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Response to LETR Discussion Paper 02/2012

The City of London Law Society (the "CLLS") represents approximately 15,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These 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 02/2012: Key Issues II: Developing the detail ("Consultation 2") has been prepared by the CLLS Training Committee. The membership of the Committee is set out below.

As we are a representative body and wish what we submit to be as clear as possible for our members, and whilst we expect the LETR executive to be familiar with the expressions we use, we again annex a glossary of terms at the end of this document.

We want to go further than we have perhaps in our earlier papers (which we will refer to as CLLS 1 and CLLS 2 as appropriate) in stating the success, not just of our member firms, but of English[*] law and lawyers worldwide generally, and our belief in the very high standards of practice by solicitors in England. In addition to many of our members having offices in other jurisdictions, a substantial number of them work with lawyers in other jurisdictions and solicitors in various parts of England. There is absolutely no doubt of the extremely high quality of English lawyers at any level of comparison. If the LETR, or any regulator subsequently assessing the conclusion of the LETR, wants details of the contribution of our profession to the British economy, or to British export earnings, those figures are readily available. In short, as a profession solicitors represent a real British success story.

General observations

We have set out the success of English law, and English lawyers, in the preceding paragraph, because we were disappointed about the comment in paragraph 134 of the Consultation 2 to the effect that LET is not fit for purpose. To say that "it is difficult to see that the system [of LET] as a whole is fit for its purposes" seems to us to be misconceived. Consultation 2 itself recognises the lack of evidence for this statement. It is also questionable whether the shortcomings of LET which the LETR executive produce are shortcomings at all. The LETR executive should think seriously about withdrawing that comment in any final form of its report.

[*] It seems pedantic to say "English and Welsh" or "England and Wales" every time but we intend "Welsh" and "Wales" to be included in all references to "English" and "England".

We have no doubt that LET needs improvement, as set out in CLLS2. But recognising fault does not imply lack of fitness for purpose.

Our single greatest concern is that Consultation 2 appears to proceed on the relatively unexamined proposition that there are major performance issues with solicitors and other legal service professionals which could be improved, but are unaddressed, by legal education. Little evidence is produced to support that contention.

This is compounded by an approach by the LETR executive which appears to place little weight on the value to professionals of experience, of doing legal tasks themselves (with supervision at the early stages) and watching others do so. This is not "passive education" but a critical part of the development of a professional. Experience cannot be replicated by academic teaching, no matter how eminent the teacher. In this context, we want to stress that our member firms see LET as a career long activity, supported by CPD as well as experience. We think the role of the academic and practical teaching stage (the LPC for solicitors) is to provide a sure base for that career long learning, teaching fundamental intellectual skills and legal understanding, so that practitioners can react to what is likely to be a fast changing environment, as well as a grounding in essential legal knowledge.

If the objective of LET was to produce perfectly formed lawyers on graduation from the LPC (or the training contract or pupillage or other work based learning) then LET would need to be substantially revised, and probably extended. Even then, as our members who employ lawyers from other jurisdictions where training is much longer and often more intensive can testify, entrants to the profession would lack some of the commercial and client care skills to which the LETR executive refers.

The importance of practical experience is currently endorsed by the fact that no person is entitled to supervise for the purposes of the Practice Framework Rules unless they have been entitled to practice for at least three years. In general, and particularly by not following up on CPD (see below), the broader issues of legal education for an entire career, not just "Day 1 outcomes", have been obscured in Consultation 2.

Where we would have a concern with LET for solicitors generally, which reflects the experience of some of our members in the LETR exercise, is that a gap seems to be appearing between larger commercial firms (not just our members as there are excellent firms (commercial and high street) outside London or in London outside the City) and many smaller high street ones. In the larger firms, there is both the resource to actively promote training and professional development, and a desire to do so to promote the future success of the firm. In many of the smaller ones, cost pressures have deprived firms of the necessary time and resource; many do not take trainees at all, or if they do they immediately place demands on trainees for service which can cut across the learning process. Other than when they address paralegals, neither of the two LETR consultation papers have really dealt with this growing distinction, which is going to be a pressing issue in the next few years. And particularly so if the (eventual) economic recovery increases demand for practitioners.

