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Training Committee response to Legal Education and Training Review Discussion Paper 02/2011:Equality, Diversity and Social Mobility

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of the Legal Education and Training Review Discussion Paper 02/2011: "Equality, diversity and social mobility issues affecting education and training in the legal services sector" (the "Paper") has been prepared by the CLLS Training Committee.

The Paper is an impressive and ambitious piece of work, seeking as it appears to place a greater emphasis on diversity than equality, and still greater on social mobility than on either diversity or equality. This is a substantial target, given that there is very limited data on the legal sector as regards protected characteristics other than gender and ethnicity.

The Paper acknowledges that approaches to diversity and (even more so) social mobility are, by contrast with equality, and perhaps of necessity, less governed by existing regulation. Social mobility, by comparison (with equality and diversity), is a relatively difficult concept to define. This probably explains why social mobility is unknown to existing statutory regulation, inasmuch as social mobility is neither defined, nor a regulatory objective, nor a professional principle in Legal Services Act 2007; indeed, the term 'social mobility' is unknown to legal statutory regulation. So it comes as something of surprise to read so early in the Paper that 'the extent to which regulatory tools and interventions can *and should* (our emphasis) contribute to maintaining and enhancing diversity and social mobility in legal education, training and recruitment is thus a very relevant consideration for the Review'. Put differently, to argue (in effect) that social mobility is a more important target for regulatory intervention and tools than diversity, a specific regulatory Objective of LSA 2007, and those protected characteristics of equality, defined by the Equality Act 2010 makes for an interesting approach and will pose challenges for regulators in implementation.

The Paper draws on the work of Alan Milburn and the Panel for Fair Access to the Professions in 2009, and positions social mobility as a pressing political concern. The Paper notes that the Panel made over 80 recommendations, of which a number are relevant to the LETR. It should be recognised that the great majority of the 80 recommendations had action timelines of less than 12 months, and that in Milburn's eyes the picture has changed significantly since 2009. We will return to Milburn's 2012 progress report.

None of this is to diminish the absolute and continuing importance of social mobility. The Paper is undoubtedly correct to say that social mobility is a major concern for education policy at all levels, that low educational attainment is significant in perpetuating itself, and that the resulting inequalities undermine national economic growth. These phenomena, together with the growth in breadth and depth of Higher Education, have created an ever-changing context for training choices and recruitment decisions. The Paper is right to describe today's Higher Education Initial Participation Rate of 40% as positive, and economically, socially and culturally 'a good thing', which should enhance social mobility.

It was troubling then to read the thoughtful and arresting section (paras 55 to 60 of the Paper) on the consequences for social mobility arising from the forthcoming changes to the universities' funding and selection processes. The prediction that the changes may prompt a merit-based scholarship 'arms race' is worrying for a number of reasons, not least that it will reinforce the trend of polarising the winners and losers in the graduate job market. The picture may actually be worse than that painted in the Paper. The next Research Assessment Exercise seems likely to prompt a still greater distinction between the pre- and post-1992 university law schools, with greater pressure to recruit research staff than teaching staff. This may lead to enhanced differentials.

The recruitment policies of the CLLS' global firms do not necessarily bear a linear relationship with either the state of the UK economy, or with the level of competition for entry level graduate jobs. A rise or fall in either criterion may affect the total number of recruits, but has only modest effect on the mean quality of those recruits: the CLLS firms want the best 2000 – or 1800 or 2200 - lawyers *and non-lawyers* annually that they can get, in competition with the Bar, the fast-stream Civil Service, the banks, the accountants and the many other global competitors for talent. The firm that regularly recruits Number 2001 in a 2000-recruit year will eventually fail.

The CLLS and its members recognise that the never-ending search for talent requires a new balance to be struck in the Quality v Diversity debate. The Paper is right to question, at para 18, whether the standard conceptions of merit have led to a resistance to policies that might otherwise enhance social mobility, but the recent performance of the firms suggests they are alive to this concern. Increasingly, enlightened self-interest is leading the firms to take additional steps, at an earlier stage, to ensure a better fit between their lawyers and their clients. Routinely now, the firms are to be seen in local secondary schools, looking to raise the horizons of talented, but relatively disadvantaged students. The firms recognise that a combination of new pathways – snakes and ladders, if you like – offers the possibility of getting presently undiscovered talent onto the rungs of the ladder. Contrary to perceived wisdom, these new pathways seem as relevant to the quality needs of ABS as they do for the needs of traditional City firms. The CLLS believes that meeting the demands for that relative increment of quality at each level could prove decisive in the future profitability of the firms. At the undergraduate level, the firms and academic providers are

enthusiastically promoting legal employability as a key benefit of their novel solutions: the two–year law degree will not suit every student, but may be a promising way of reducing the debt burden on those who can least afford it; likewise, the various imaginative solutions that blur the hitherto sharp distinctions between school, undergraduate degrees, vocational training and work-based training open up new possibilities of lower-debt access to the profession. The prominent PRIME initiative to provide high quality work experience has been rolled out by 77 law firms (most of whom are CLLS members) in, relatively speaking, an amazingly short period of time, and the experience of some firms (of which, more later) suggests that their initiatives actually result in pull-through to the workplace.

