The City of Westminster and Holborn Law Society

A NEW FRAMEWORK FOR WORK BASED LEARNING

Response to the consultation paper

This paper is the response to the Consultation Paper from City of Westminster & Holborn Law Society ("CWHLS") representing 1,100 solicitors in Westminster and Holborn.

This is an initial response to the consultation paper in order to assist with the funding bid which has to be submitted by October. CWHLS will respond more fully when the consultation proposals are published later this year.

Q.1. To what extent, if any, should the LSRB prescribe the form and content of training agreements between organisations and trainees provided the LSRB validates and monitors organisations to ensure that an appropriate level of training and support is provided to trainees and a robust assessment mechanism is employed?

It would be useful if the LSRB produces a guideline agreement in order to assist where there is none (for example for organisations applying for validation for the first time). In order to ensure fairness there should be a standard which applies to all organisations. Candidates working in non-accredited organisations would need to be treated equally with those from accredited organisations and a standard agreement should help to achieve this.

There are employment issues which may need to be prescribed, for example, what happens if a candidate/trainee is not assessed as competent after their period of work based learning (WBL) which could be as little as 16 months? There need to be safeguards against a firm dismissing a candidate who has failed the assessment after being entered for it at the firm's request when they are not ready. In this situation, there would have to be a reasonable period of extension in order for the candidate/trainee to improve and demonstrate their competence at a further assessment. We suggest that this should be up to 30 months, after which the organisation could release the candidate/trainee as having failed the assessment.

Q.2. Should individuals with relevant work experience who can demonstrate their competence against relevant day one outcomes through a portfolio and regular reviews with approved assessors be able to qualify as a solicitor even if they have not been employed in an accredited training organisation or undertaken their work experience under a formal training agreement?

In principle yes, as long as their portfolios are properly supervised and externally assessed.

Q.3. How might the day one outcomes be converted into assessable levels of competence appropriate to newly qualified solicitors?

No comment

Q.4. Do you think that there is a risk that solicitors who have qualified via the non traditional route will be perceived as less competent than those who qualify via the traditional route? If so, how can this risk be mitigated?

Yes, it is likely that there will be some. However this will vary, in the same way that some employers regard qualification through the Graduate Diploma in Law as inferior to qualification via the law degree, others value the breadth of academic experience. We believe that this will change in time as the profession gets used to the new system, and sees that the assessment of skills, knowledge and understanding is rigorous, standard and fair.

Q.5. Do you agree that the standard for accredited training organisations should be set at the level of current best practice? If so, how should this be determined and set as the standard?

Yes. Lexcel has provided a means of recognising certain forms of best practice, and this could be used as a starting point for organisations wishing to be validated as accredited training organisations.

Q.6. If the standard for accredited training organisations is to be set at best practice level, do you agree that the LSRB should introduce a more robust validation and monitoring regime for organisations seeking accreditation than is currently in place?

Yes, there should be a more robust regime, and there should be mandatory LSRB-run training for people wishing to act as supervisors. However, we believe that independent assessment of trainees' final portfolios should be carried out in order to ensure a fair and objective test of competence.

Q.7. The costs of the validation and monitoring process are likely to be higher than the current costs for authorisation as a training establishment although the internal costs for organisations already following best practice should be minimal. Do you think that organisations would be deterred from seeking accreditation because of:

a) an increased validation and monitoring fee? and/or
b) a more robust validation and monitoring regime?

We think that initially both these aspects of the new regime may deter. However, the proposals are in the public interest and many firms will agree that it is important to improve the training, supervision and assessment of competence for qualifying solicitors. It is in the interests of the profession that trainees are regarded as part of the firm's commitment to training, rather than, as is the case sometimes, an extra pair of hands at the lowest level of fee earning.

Q.8. Do you think the proposed approach to accreditation of training organisations risks deterring firms from taking trainees altogether? If so, how should this risk be mitigated?

It is possible. However, the market dictates recruitment of trainees and firms will always need future fee earners.

Q.9. What, if any, guidance should be provided on what constitutes work at an appropriate level to meet the day one outcomes for a newly qualified solicitor?

It is essential that guidance is provided especially in the case of candidates in non accredited organisations, who must be informed of the levels that are expected of them. If there is a lack of effective day-to-day supervision, a candidate in a non-accredited training organisation could lack focus in the development of their skills.

Q.10. (a) Do you agree that, as well as an assessment tool, the portfolio should act as a development tool and that individuals should be encouraged to record and reflect on their work based learning at the point at which it happens or as soon as possible afterwards? Or
(b) For a period when the scheme is first introduced, should individuals who already have many years relevant experience, e.g. as a paralegal, be able to complete a portfolio retrospectively and submit it for assessment even though they will not meet the requirement for regular, documented review sessions?

a) Not from a regulatory point of view. The portfolio should demonstrate how the individual meets the day one outcomes, not how the individual reached that outcome. In practice it may be desireable for a development portfolio to be kept for for internal use with the supervisor, however this should bot be part of the regulations. Reasonable time must be allowed for trainees to write up their portfolios in work hours in order for this to be a useful tool. The assessor looks only at competence not at the development.

b) No. In general we think that the system should not allow retrospective evidence. However, if at the beginning of the new system there is a backlog of suitable candidates then there should be a transitional period in which to submit retrospective portfolios. Once the system is in place then there should be a cut off point after which retrospective portfolios are no longer allowed.