We would observe that Consultation 2 does not follow up in areas like CPD (see above) and equality and diversity. In our view it is difficult to assess and make recommendations for legal education in the absence of a discussion of these issues. Also (and see below), and despite being experienced solicitors, we found some parts of the review and the consultation questions such as 12, 13, 15 – 18 a little obscure. These may be more understandable to those who have been involved in the detailed research mentioned in Consultation 2.

We are also concerned about the reference to regulation by reference to reserved activities and its promotion by the LSB in paragraph H of the introduction to Consultation 2. We note that the LSB did not make a submission on the first LETR consultation. We addressed this issue, and the profound damage it is likely to inflict on the English legal system, in CLLS 2 (see the discussion by

reference to paragraph 100 of the first LETR consultation). In the circumstances, the LETR executive is right not to address many of the regulatory issues which arose in the first consultation paper. It does, however, make the discussion of a separate regulator for education in Consultation 2 very difficult to address.

Finally, we have made some comments on paragraphs 145 and following to the end of Consultation 2 following our response to question 18.

Appendix: Consultation paper questions and answers

The QLD/GDL

Question 1: In the light of limited evidence received so far we would welcome further input as regards the preferred scope of Foundation subjects, and/or views on alternative formulations of principles or outcomes for the QLD/GDL (We would be grateful if respondents who feel they have already addressed this issue in response to Discussion Paper 01/2012 simply refer us to their previous answer).

Answer: We would refer to CLLS 2. We might add that we think that the law of organisations, which raises difficult conceptual issues about legal identity and corporate "intention" and related issues, is more important than "commercial law" ("which is different from "commercial awareness" which would be difficult to teach at a university). Most solicitors will deal with public or private corporations, or other non-human actors, during their courses and conceptual understanding is essential.

Incidentally, does the LETR executive believe that the issues raised in the five bullet points in paragraph 42 of Consultation 2 are all equally important and require equal emphasis in education, including the time to be devoted to them? We think not, but do not elucidate further on this point in the interests of brevity.

Question 2: Do you see merit in developing an approach to initial education akin to ICAEW? What would you see as the risks and benefits of such a system?

Answer. The reference to ICAEW follows an analysis of the problems associated with the GDL, which analysis we believe to be flawed. We understand that some academics take offence at the idea that graduates taking the GDL can achieve something in one year which takes 3 years at university, satisfaction of the requirements of the QLD. We accept that one year is short by international standards, albeit that the GDL is taught on this basis because many of the required university level cognitive and research skills have already been acquired before the course commences.

Nonetheless the GDL is valued by our members as set out in more detail in CLLS 2.

In any event, practical issues with the GDL should not be allowed to be an inhibitor in legal education. If after considering the final LETR recommendations, the regulator decides on an increased compulsory element in the QLD (and therefore the GDL) it should do so. It would then be for GDL providers, not the regulator, to decide on what practical steps are required to implement the new requirement. Employers of GDL graduates, such as our members, would no doubt seek to be involved. We doubt whether, in truth, a period of more than one year will be required.

Turning now to the text of the question, the ICAEW system involves three sets of exams over a period of three or more years after university graduation and taken whilst working. Where somebody has studied accountancy at university, exemptions may be available for some but not all of the exams.

Those of our committee who have had dealings with chartered accountants, particularly those from the major firms, admire the quality and consistent ability of their partners and staff. Having said that, we do not believe that their training system would work for solicitors, nor do we think it is necessary.