The dynamic pressures faced by firms recruiting was clearly evident in the report of a CLLS Open Meeting held in March 2012, and attended by Dame Janet Gaymer and Sir Mark Potter. Comments under the Chatham House rule were not attributable, but included the following extract:

> 'Firms did not always recognise the huge sums they had invested in in trainees because they saw it as training their own future partners, to ensure the lifeblood of the firm. The number of applicants always exceeded demand, so firms used it as an opportunity to raise standards. Arguably the bottleneck was created by the lack of training contracts; more accurately, however, the bottleneck reflected the market perception of the likely number of jobs available. Some firms offered additional places, training more than necessary to allow for those who did not stay……. Given the huge sums spent, the firms expected the very best candidates, and so did their clients. Even amongst the brightest trainees, business and literacy skills were often poor. Undergraduate degrees were no guarantee of literacy. Huge skills gaps were still evident….. While Diversity and Social Mobility were key issues, the quality of the national secondary education system also continued to be a massive issue in determining the quality of the applicant pool…… There (was) a strong argument for retaining the training contract to ensure quality and performance for all trainees, regardless of how they entered the profession.'

In his 2009 report, Alan Milburn had rejected the argument that the firms' policy of selection on merit necessitated their significant focus on recruiting Oxbridge graduates who had a prior private education. Milburn claimed that the required talent was out there in the schools and UK universities, and it was up to the firms to make a greater effort to find it. The firms have responded, as evidenced by Milburn's 2012 progress report which, in the context of social mobility and young people, reported:

> 'Analysis of the responses to the call for evidence found that many of the legal sector respondents were focused on aspiration-raising programmes as their primary tool for improving social mobility and access to professional careers. It is clear that genuine steps have been taken since 2009 to improve awareness and understanding of the legal profession, as well as working with young people from more disadvantaged backgrounds to improve both cognitive and non-cognitive skills. Submissions provided examples of aspiration-raising that covered:
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> - mentoring law students from lower socio-economic backgrounds
> - supporting A-level students with UCAS applications
> - annual career days to encourage students to apply to university

- work experience programmes, such as PRIME and Legal Access Week
- building the literacy and numeracy skills of Year 6 pupils, and
- hosting workshops, events and visits to offices …….

Milburn welcomed any activity that helps to raise aspiration, and recognised the long tail of this activity; even work done with years 12 and 13 pupils with the purpose of encouraging them to join the legal profession after graduation will not come to fruition for several years. He observed "the Legal Sector is to be applauded for the efforts it is making. We would like other leading profit-makers, such as accountancy and banking to take note of the way in which the sector is working together and to follow suit."

A case study considered the work of Addleshaw Goddard LLP, which runs a Legal Access scheme. This identifies law students from less privileged backgrounds who do not meet the company's usual A-level selection criteria and fast tracks them onto the summer placement scheme. The selection process comprises a competency-based application form, an online verbal reasoning test and an interview with a careers consultant. Candidates that impress on the summer placement scheme are invited to an assessment centre and, if successful, are offered a training contract. During the selection process, a heavy weighting is placed on any obstacles that candidates have had to overcome during schooling, including their socio-economic background. Since 2007, 13 participants have gone on to secure training contracts with the firm.

Milburn concluded 'it is clear that the legal sector is starting to make real efforts to address fair access and social mobility. In some cases, the legal sector is at the forefront of driving activity aimed at changing access to professional jobs, whether this is through co-ordinated outreach programmes or by introducing socio-economic data collection. We commend these efforts and would like to see other professions following suit'.'

Clearly there is scope for a much greater degree of social mobility. However it is apparent from Milburn's 2012 progress report that his concern is one of pace, rather than of content, in the implementation of social mobility initiatives. His final conclusion in Chapter 3 Progress in the Legal Profession is clear: 'Overall, law is on the right track but its progress is too slow. It needs to significantly accelerate'. For our part, we would stress that regulatory intervention has not been needed to achieve this.

We wish to address further the role of regulation in achieving social mobility outcomes. The broader regulatory move to Outcomes Focused Regulation suggests that the setting of diversity targets, or actively requiring legal service providers to take positive steps to engage in diversity initiatives is yesterday's agenda; and it was yesterday's agenda that resulted in the box-ticking 'creative compliance' mentioned in para 109. If Milburn is right in suggesting that the legal sector generally is on the right path, and that the pace of activity is today's main problem, then the use of regulatory tools and interventions may look both disproportionate and counter-productive. If social mobility initiatives are to become the norm in the firms' search for talent, then regulatory tools and interventions will always be trumped by the rewards of enlightened self-interest.

