

**The Law Society's Consultation Paper of March 2005  
"Qualifying as a Solicitor – A Framework for the Future"**

**Response by the City of Westminster and Holborn Law Society  
July 2005**

The City of Westminster and Holborn Law Society ("the Society") previously responded to the Second Consultation on a New Training Framework for Solicitors, issued by the Law Society in September 2003.

This present response by the Society to the Law Society's Third Consultation Paper of March 2005 ("the TFR") incorporates the general principles and views held by the majority of the members of its Committee.

This response has been prepared by the Society following widespread discussion within the Society and points made by members. The response is made independently of the views of any members of the Society who have been participating separately in the Law Society's committees or working groups.

Part One of this response is presented in structured form and gives the Society's answers to the specific questions posed in the TFR.

Part Two of this response was prepared by the International sub-committee of the Society. The Society is active in international matters and is particularly concerned as to the effect that aspects of the Law Society's current proposals (contained in the TFR) might have on other jurisdictions and on their perception of the quality of our training regime.

Part Three part of this response contains a summary of the Society's conclusions in relation to the TFR.

**Part One**

**Structured response to specific TFR questions**

**1. The "day one" outcomes as set out in annex 1.**

**Answer:** The Society considers that the main areas are covered but the lack of detailed syllabuses does not enable a judgement to be made about the minimum standards which will be achieved by candidates for admission as solicitors.

**2. Arrangements for assessing knowledge, understanding and skills and, in particular, the characteristics of an examination and assessment framework that would provide you with confidence that standards of entry were secure.**

**Answer:** The Society considers it is essential that certain core legal skills and knowledge should be assessed by centrally set and marked examinations which are externally examined and moderated. At university level, universities appoint external examiners to try to ensure adequate standards are maintained. At the level of professional qualifications, the most effective way of ensuring consistent standards are maintained is to have centrally set and marked examinations. It is, therefore, proposed that two-thirds of the new assessments should be compulsory and should be centrally set and marked examinations under the control of the Law Society. The Society proposes that the following core subjects should be examined by centrally set and marked examinations:

- (a) Practical conveyancing;
- (b) Criminal and Civil litigation and Evidence;
- (c) Company Law and Partnership Law;
- (d) Wills and Probate;
- (e) Taxation;
- (f) Professional Standards and ethics;
- (g) Solicitors' accounts, Trust accounts and Company accounts.

The Society accepts that more flexibility should be possible with the optional parts of the new assessments as long as arm's length, independent external examiners have significant powers over those aspects of the qualification process.

### **3. Arrangements for assessing performance in the work place including:**

#### **The supervising solicitor's role**

**Answer:** The role of a supervising solicitor within the trainee's own practice/employer should be limited to ensuring that the trainee has carried out a prescribed range of work or transactions to a minimum acceptable standard with supervision from more experienced staff.

#### **The assessment of the trainee's portfolio**

The assessment of the trainee's portfolio should be carried out by an appointed solicitor who does not work for the same practice/employer as the trainee.

### **4. Proposals to allow individuals to study and prepare for qualification in different ways, including:**

#### **Any concerns that students might be exposed to poor quality courses and steps that could be taken to mitigate such risks;**

**Answer:** The Law Society should issue recommended minimum teaching times for courses, syllabuses and checklists. However, it may be more difficult for staff/student ratios to be specified because the quality of the teaching and teaching materials are often the most important factors in a good quality course.

**Information that might help students make informed choices about their options;**

**Answer:** The Institute of Chartered Accountants of England and Wales (“ICAEW”) has retained centrally set and marked examinations for qualification as a chartered accountant. ICAEW monitors and accredits courses designed to prepare accountancy students for their professional examinations. The system consequently ensures that a high standard of competence is required and consistent standards are maintained.