Q.11. Do you agree with the proposition that qualifying work based learning could take place at any point in an individual's career i.e. prior to formal academic study, during the LPC, during the formal period of work based learning provided that it is at an appropriate level and that the individual could begin completion of the portfolio at whatever point they are undertaking relevant work experience?

Yes, in general we do, provided that it is during or after academic stage (i.e., law degree or PGDL). We do not think it is appropriate to allow relevant experience from a young age, for example from 18, to be considered as the appropriate level. We believe that the reflective element of the portfolio should demonstrate the application of legal knowledge and understanding, and for this reason we believe that WBL should be considered for the portfolio during and after the period of formal legal study. There are issues that need to be addressed, such as sustaining client confidence, and a definition of "appropriate" level. We believe it is important that the WBL is real work and not shadowing for example.

Q.12. Should the LSRB set the minimum number of review sessions (e.g.four) and the minimum period of time between each review session (e.g. four months) or simply allow individuals to present themselves for assessment when they have completed their portfolio and feel that they can demonstrate their competence against the relevant day one outcomes? If the former, how many sessions and how long a period between them should be the minimum?

No, there should not be any set review sessions. There is sufficient regulation in the new Code of Conduct, and over-regulation should be avoided. The new Code states that "you must operate appropriate supervision management arrangements to meet your duties to clients". This should be sufficient in relation to overseeing individuals wishing to qualify as solicitors.

If a minimum number of review sessions and interval is prescribed, they need to be flexible with planning and setting timetables for supervision and review dates. For example, if there is a rigid timetable of supervision and review dates which is not met, for whatever reason, this may affect the capacity to produce the portfolio on time for assessment and could lead to a trainee failing to qualify. Alternatively the portfolio may be rejected. In turn this may lead to complaints and appeals.

Our experience has shown that four months is often not a sufficient period to gain an understanding of practice in an area of law.

While in general we believe that a minimum of two years is necessary for a trainee to develop their competence to the standard for Day One entry, we believe that this will vary according to each individual trainee. At present there is provision for exemption, leading to a period of 18 months work based learning, below which we think the period should not drop. Flexibility should be considered, but there needs to be an objective measure for assessment of attaining competence at each review period.

Q.13. How wide a variety of different areas of law should a newly qualified solicitor have experienced? Should experience of both non-contentious and contentious areas continue to be required?

We believe that there should be at least four areas of law and there should be a mix of contentious and non-contentious. We favour qualification with a broad range of knowledge and experience, rather than early specialisation. Specialisation during the WBL stage reduces the opportunity both to experiment with areas of law to find areas that suit and the opportunity to understand areas of law which may be useful even though a practitioner specialises at a later stage.

Q.14. If the LSRB specifies a minimum number of review sessions and elapsed time between sessions, will firms take advantage of the flexibility or simply design their training programmes so that all trainees qualify within the minimum 16 month period?

We believe that some firms may use the new regime so that trainees qualify as quickly as possible in order to use their fee earning time at a more profitable level. However, this will only be efficient if the trainee is competent and requires little supervision post qualification.

Q.15. Do you think it is important that individuals not employed in an accredited training organisation should be able to access LSRB appointed portfolio supervisors to help them determine whether their work is at a sufficiently high level to demonstrate competence against the day one outcomes and to enable them to regularly review and reflect on their competence?

Yes - see answer to question 9

Q.16. If the cost of the external review sessions and the final external assessment for individuals who are not in accredited organisations is to be met by the individuals seeking to qualify, do you think that this would act as a new barrier to qualification?

Yes, it will act as a barrier. Candidates in non-accredited organisations are more likely to have to pay for themselves, while it seems likely that trainees in accredited firms will generally have their fees paid by their firms. It is unlikely that non-accredited organisations will pay the fees for their employees, unless there is some benefit to the organisation in having their employee qualify as a solicitor. If this would result in a) the employee leaving to work elsewhere, or b) the employee seeking higher salary within the organisation, there is little incentive to pay the fees or assist them in trying to qualify. It may be necessary to set fees for trainees/candidates from non accredited training organisations at a lower level than those from accredited training organisations.

Q.17. Do you think the new requirements for in-house review and assessment will deter organisations from taking trainees altogether? If so, how should this risk be mitigated, if at all?

It is likely that a more onerous regime will deter some organisations from taking trainees. However, are these the organisations which should be training candidates for the profession? Perhaps it is better to lose the organisations which are not prepared to offer a structured regime of review and assessment.

