Note for CLLS Firms' Legal Education and Training Review (LETR) Open Meeting – 28 March 2012

A Selective Comparison of the Emerging Issues in the LETR Discussion Paper 1/2012, and the CLLS Position Paper submitted to the LETR team in Feb 2012.

1. You will have read the CLLS short position paper, but you may not have read the significantly longer LETR Discussion Paper 1/2012.

2. At the outset, you should note that the LETR Discussion Paper 1/2012 has adopted a number of thematic emerging issues, whereas the CLLS Position Paper followed a chronological path through the various stages of legal education and training. It is probably useful to take the LETR work as the reference point, against which we can highlight a few of the significant similarities or differences in the stance taken by the CLLS.

3. The LETR Discussion Paper 1/2012 identified a number of emerging issues that had arisen from the work of the LETR team, both from the literature review and from stakeholder engagement. These include:

a. Knowledge and Skills Gaps
b. Entry to the profession – the numbers game
c. Selection systems
d. The Legal Practice Course, and
e. Rival international qualifications

4. Taking each theme in turn:

a. Knowledge and Skills Gaps

The LETR paper identifies an extensive range of shortfalls apparently exhibited by new recruits. The most common symptom is a poor standard of writing. This is explained by several factors, including the decline in the requirement to display a sustained argument in school exams; a consequent lack of thematic clarity in sustained prose; and some normalisation of 'text speak' and a lesser focus on correct and formal language. These factors are compounded by today's technology, with spellcheckers replacing the need to be able to spell, and the immediacy of emails reducing the traditional consideration given to the written word. Taken in the round, these trends are inimical to a profession that trades in precision.

The LETR paper also highlights the complex debate about the place of ethics, professionalism and legal values in undergraduate studies and the academic core. Further gaps and limitations include basic business and commercial awareness, and the need for additional training in statutory construction.

The CLLS recognises many of the shortfalls identified in new recruits, but the CLLS' expectation that firms will recruit only the most capable candidates will go a long way to mitigate the worst of these undergraduate failings.

The CLLS believe that we need common requirements and standards for the seven Foundation topics of law, to provide a greater assurance as regards the knowledge acquired by all recruits (QLD and GDL students alike) though specifying a precise syllabus may be too prescriptive. The CLLS would

like professional ethics, i.e., the philosophy of ethics, and the law of organisations to be included as, or in, Foundation topics. If necessary, we would support reducing or dropping some subjects to permit a rebalancing of the Foundation topics. We believe that law degree and GDL courses should be reviewed for content and for consistent standards.

b. Entry to the Profession - the numbers game

The LETR describes the imbalance in numbers between applicants for undergraduate law courses and eventual places for qualified lawyers. The LETR notes that the real bottleneck occurs late in the training process, after a considerable investment has already been made. The picture is complicated by the developing degree of overlap in some areas of the work done by solicitors and paralegals. The LETR poses a rhetorical 'what if?' in asking whether these bottlenecks, so totally controlled by the existing professionals, resist any attempts to achieve fair access?

The CLLS argues that the SRA should not interfere with numbers of either LPC places or traineeships. Nor should the profession seek to impose limits on numbers seeking to enter the profession. Only a properly informed market can determine the 'right' numbers, in the face of changing economic conditions and an inevitable relatively long training pipeline.

One illusory solution to the blockage is to award the title of solicitor on completion of the LPC, rather than at the end of the Training Contract. The CLLS is certain that this would undermine the title of solicitor as a badge of excellence, would confuse the consumer as to what constitutes a 'real' solicitor, and would anyway do nothing to lead to employment as a solicitor. Indeed, awarding the title of solicitor on completion of LPC might engender the false belief in students that, as a result, they would be more employable at the end of the LPC.

c. Selection Systems

The LETR claims that there is much work to be carried out to ensure that admission to the profession and to academic programmes is fair. More work is recommended on the role of standardised admission tests, and alternatives such as aptitude tests. The LETR points to a concern that the firms are recruiting mainly from 'top universities', thereby leading to dashed hopes in students elsewhere. Moreover, there is some criticism in the use of A-level results as a recruitment criterion, because such results tend to re-inscribe the inequalities of the school system into the labour market.

The CLLS is sceptical about the use of aptitude tests, either as means of dealing with the numbers game (see above) or as a predictor of professional ability. Likewise, the CLLS would be wary of introducing a more demanding degree qualification, e.g., a minimum 2:1 rather than a 2:2. In practice, the high number of 2:1s already awarded to law graduates, and non-law graduates entering the GDL, would place no significant limit on entry to LPC programmes. More importantly perhaps, a formal 2:1 criterion would at a stroke exclude many of the relatively 'late starters' from socially disadvantaged backgrounds.

More broadly, the CLLS firms set a good example to the profession, and to many other professions, in their pursuit of excellent candidates from every possible background. Not least for reasons of enlightened self-interest, our pursuit of excellence is a defining feature of City Law, and is entirely consistent with our need to offer 'premium quality' service, well above the regulatory minimum standards, to demanding clients.

d. The Legal Practice Course

The LETR's coverage of the LPC is largely descriptive, and has no particular thrust. It notes the increasing variations in breadth and depth of the LPC, and draws attention to the bespoke LPCs designed and sponsored by particular firms and groupings of firms. It covers the 'LPC plus Training Contract' model, and the 'degree plus LPC' and M Law 'one stop shop' models offered by Northumbria.

The LETR does however list the potential gains and losses that would flow from abolishing the requirement for the LPC. Gains include the cost to individuals, and losses include the revenue and employment for the providers. At this stage, the LETR has taken no obvious view on the future direction of the LPC (or, if there is to be no LPC, how best to regulate the necessary acquisition of skills).

The CLLS believes that the current programme of courses provided by the providers for the City firms is generally fit for purpose, and we would expect the flexibility of delivery models to continue to evolve. We do however have a concern that the LPC market could develop into something of an oligopoly, with consequent implications for costs falling on the students. The potential consolidation of legal education providers is a key factor for the regulator to consider.

e. Rival International qualifications

The LETR fears that internationally minded, ambitious lawyers from around the world are more likely to complete a US LLM than a UK LLM, because it is easier (and quicker) for them to take the New York Bar and to gain work experience in the US, rather than to qualify in the UK. This has possible implications for sustaining English law overseas as the law of first choice.

Whether this phenomenon is a real disadvantage to the UK legal sector is unclear: more work is probably needed to distinguish the providers' interests from the sector as a whole. In part, the problem is addressed by the introduction of the QLTS, which speeds up the process for relevant practitioners seeking to qualify here (though the current lack of tuition leading to the assessments means it is not yet proving to be an attractive alternative to the old QLTT). The CLLS is confident that English law will prosper or fail on the basis of quality of its practitioners, not on their quantity. But we must stay abreast of this issue as the LETR progresses.

5. Strangely perhaps, the LETR team has not included the Training Contract as one their Emerging Issues, though the paper does list the potential gains and losses that would flow from abolishing the regulatory requirement for a Training Contract. You will be aware that, anecdotally at least, some jurisdictions regard today's Training Contract as the "jewel in the crown" of the English system. We have made that point forcefully in our Position Paper to the LETR team, but it is something we will need to keep pressing.

David Hobart March 2012

Chief Executive CLLS