Accounting recruits are very different from recruits to the solicitor's profession and the bar. Many will start work having studied no subject relevant to their chosen profession at all. When prospective

solicitors and barristers start work they will normally have done and been examined in a law degree/GDL and either the LPC or the BPTC. To impose a new set of exams on top of that would be excessive, and particularly so given the points made above about the issue being addressed. Moreover, a separate exam system would cost money which smaller firms under financial pressure may not have, and by adding new restrictions on entry to the profession may create additional barriers to social mobility.

Perhaps the question also asks respondents to contemplate the elimination of the QLD and the LPC and replacement by new tests. That is unlikely to be an acceptable outcome to the LETR, so we will not rehearse all of our concerns, including the differences between what accountants and lawyers do and the commercial environment in which they operate, that would arise on such a proposal. We say that without any disrespect to accountants at all. The larger accountancy firms, in particular, set a tremendous example about the role that training can play in the development of skilled professionals.

Finally, we note that CILEx already offers an alternative to the QLD and the LPC.

The LPC

Question 3: We would welcome views on whether or not the scope of the LPC core should be reduced, or, indeed, extended. What aspects of the core should be reduced/substituted/extended, and why?

Answer: In the lead up to this question, the LETR executive asks in respect of the LPC, "just how useful is the idea of a common core in the context of an increasingly fragmented profession [(paragraph 47)]". This of course goes to the heart of whether (in the case of solicitors) there should be one common qualification for solicitors, and from the comment in paragraph H of the introduction to Consultation 2 it would appear that this is something the LSB will soon challenge. This response is no place of course to debate that but in all sorts of ways the answer to that question is key to a number of issues raised in Consultation 2.

Consultation 2 also says in paragraph 48 that the reality is that most LPC students will, before they commence the LPC, have made decisions about, inter alia, where they want to practise. That certainly is not the experience of our member firms and if a regulatory response is to be built on it we see major issues. How fair or sensible is it to expect the majority of aspirant lawyers to decide their future in the profession whilst, in effect, still at university? There is a real need for a LPC which is part of a process to a common qualification as a "solicitor".

As per CLLS 2, our member firms are able to influence the content (but not the core content) of the LPC. Even in the core, we can adjust (so the conveyancing element in a course designed for a CLLS member may be more relevant to commercial conveyancing than domestic conveyancing). This being the case, we do not feel strongly about LPC content although we do recognise some of the complaints listed in paragraph 45 of Consultation 2.

That said, we do have some comments. Accepting reality, some of our members believe the emphasis in the LPC core on conveyancing might perhaps be reduced (but by no means eliminated) and the advocacy element increased. This is also relevant to our next answer. We also welcome (as we said in CLLS 2) the additional flexibility recent reforms to the LPC have created and would be opposed to that being sacrificed. Indeed, still more flexibility would be welcome.

BPTC

Question 4: Should greater emphasis be placed on the role and responsibilities of the employed barrister in the BPTC or any successor course? If so, what changes would you wish to see?

Question 5: Do proposals to extend rights to conduct litigation and the extension of Public Access to new practitioners require any changes to the BPTC, further education or new practitioner programmes, particularly as regards (a) criminal procedure; (b) civil procedure; (c) client care; and (d) initial interviewing (conferencing) skills?

Answer. We will take questions 4 to 5 together to the extent we have an interest.

As we said in CLLS 2, our members would seriously consider any proposal to link the LPC and the BPTC. After all, the role of solicitors in advocacy is increasing, and solicitors' firms employ many barristers (who can now be partners). So there should not be any theoretical bar to such links (and see our response to question 3 about the content of the LPC core which may help such links).

We would, however, query the role of regulation in this. It would be one thing for the SRA and the BSB to authorise such links, and altogether another thing for them to require such links. It should be left to the market to decide if there is a need for such a combined course (whatever form it may take) at this stage.

Question 6: We would welcome any additional view as to the viability and desirability of the kind of integration outlined here. What might the risks be, particularly in terms of the LSA regulatory objectives? What are the benefits?

