, but we suggest that regulators and providers be encouraged to explore the development of alternative more cost-effective means of assessing competence in these areas.

It would be appropriate to require that regulators and providers of education and training ensure that accurate and objective information on career prospects – e.g., using current examples, the overall number of pupillages or training contracts, be widely publicised. This should cover both current data and the best possible assessment of likely future trends. There is evidence recently published in relation to the LPC that suggests that students do eventually learn to interpret such information in order to make responsible career choices.