



INCREASING FLEXIBILITY IN LEGAL EDUCATION AND TRAINING

Response to the Legal Services Board consultation

The consultation

1. The BSB welcomes the constructive engagement with policy development in relation to legal education and training by the Legal Services Board. However, this response is provided without prejudice to the BSB's primary position that the LSB would be exceeding its powers if it issued its proposed statutory guidance.
2. The questions posed by the LSB in the consultation do not, in general, have straightforward answers, and time is required for front-line regulators to formulate their own plans in this complex area. The publication of the LETR report has already stimulated fresh thinking and the initial designing of ideas to improve the regulation of education, and there is a risk that these welcome developments would be stifled by premature statutory guidance.
3. Notwithstanding these important concerns, the BSB has sought to respond to the consultation with its initial thoughts following publication of the review.

Proposed outcomes

1. *Do you agree that these outcomes are the right ones?*
There is ambiguity in the phrasing of the question. On the one hand, these may be legitimate and appropriate areas of interest for the LSB, given the current regulatory environment for education and training. However, we question whether these outcomes adequately address and encompass the purpose of legal education and training overall.
2. *Do you think that all of the outcomes should have equal priority?*
As indicated above, we do not think the outcomes are particularly well drafted or that they encapsulate the essence of legal education and training. Once any outcomes have been identified, they will all be important. However the key priority is the maintenance of the necessary standards.
Suggested outcome (iv), which relates to the provision of training by entities, is more relevant to solicitors than barristers, the majority of whom are self-employed.
Suggested outcome (v), which asserts that no restrictions should be placed on numbers entering the profession by education & training regulation, must be qualified by (iii), which addresses standards, so cannot stand alone as suggested.

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

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?*

Yes, we agree that this is a useful starting point in assessing whether regulatory measures are appropriate or proportionate. However, in the context of the role of the barrister's profession in particular, there are very few who perform a defined set of very specific tasks which might then conceivably require only very specific training in the manner apparently envisaged by the authors of the consultation paper. The majority require a broad and adaptable base of knowledge, skills and experience.

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

We recognise the opportunity for greater alignment of competency descriptors and definitions between Regulators. The BSB and SRA have established a cooperative approach in the development of their own competency frameworks to address this need.

5. *Do you agree that regulators should move away from 'time served' models?*

We agree that unqualified 'time served' models fail to address questions of the quality of learning and the achievement of competence. There are specific contexts in which a qualified 'time served' approach may offer an appropriate surrogate for more direct measures of competence, which can be challenging, convoluted and unsatisfactory in their design.

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

We acknowledge the need for continuing reassessment of the proportionality of such regulation, drawing on experience in other sectors and internationally. In relation to the vocational stage, this will be a focus of attention in the forthcoming review of the Bar Training Regulations. In relation to the academic stage, this will be a focus of attention in the joint work we are doing with the SRA. At this stage we cannot be clear about how our regulation will be changed.

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

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?*

We agree. However as a bare minimum, entrants to the Bar need (a) a sufficient understanding of academic law; (b) the relevant skills for effective practice and (c) experience to underpin effective performance in the workplace. The BSB is already considering ways in which flexibility might be introduced into the system without

compromise to the quality and standards that underpin public confidence in the profession.

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

We see the potential for such a benefit to be realised, but do not foresee that it is an inevitable consequence. The Bar Standards Board will monitor the impact of any such changes on diversity of those preparing for a career at the Bar. Evidence shows that a greater challenge is not diversity at entry, but through the course of career progression, with the representation of certain groups eroded dramatically in the early years of practice. We are concerned that the impact of government initiatives in legal aid and higher education will have greater direct and adverse impact on equality and diversity than might be attributable to the regulation of legal education.

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

We agree. The Bar Standards Board has already made progress in aligning its approach to quality assurance with that of other agencies. For example, we have recently changed our approach to quality assurance in relation to the Academic Stage, together with the SRA, by reference to the evidence available from the Quality Assurance Agency.

Balancing entry and ongoing requirements

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

We agree in general, and recognise the challenge in identifying effective approaches to instilling the qualities required for competence in a profession which requires a very broad base of knowledge, skills and experience. It is too early in the process of review, however, to extend the principle to an absolute position in the complex environment of education & training.

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?*

We agree with the point in principle, but recognise that the strength of the case will vary in different areas of practice, and an appreciation of the consumer's expectations and assumptions of competence (of the service provider) will be essential in making that judgement. We expand on this point further in relation to question 3, above.

Whilst we would identify alternative routes as viable, we argue that graduate entry at a reasonably high standard is a clear indicator of the capability for high level understanding (not just acquisition of knowledge), analytical skills and skills in written and oral communication that are required of those in the profession: in particular, building the initiative to challenge and to be inventive, and to draw inferences in relation to issues and subjects outside those immediately apparent and prepared for. There are trends that strengthen the case for the broad-based education and training of barristers. The growth in recent years of European law and human rights law

within English law (eg in relation to welfare law) requires the ability to see beyond immediate, apparently specialised problems to a matrix of possible approaches and inter-related legal considerations; an exclusively specialist training would put a barrister at a disadvantage in these and many other areas.

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

We agree that reaccreditation is one tool that might be considered in addressing risk, where risks are high, the potential impact severe and where there is good evidence that varying competence is a significant causal factor for that risk. However, it is not the only regulatory intervention available and more proportionate measures may be available.

Balance between entities and individuals

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

There is a question about the viability of support for training within existing business models and at the scale of the modern Bar, and about the effectiveness of operation of a market for pre-qualification training with such a small annual cohort of applicants. Further investigation is required, in a market of changing business structures for advocacy services.

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

Having recently introduced centralised assessment, we are clear that assessment is distinct from the education and training itself, and by concentrating on assessment, the regulator focuses on educational outcomes, not process. By having an element of centralised assessment, the BSB is assured that education providers deliver the outcomes we seek.

Restrictions on numbers

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

We understand that it is not lawful for the regulators to restrict the number of people entering the profession, except in relation to assuring their competence to practice.

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

No, though we recognise that the costly and strictly sequential approach to training prescribed for the Bar overall, which is designed to provide assurance of standards, may have a restrictive impact, and we are exploring options to increase flexibility in pathways to qualification.