Answer: This question follows a discussion of various areas of integration of training and teaching of the LPC/BPTC level with practical experience.

We did touch on this point in CLLS 2 and we see no reason why this could not be experimented with if firms so desire (and some do). We would be opposed to making it compulsory as we are of the view that for many firms it will be much more disruptive and burdensome, and therefore unattractive, than the current system resulting in a potential decline in the opportunities to take up a training contract.

As set out in Consultation 2, there are no obvious comparators for this type of integration, and a change this profound might be unhelpful when it is unclear what the long term prospects for the profession are, and many people are struggling to obtain training contracts. In addition, where are those students who are currently unable to secure training contracts going to obtain work experience from during the LPC? The legal profession is not like the NHS which offers ample opportunity for placements. We note that Consultation 2 is not dealing with equality and diversity issues, but a compulsory system of this type might well prove to be exclusionary if providers of practical experience cannot be found.

In summary, and having in mind that such integration is already permitted, we would be opposed to any mandatory rules to implement proposals like this.

We would make one other observation; the professions need to find a way to give publicity to alternative approaches. If firms implement a mixed LPC/work experience programme, there would be many others in the profession who would have an interest in how well it is thought to work. It may seem an odd thing to say, but some sharing of experience with LET might promote innovation more widely and therefore be of value to the whole legal community (and ultimately to the benefit of clients).

Other regulated professions

Question 7: We would welcome additional evidence as regards the quality of education and training and any significant perceived knowledge or skills gaps in relation to qualification for these other regulated professions.

Answer: "These" refers to other parts of the legal profession, not non-legal professions.

We have a high regard for the Bar, to whom our members have recourse frequently. At the CLLS Training Committee level we have less knowledge of the other professions.

We would not presume to comment on the quality of other professionals, save to observe that no matter how well trained and regulated a professional is, any individual professional may make mistakes or perform badly on occasions. It is extremely dangerous to generalise from such instances about training or regulation.

Implications of minimum qualification level

Question 8: As a matter of principle, and as a means of assuring a baseline standard for the regulated sector, should the qualification point for unsupervised practice of reserved activities be set, for at least some part of the terminal ('day one competence') qualification at not less than graduate-equivalence (QCF/HEQF level 6), or does this set the bar too high? (Note: 'qualification' for these purposes could include assessment of supervised practice). What are the risks/benefits of setting the standard lower? If a lower standard is appropriate, do you have a view what that should be (eg, level 3, 4, etc)?

Answer: The CLLS has had a concern throughout this exercise that the LETR must not result in a reduction in standards of legal education and training (see CLLS 1). In broad terms the successful completion of the QLD and LPC achieve Level 6, although some LPCs can be supplemented with a research paper for the successful candidate to achieve an LLM and with it Level 7.

We are strongly of the view that to be a solicitor will continue to require at least the achievement of Level 6 plus the LPC. We understand the argument that someone qualified in a single reserved area, perhaps in due course will writing, may require a level lower than Level 6. We, however, would disagree. Some wills are simple; some are not. There are difficult issues around inheritance and other taxes. If part of the testator's property includes overseas real estate there are wholly new issues. We just do not accept the thesis that will writing activities are wholly lower level functions. So our view is that Level 6 is a bare minimum for legal professionals, and it should be accompanied by some practical training.

We would also adopt something from our introductory remarks. LET should be able to equip practitioners for long term careers in the face of changing law and a changing society. That requires a proper starting qualification with an emphasis on broad intellectual skills as well as detailed knowledge of appropriate areas of the law.

Paralegal qualification

Question 9: Do you consider that current standards for paralegal qualifications are fragmented and complex? If so, would you favour the development of a clearer framework and more coordinated standards of paralegal education?

Question 10: If voluntary co-ordination (e.g. around NOS) is not achieved, would you favour bringing individual paralegal training fully within legal services regulation, or would you consider entity regulation of paralegals employed in regulated entities to be sufficient?