The courses previously offered for the old Part II Law Society examinations (until 1979 except for re-sits) varied greatly in quality and the pass rates of students at different colleges varied significantly. Nowadays, students are much more demanding. In establishing a new qualification regime, the Law Society should require teaching institutions or course providers to publish details of the staff/student ratios on taught courses, number of hours of tuition and compliance with some regular and reliable accreditation requirements.

**The types of programmes of study students might wish to follow.**

**Answer:** Many students will probably still wish to attend full time courses to fulfil the equivalent requirements of a law degree or the Common Professional Examination and the Legal Practice Course. In some cases, the provision of part time courses will suit students who have to continue working to finance their studies. However, distance learning will not be suitable for all types of training in practical skills e.g. advocacy. The Society considers the average fees for the Legal Practice course are too high. If the fees for the course (full or part time) or its replacement could be kept within more reasonable limits, the costs of qualifying incurred by students would be more manageable. The Society regrets very much that the previous option for students of serving five years as an articled clerk combined with professional examinations is now no longer available; this option would overcome some of the complaints made by students about the high costs of qualifying.

**5. Proposals to allow teachers and course providers freedom to design and deliver courses and programmes to support learning including:**

**The advantages, disadvantages and risks of allowing teachers and course providers freedom to design and deliver courses and programmes of study;**

**Answer:** The greater the freedom given to law teachers, the more rewarding the process will be for them and for many of their students. However, too much flexibility in course design and delivery means a much greater variation in standards of teaching between different courses. The aim should be to have detailed syllabuses but to permit a wide variety of different teaching methods.

**How such freedom might be used.**

**Answer:** The freedom to use different courses and methods is of most benefit in teaching practical legal skills e.g. drafting, advocacy or negotiating. Academic or

technical legal knowledge is often best taught and assessed by traditional methods - lectures, tutorials, seminars and unseen written examinations.

**6. The proposed availability of discrete qualifications set at the level of the newly qualified solicitor or a solicitor moving into a new area of work including:**

**Opportunities to link such qualifications with professional accreditation schemes;**

**Answer:** Discrete qualifications would be best pursued by solicitors after qualification e.g. higher courts rights of audience, specialist panels such as planning. Often such qualifications are of value because they involve the completion of some practical experience in addition to technical legal knowledge.

**Whether all solicitors should be required to achieve one or more such qualifications before being admitted.**

**Answer:** No, such qualifications should not be mandatory and should generally be pursued after qualification. There are currently a whole range of additional qualifications which are of use to solicitors but these are gained independently of qualification as a solicitor. They will continue to be of value to solicitors as additional qualifications. They include

The Law Society specialist panels; Higher Courts rights of audience; diplomas and degrees in Law and other subjects; Membership of Society of Trust and Estate Practitioners; Legal Associateship of the Royal Town Planning Institute; Associateship and Fellowship of the Institute of Taxation; Associateship and Fellowship of the Institute of Arbitrators.

**7. Work-based learning requirements including proposed requirements for trainees:**

**to develop their skills in both contentious and non-contentious areas of work (suitably defined);**

**Answer:** The Society considers it is still important for solicitors to be trained and assessed in both contentious and non-contentious areas of work, as this will provide the trainee with a minimum core of legal knowledge and experience and will help to safeguard the reputation of the qualification as a solicitor.

**not to have to work in a given number of areas of law;**

**Answer:** The Society considers that it should remain a requirement for trainees to receive experience in at least three different areas of legal practice.

**to enjoy the employment related protections under statutory and professional provisions but not to require that additional employment related protections are in place;**

**Answer:** The Society is strongly in favour of the retention of a training contract for a minimum of two years although it would be willing for such a contract to be carried out part-time over a longer period. One of the essential hallmarks of professional training, since medieval times, has been a period of apprenticeship and this requirement has served the Solicitors' branch of the legal profession well.

**for trainees to compile a portfolio for external assessment.**

**Answer:** This requirement should involve practical work by trainees which helps to build up their skills before qualification. The number of items should be manageable, guidance should be given by the Law Society on the likely average amount of time to be taken by a trainee in preparing the portfolio and indicative examples in a wide variety of fields of legal practice should also be published.