Q.18. Should organisations be able to train portfolio supervisors in-house provided the training meets LSRB standards?

There has to be an LSRB standard to which all supervisors work, and this should be validated and monitored externally. Supervisors should have central training that would enable the LSRB to ensure consistency. It may also give rise to a network of supervisors with an ethos of raising standards in the profession.

Q.19. Do you agree that individuals in accredited organisations responsible for the final assessment of portfolios should be required to be trained in assessment by the LSRB to ensure consistency of approach and externality in the assessment process?

Yes, they should. In addition we believe that all assessment should be done externally in order to achieve consistency and fairness. The LSRB should train assessors from accredited organisations so they can assess the trainees of other accredited organisations, but not from their own organisations.

Q.20.(a) Should the roles of portfolio supervisor and assessor be distinct and separate in order to ensure neutrality and objectivity in the assessment process;
or
(b) Is there value in the assessor consulting with the portfolio supervisor as part of the assessment process;
and/or
(c) Could portfolio supervisors also assess individuals they have supervised?

(a) Yes
(b) Consultation is not necessary, but a final review report could be submitted by the supervisor. The review reports could be submitted at the same time as the portfolio.
(c) No

Q.21. (a) Do you think the cost of training in-house portfolio supervisors and assessors will deter organisations from taking trainees altogether? If so, how should this risk be mitigated?

or

(b) Do you think that some firms would continue to take trainees but would submit them for external LSRB review and assessment rather than seek accredited status?

(a) Yes it may deter. The risk could be mitigated by educating firms as to the value of effective training and the importance of this in developing the firm's/the profession's future fee earners and partners. In addition CPD points should be awarded for the supervisor/assessor training courses.

(b) Yes. In fact we think that external assessment is essential in all cases to maintain the integrity and independence of the qualification process. We need to avoid any system which would enable firms to allow an individual to complete training where the day one outcomes have not been met.

Q.22. What might be the implications for small training firms? How should any problems be mitigated?

We hope that these proposals will provide a cost neutral training regime with the benefits of external review and assessment. This would enable small firms to take trainees, without the fee-earner time investment needed for internal assessment. However, there is a risk that there would be a lack of day-to-day supervision if the firm felt that all supervision would be done externally. The emphasis on the review meetings and final assessment mechanism cannot and should not be a substitute for day-to-day supervision and training. However, the firms' own risk assessment would militate against this.

Q.23. Do you agree that accredited organisations should be able to conduct their own assessment of trainees or other employees, to LRSB standards, provided the LSRB validates and monitors the training and assessment provided by the organisation?

We think that it would be better to have assessors assess the trainees in other accredited organisations selected randomly. In order to be completely independent the assessors and the organisations with trainees for assessment would not know in advance who the assessor would be. This would prevent the possibility of firms colluding to pass individuals who have not met the day one outcomes.

Q.24. Should individuals who have not gained their work experience in an accredited organisation be subject to further assessments of their skills in addition to the assessment of the portfolio? E.g. face to face skills assessments, formal interviews or more broadly based (and more expensive) assessment centres?

Ideally, there should be a face to face skills assessment for all trainees along the lines of a university viva in order for the assessor to ensure that the candidate is genuine and to avoid the risk of portfolio cheating. Assessment Centres would provide consistency and fairness in the regime, but we do recognise that they could be more expensive. One possible way to mitigate the expense could be to organise external assessment through existing training providers as an add-on post LPC qualification.

Q.25. If this general approach is adopted, how do you think it should affect the present arrangements for overseas lawyers seeking admission to the roll in England and Wales who are expected to demonstrate their experience in practice before being admitted as a solicitor in England and Wales?

It should be possible for overseas candidates to register from overseas so that they can then work on their portfolio going forward; otherwise they would have to present their portfolios on retrospective work. There should be an equal period for the assessment period, which we believe should be a minimum of two years post admission. Although candidates must be able to do the work on which to base their portfolio from outside England and Wales (if it were otherwise it would effectively close the door to foreign applicants), it seems reasonable to stipulate that the final assessment should be carried out in England and Wales.

General comment:

In general we fully support the introduction of a portfolio. We hope that the timetable for its introduction can be speeded up as we understand that it is proposed to wait until 2010 until the portfolio is introduced.

There may be a need to be flexible with planning and setting timetables for supervision and review dates. For example, if there is a rigid timetable of supervision and review dates which is not met, for whatever reason, this may affect the capacity to produce the portfolio on time for assessment and could lead to a trainee failing to qualify. In turn that might lead to complaints and appeals.

The new system would need to deal with issues which will arise with external supervision and/or assessment:

a) Confidentiality of the files
b) Firm specific "know-how" and processes
c) Commercial practices

We recognise that assessment centres are used increasingly in other fields. This is often seen as an impartial and objective method of treating a wide range of candidates. However, such a new system will be expensive.

It is important that thorough costings of the new system be made so that the profession can take a view as to whether it can afford to pay for the introduction of the full system.

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