Answer : As Consultation 2 acknowledges, any analysis of paralegals is bedevilled by lack of a common definition of a paralegal, and it is disappointing that the LETR executive does not suggest one. It is difficult for us to say more than we did in CLLS 2. In short, we do not think a case for regulation is made out. We would also observe that for nearly all paralegals (in the sense the LETR

executive is using that term for persons involved in reserved activities), competence issues can be addressed at the level of the service provider which employs them.

We are strongly of the view that there should be no rule that only people enrolled in some "paralegal training programme" may carry out restricted activities; the key is proper supervision by a solicitor or other legally qualified person.

Ethics

Question 11: Regarding ethics and values in the law curriculum, (assuming the Joint Announcement is retained) would stakeholders wish to see.

(a) the status quo retained;

(b) a statement in the Joint Announcement of the need to develop knowledge and understanding of the relationship between morality and law and the values underpinning the legal system;

(c) a statement in the Joint Announcement of the need to develop knowledge and understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values;

(d) the addition of legal ethics as a specific Foundation of Legal Knowledge.

In terms of priority would stakeholders consider this a higher or lower priority than other additions/substitutions (e.g. the law of organisations or commercial law)?

Would you consider that a need to address in education and training the underlying values of law should extend to all authorised persons under the LSA?

Answer: We would be content with either (b) or (c) (preferably (c)). We do feel additional training on ethics and values is higher priority than other possible additions to the QLD, but we do not see a trade off as we are not supporting a new foundation course in ethics. And to us it is axiomatic that all authorised persons must be trained in legal ethics and values.

LET and Regulation

Question 12: Do you agree the need for an overarching public interest test in assessing the aims and outcomes of LET? If so do you have any view as to the form it should take?

Answer: It is probably at this stage in Consultation 2 where we felt that the analysis and questions become a little obscure. Specifically, in answer to question 12, we think LET needs to reflect the objectives in Section 1 of the Legal Services Act. We see no reason at all to seek to go beyond these, and damage in so doing. But as Section 1 is not referred to, we wonder what the analysis preceding the question, and the question, is aiming at.

The Review Overall

Question 13: We would welcome any observations you might wish to make as regards our summary/evaluation of the key issues.

Answer: We will assume that the question relates to the issues identified in paragraph 127 of the Consultation.

In short, we agree that the summary picks up many of the key points raised by the LETR executive, but we do not agree with the conclusions drawn. See also the introduction to this response about some of the areas which Consultation 2 does not cover.

Given the large number of transactions in which legal professionals are involved and the comparatively small number of complaints, we do not agree with the underlying content of paragraph 127a about a mismatch, or that there is sufficient evidence of failure to justify regulatory intervention (the lack of evidence issue is recognised in paragraph 93, with which we agree). Of course we accept there are problems to be addressed. We also part company with the LETR executive if the implication is that these issues will be substantially improved by formal legal education as opposed to training coupled with practical experience. We are, we may say, somewhat cynical about the views here (and see also paragraph 14 – 19 of Consultation 2) about the impact of change on required legal skills. We are not denying that things have changed and changing and will change more. But large parts of what solicitors do fairly constant over time even if email has replaced the "travelling draft" and the quill pen. We think that the LETR executive may not altogether recognise this underlying continuity. We are not predicting stasis, but there are risks if the basic skills for practice as it is now are not taught in anticipation of change. In addition,we have set out in more length above our views about what LET can achieve, and also those bits (like commercial and client care skills) which it will struggle to address by itself.

We also disagree with paragraph 127b. The description of on the job learning as "passive" is narrow minded at best. It is reminiscent of the now discredited nostrum that what cannot be measured has no value. But we do support a reform of CPD to back up what we might call "experiential" learning.

As set out in CLLS2, we agree with paragraph 127c.

On 127d, we have already queried the LETR's views on paralegals.

