

City Law School response to LSB Consultation Document: ‘Increasing flexibility in legal education and training’.

This is a response from The City Law School, City University London, to the consultation document produced by the Legal Services Board in September 2013. We have chosen to address certain questions only, given our role and experience as a provider of legal education.

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

We agree in general terms that these outcomes are appropriate. We are concerned that some of them may have damaging consequences if applied in a way which does not recognise the importance of effective learning processes. That will be reflected in responses below.

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

In our view, none of the outcomes should be seen in isolation from the others. For example, Outcome i. could be seen as undervaluing the importance of continuing professional development if not read in the context of outcome iii.. Therefore the issue is not one of priorities but that the outcomes should be considered and interpreted as a whole.

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?

We agree that such an outcomes approach is appropriate. We agree also that there are universal requirements, such as those you identify, which should be required whatever the role or activity being regulated or the breadth or specialisation of the anticipated activity for which the individual is being assessed.

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

No response.

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

While there is little value in the ‘time served’ element of existing requirements, either for pre-qualification education and training or for CPD, it should be recognised that the standards required to demonstrate the necessary outcomes cannot be achieved without the individual undergoing learning activities which will inevitably take considerable time. These may constitute undergraduate education in law or other disciplines, focussed legal education and training, work experience with a proper learning content to it, directed private study, etc.. Regulators should recognise that it is hard to identify outcomes which may not be prepared for by relatively narrow coaching techniques. Confidence in an individual’s competence is only securely obtained by requiring them to undergo a sufficient process of experiential learning. While this may be achieved in different ways, such as through a properly-designed course or through genuine workplace learning, the importance of process should not be underplayed.

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

While the experience of other sectors should be considered it should not dominate the processes of review and is not more relevant to the regulation of students than it might be to other aspects of regulation.

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 with this provided that effective methods of quality assurance remain. The proposal in paras 59-61 of the consultation document is important in achieving this while at the same time avoiding the development of an unwieldy bureaucracy.

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

There is no guarantee that this change will have a positive impact on equality and diversity. There is a risk that a combination of high cost provision by elite education providers will be irresistible to elite legal service providers and result in a further narrowing of opportunities for those whose background or resources do not give them access to such elite education providers.

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

No response.

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

We consider that entry requirements for practice should focus on competence but that this should not have a direct impact on expectations of the academic stage of legal education. Here there are other educational objectives which are not easily encompassed by the concept of 'competences'.

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 example in para 64 demonstrates the inadequacy of broad based knowledge by itself in ensuring quality services. However, there are dangers in abandoning broad knowledge requirements. An advisor with a narrow knowledge base may provide inadequate advice. An obvious example is a will writer with inadequate knowledge of tax law. Another would be a housing law advisor with inadequate knowledge of employment law, family law, social security law or other areas which may explain the reason why a client finds themselves in housing difficulty. Whether this danger is best mitigated by entity regulation or by regulation of the individual advisor requires further research before it can be said that it does or does not constitute an unnecessary barrier to entry.

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

No response.

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

No response.

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

No response.

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 agree that it is not the role of the regulator to place restrictions on the number of people entering the profession other than those required to ensure standards.

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

Current arrangements are sometimes cited as imposing barriers (as opposed to restrictions) due to their cost. In our view these are not unnecessary. The provision of the detailed skills training required for preparing students for entry into the training contract and pupillage stage is of genuine value and reflects the real cost of the small group work and individual attention given to students that these courses require. A more productive approach is to consider alternative ways of achieving the insight, understanding, knowledge and experience required by entrants which might be offered alongside the current arrangements.