Having emphasised the support of CLLS and its member firms for the objection of social mobility, we would also like to confirm that our commitment to the existing equality and diversity agenda

remains high. Our members want to utilise talented people regardless of background in their quest to provide high levels of service for our clients.

The Schedule to this note addresses those of the specific questions raised in the Paper which seem apposite to CLLS and its members.

David Hobart (Chief Executive, CLLS), Tony King, Allan Murray-Jones

SCHEDULE

Question 7. In this question the LETR team asked about evidence which shows that diversity initiatives are changing recruitment practices and trends. Certainly amongst our member firms there is a great deal more awareness of the need to recruit from as wide a range of potential candidates as possible. We suspect, however, that these initiatives (as indeed most initiatives in this area) will cause change over a period, rather than over a short time, although the views of Alex Reuben (above) will no doubt push firms to move faster.

Question 8 raises the issue of a central clearing house for "internships". We think care needs to be taken about the introduction of bureaucracy into any recruitment process, and we certainly would not want some central scheme that prevented our members dealing direct with seeking work experience. Our members are uniquely well placed to look at what they need in terms of skills and experience. However, some of our members might well be prepared to look at candidates coming from a central clearing house although others already receive hundreds or even thousands of applications and may feel that this is enough.

We would stress that unlike the NHS which we believe does use a centralised process in part, in the legal sector there are multiple employers with radically different needs.

Question 10. This relates to the role of regulation is encouraging work experience as part of the QLD. We would note that anything that adds to the burden on teaching institutions, or require students to find work to progress through early stages of legal education, is likely to have some adverse effect on at least some students.

In relation to **Question 14**, we were unclear whether "funding awards" was intended to include the subsidies that our firms paid to people who have agreed to join them as trainee solicitors. We assume not, but in any event, we think anything which involves an increase in the degree of regulation needs careful scrutiny, both because of its cost and because of the burden it places on those who are monitored. For a lot of firms, the decision to take on trainees, particularly during a downturn, can be a difficult one. It is very much an investment in the future, and putting additional barriers or expense into that mechanism is unlikely to encourage such decisions.

Question 15 deals with the offering of scholarships for BPTC and LPC. We would observe that if these institutions need to offer a material number of scholarships, the fees for those not receiving scholarships are likely to increase. We believe that existing LPC fees may already be a material disincentive to people from a range of backgrounds entering the legal profession even without such additional costs.

Question 17. In passing we note that the LETR terms refer to the Law Society's interest in aptitude tests. We are aware that the Law Society decided not to proceed with aptitude testing on the grounds, that whilst aptitude testing may provide some guidance as to the likely outcomes of a candidate attempting, for example, to graduate from the LPC, there were no evidence linking aptitude testing with performance as solicitors. That said, if there was evidence of a good predictive correlation between such tests and performance we have no doubts that our member firms would be interested.

Question 22 deals with targets. Our members would be resolutely opposed to targets or quotas. They have a significant self interest in widening the range of talented people that they hire. Requiring them to take potentially less talented people would damage their enthusiasm for the project, and possibly their business. At a time when a significant number of legal firms are suffering financial difficulty, targets or quotas are likely to increase their difficulties, and may end up causing reduction in employment.

Question 23 deals with returners to work. The issues around appropriate support for lawyers who take career break are a matter of concern to a large number of our members. But we would not see why this would be a matter of focus for the LETR team, or indeed regulatory intervention.

Question 25 is about diversity training. Virtually all of our members provide diversity training to staff. The issue for us is not about whether diversity training should be provided, but whether a regulator should be as prescriptive as question 25 implies. Our view is that the current approach of the SRA to outcome focussed regulation, dictates that the principal outcome should be no discrimination, but the detail of how firms achieve this should be for them. We commented above about the risk of regulation encouraging a box tick mentality.

Question 28 deals with re-accreditation. We think that re-accreditation is an extremely difficult subject, and much more complex than any public discussion of the subject that we have seen so far suggests. That said, in our sector of the legal profession, we doubt whether it would have a disproportionate impact on equality and diversity.

Question 30 raises the issue of the creation of a sector wide non-regulatory body to take diversity initiatives. We note that the question does not relate to a regulatory body, but it does create yet another entity to be managed and paid for, presumably by the profession. There is a considerable range of issues relating to diversity across the legal profession, and the issues differ considerably between firms of solicitors. It is hard to see that someone to mentor ideas across a much wider spectrum would add anything to what currently exists.

2 July 2012

THE CITY OF LONDON LAW SOCIETY
TRAINING COMMITTEE

Individuals and firms represented on this Committee are as follows:

Tony King (Clifford Chance) (Chairman)

D.E. Coleman (Macfarlanes LLP)

Ms. R. Grant (Hogan Lovells International LLP)

P. McCann (Herbert Smith LLP)

Ms L.J. Meikle (nee Stoker) (Slaughter and May)

Ms C. Moss (Fasken Martineau LLP)

A.G. Murray-Jones (Skadden Arps Slate Meagher & Flom (UK) LLP)

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