In 127e we query "exit points" and "off ramps". We have concerns about how to bring the disadvantaged into the profession, not how to push them out. But again we may be missing something subtle here. But to try to be constructive, developing the LPC into an LLM might be helpful for those who do the LPC but do not find a job.

We would add that we agree with paragraphs 129 (that over-supply is not itself a regulatory problem). Costs of LET (paragraph 131) are a major issue, of course.

Question 14: Do you agree with the assessment of the gaps (now or arising in the foreseeable future) presented in this paper in respect of the part(s) of the sector with which you are familiar? If not, please indicate briefly the basis of your disagreement.

Answer: Again, and it is understandable given that the LETR has a heavy bias towards teachers (albeit distinguished teachers), we think that not enough attention is given to experiential learning.

This is not to say that we do accept that there are serious issues to address in the areas identified. It is more that we have reservations about seeing them addressed as failures of LET. As set out above we believe these matters are best addressed by authorised entities and, where appropriate, CPD, not those bits of LET which are addressed in Consultation 2.

CLLS member firms see LET as career long learning, with solicitors achieving an initial level of competence but learning and applying new skills throughout their career. Over the 35/40 years of the careers of many solicitors, whole areas of law will appear (environmental law), change dramatically or disappear. We think the LETR executive needs to take more account of the benefits that the experience gained over those years gives.

In relation to the last three bullet points in paragraph 133, when these skills need to be inculcated may well depend on the firms involved. In our experience, a lot of what is mentioned in the fourth and fifth points needs to be achieved during the training contract. The sixth point ("commercial skills") is something our member firms tend to focus on post qualification. In reality, many of the commercial skills identified, including client relationship management and networking, need to be taught in the context of what solicitors do and how they do it, which is to say that a practical environment is required We are, in any event, unclear what role regulation could or should play in this area.

So our answer to question 14 is that we do not agree with the assessment of the gaps if the LETR executive implies that these issues are functions of the academic stage (QLD/GDL) or the practical skills stage (LPC) or indeed that some of the "gaps" identified are regulatory issues at all. Because it is easy to mischaracterise our stance as a typical conservative reaction of people with entrenched interests, we repeat that we do accept that there are issues which need to be addressed.

Question 15: Do you consider an outcomes approach to be an appropriate basis for assessing individual competence across the regulated legal services sector? Please indicate reasons for your answer.

Question 16: In terms of the underlying academic and/or practical knowledge required of service providers in your part of the sector, would you expect to see some further specification of (eg) key topics or principles to be covered, or model curricula for each stage of training? If so do you have a view as to how they should be prescribed?

Answer: We accept that regulation in many areas is now flowing in the direction of an "outcomes" approach. The CLLS generally has expressed concerns about how that is best applied to the legal profession. Those concerns are magnified in legal education.

We feel that before LET is pushed into an outcome focussed regulation system there needs to be a comprehensive and workable set of the criteria to be applied to define what are acceptable outcomes. The example in paragraph 135 (research skills) is not directly relevant to (say) the tasks of a legal professional in advising a client on what actions to take in a competent and acceptable way. Other areas are easier to assess.

So, whilst we are not conceptually opposed to outcome focussed regulation of LET, we feel that much more work needs to be done before this can be used to the exclusion of input rules (passing the QLD, the LPC etc.).

Turning to question 16, "principles to be covered" or "modern curriculum" may not be apposite words to describe the practical (for us the training contract) part of LET. But we would not be opposed, if the regulators think it necessary, to more indications of what is expected during the training contract provided they are sufficiently flexible to allow for practical implementation.

On the other stages of LET that apply to solicitors:

(a) we can see a case for more prescription of the content of the QLD/GDL, which in England and Wales are extremely non-prescribed by world standards of legal education. Having said that, English and Welsh university education is good by most standards so we are not at this stage advocating change; and

(b) we think the new flexible LPC should not be disturbed at this stage.

Question 17: Would you consider it to be in the public interest to separate standards from qualifications? What particular risks and/or benefits would you anticipate emerging from a separation of standards and qualifications as here described?

Answer: The question and the analysis that precedes it are, in our view, difficult to follow.

At one level, standards and qualifications are already separated. The regulator, in our case the SRA, does not set the standards (as opposed to the content in broad terms) of the QLD, although in principle it can influence it through the JASB. Indeed, and also in principle if not in practice, the SRA could determine whether or not the general standard is high enough. It could say that an individual university does not teach well enough, or teach the right things, and refuse to recognise its graduates as having achieved the standard of a QLD (a rule change may be necessary). We accept that in the real world that will not happen. In the real world the standards of the QLD are set by the university sector itself.

So we do not take the LETR executive to be carrying out a general analysis of the distinction between standards and qualifications. We think, and the text leading up to question 17 suggests this, that in reality the LETR is addressing issues around the separation of the regulation of standards from regulation of qualification.

In the absence of any involvement in setting and monitoring standards, how can a "qualifications regulator" make an accurate assessment of what skills an individual professional must have? Consultation 2 does not address this issue and it is hard to address question 17 without first answering it.

We would also wish comment briefly on the so called "functionally" usefulness which might result from a separation set out in paragraph 136 of Consultation 2:

a we see no logical reason why the clear separation of standards from qualifications for solicitors is likely to be a significant way of increasing consistency in the articulation of standards. This of course may change if the profession moves towards a ICAEW process (question 2);

b in CLLS 2 we set out our views in opposition to the idea that common standards must apply across the legal professions. We fear that this is part of a dumbing down agenda (see CLLS 1);

c we do not accept the need for integration between trainees and paralegal training and we refer to our comments on questions 9 and 10 above;

d we agree that a separation of this type might aid decisions on transfers between professions in some cases, but as with members of CILEX becoming solicitors, that already happens without such separation;

e as Consultation 2 acknowledges, there is already flexibility (CILEX for example). Indeed, the imposition of a single regulator for standards may discourage flexibility and innovation;

f we agree that it is not the function of a regulator to design and develop, say, the QLD. But how do two regulators, one for standards and one for other matters, address that point? In addition, we oppose "gold plating" professional requirements if it means making training more onerous or time consuming for no valid reason and therefore a potential artificial barrier to entry into the profession. But some commentators refer to the setting of minimum standards which differ between legal professions as "gold plating" and as with our response to b we reject the idea that LET needs to be dumbed

down to the lowest common denominator. "Gold plating" is one of those commonly used expressions which rarely aid comprehension;

g we repeat our comments on f. To give an example, there is nothing wrong with the BSB setting a standard higher or lower for advocacy than the SRA if appropriate. Alternative methods, such as used in the new higher advocacy scheme, can work to ensure a consistent minimum standard. Adding a new regulator or regulatory system would be a disproportionate response;

h we fail to understand how moving a regulatory function from one regulator to another addresses what is described as the "quis custodiet" question. With all their faults, the Legal Services Act itself and the Legal Services Board address that issue. Indeed, the reverse of the LETR executive's concern may be closer to the truth. How would an educational standards regulator adequately take responsibility for ensuring those that it regulates are fit for a specific profession? The concept of the SRA, say criticising another regulator for allowing people to practise with poor skills would be very unedifying. So we think that a multiplication of regulators creates a risk of regulatory conflict rather than providing a solution to an identified problem.

Question 18: Decisions as to stage, progression and exemption depend upon the range and level of outcomes prescribed for becoming an authorised person. A critical question of existing systems of authorisation is whether the range of training outcomes prescribed is adequate or over-exclusive. We would welcome respondents' views on this in respect of any of the regulated occupations.

Answer: Of course we can only speak for the solicitors' profession, and as above we found aspects of the question opaque at best.

We have decided to commence our response to this as if the question primarily relates to the pathways described in paragraphs 137 and onwards, and in particular the chart set out at the end of paragraph 144. Even then, we are a little unclear on what is really being discussed.

It is difficult really to react to the chart, other than in terms of comments most of which have been made already and which we will not repeat. But here goes: we notice two dotted lines for paralegals (Levels 2 and 3). One led on to a degree and one does not, but went straight to authorisation at Level 6. Another dotted line for "other Level 3" led to qualification via one route or another, and the same for "legal apprenticeship". As far as solicitors are concerned, we made clear in CLLS 2 that we accept these ideas, provided the minimum standard for becoming a solicitor shows the achievement of Level 6, and then involves the completion of the LPC or an equivalent, even if it is taken part time or integrated into work. We would also repeat something else which we mentioned in CLLS 2; individuals who take alternatives to the traditional route to qualification may well find that they are not treated by potential employers as being of entirely of equal value to those who take the traditional route.

To the extent the final LETR report recommends changes in this area, we suspect that we will need to review any concrete proposals for reform in more detail. Issues such as these are difficult to discuss in the abstract.

Now turning to a more literal reaction to the question, on the whole, we do feel that the profession, through its regulatory arm, might need to have greater control over both the standards and the content of the QLD, although as above we are not actively calling for change now. This would no doubt be seen as an assault on academic freedom, so we would anticipate adverse reaction to it. But in truth, by international standards, the profession (if you include the judiciary as part of the profession for this purpose) has an extraordinary low input into the content of the QLD/GDL. We think any shortfall in this area will not be capable of being addressed by a single regulator for

standards for which academia is likely to have an even lower regard then it does for the SRA. But this perhaps is not the right time for the profession to pick a fight with academia. As we said in our introduction, English legal education is highly regarded.

We repeat our concerns expressed in CLLS 2 that the JASB is ineffective and, in terms of regulating the LPC, the SRA has been a poor regulator.

And finally

We do wish to express some quick views on that part of Consultation 2 that follows Question 18.

Two related points emerge.

The first is that we accept (without enthusiasm on the part of many of us as our firms have already demonstrated a substantial commitment in training and monitoring) that, as things have developed, there may well in the future be a rule requiring some review of the minimum competence of practitioners at intervals post qualification. We are of the view that the sort of revalidation used in the medical profession which, to the extent it really will happen at all, will be deeply integrated into employment, simply would not work for a diverse profession like ours. In addition, the discussion of the issues raised here needs to be integrated with a review of CPD. It is particularly difficult to react to the issues raised in paragraphs 150 and 151 in the abstract.

The second, related, point is that we are encouraged by paragraph 152. As set out above and in CLLS 2, we see opportunities to develop assessment at the regulated entity level, which is realistic. Most firms (and we think all of our members) will entirely understand the need to ensure that their staff remain competent and up to date. Firm compliance with this could then be regulated. This may well be part of a proportionate response to a perceived (and perhaps to some extent a real) issue. And, as per CLLS 2, regulation of CPD might be integrated into this process in a beneficial way for all. The key here, as elsewhere, is that any new regulation is proportionate and has proper regard to the costs and other burdens imposed on the profession.

23 October 2012

Glossary

"CILEx"	the Chartered Institute of Legal Executives
"CLLS"	the City of London Law Society
"CPD"	continuous professional development
"CLLS 1"	the CLLS submission of 17 February 2012
"CLLS 2"	the CLLS submission of 10 May 2012
"GDL"	the Graduate Diploma in Law
"JASB"	the Joint Academic Standards Board
"Legal Services Act"	the Legal Services Act 2007
"LET"	Legal Education and Training
"LETR"	the Legal and Education Training Review
"LPC"	the Legal Practice Course
"LSB"	the Legal Services Board
"OFR"	outcomes focused regulation
"QLD"	the Qualifying Law Degree
"reserved activity"	an activity which, pursuant to the Legal Services Act, may only be undertaken by an authorised person
"SRA"	the Solicitors Regulation Authority

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