**8. Any other issues not otherwise covered including views on the wider context in which the review is taking place.**

**Answer:** The burden of assessment of trainees should fall mainly on external paid professional assessors. It is unfair and unrealistic to expect a significant amount of assessment to be carried out on an unpaid basis by solicitors in the practice employing the trainee. Different standards apply in different practices and it will be very difficult to ensure that consistent standards are applied.

There are obvious benefits for the profession if candidates are required to take most of their qualifying examinations before starting their practical training. Although the proposed new regime is likely to be much more flexible, the Society still considers that allowing candidates to take the main block of assessments at one or two stages is likely to be the most effective means of learning. There is a danger that if training and assessment become too fragmented, the overall structure and integrity of the qualification of solicitors will be severely damaged. Many university courses have become excessively fragmented by division into large numbers of modules. There is a balance to be struck between the rigorous acquisition of a range of knowledge and skills and effective assessment at key stages of training.

The consultation paper contained no costing of the new proposals and this should be done thoroughly even if there are various alternative schemes.

## **Part Two**

### **International considerations**

This part of the Society's response examines the TFR in the context of the Law Society's international reputation and the effect the proposed radical reconstruction of training may have in other jurisdictions where UK qualified lawyers seek to practise.

## Summary

Our view is that:

1. The TFR contains little justification for reconstructing the vocational training process
2. There has been no demand from the profession for radical change to the current system, and we are unaware of demand from the public
3. The proposed system, based on regulation of assessment rather than training, is a retrograde step which has been rejected in other jurisdictions
4. Improvements to the current system would meet the needs of the TFR without the wholesale change proposed
5. The TFR Group have misinterpreted the effect of the *Morgenbesser* case
6. The proposals will damage the reputation of the Law Society and the standing of solicitors generally. It will devalue our training and qualification scheme in the eyes of other jurisdictions

### **1. No justification for reconstructing the vocational training process**

In the foreword to the TFR it is stated that the paper does not propose that current qualification scheme needs to be dismantled. However, on closer inspection of the proposals it seems to us that by shifting to regulation of the assessment regime as opposed to regulation of the training requirement the TFR goes much further.

During the period of the third consultation the Law Society engaged the services of consultants (academics engaged in training and assessment who researched and reported over a short period in November 2004) and had before them the responses to the Second Consultation (September 2003). The material produced by the consultants has been published on the Law Society's web site. It does not support the dismantling of the current vocational training scheme, namely the compulsory requirement to pass the Legal Practice Course (LPC).

The TFR Group does not have sufficient evidence to support its proposals to change to an assessment-based scheme and to abandon the regulation of training. Consultants Bone and Johnson were asked by the TFR Group to report on the detailed specification of day one outcomes identified in the Second Consultation and to review the range and content of assessments and at what level assessment should be carried out.

Their report dated 25 November 2004 identifies an ambiguity in the Second Consultation (September 2003) that glosses over whether there should be a compulsory course of vocational training. This has led to respondents to the Third Consultation expressing a feeling of ambush because it was not made clear until January 2005 that the TFR proposed to abandon the requirement to pass the LPC. The report by Bone and Johnson is the only consultant's report to the TFR Group that deals directly with this question. Their view is that the profession would be unable to satisfy the Law Society that the assessment of the day one outcomes could be done in a fair, valid and reliable manner. "The profession has no history or expertise in testing outcomes of this type. Ensuring a common standard in these areas can realistically

only be done with consistency by course-based assessment.” and “We feel that some regulation of the stages towards qualification is a vital safeguard for standards, for those recruiting to the profession and for aspiring solicitors.”<sup>1</sup>

The Bone and Johnson report is the evidence the TFR Group had before it but the majority of the TFR Group reached a different conclusion from the consultants without citing any evidence to support their decision. The TFR Group minority report (Hardee and Knott) followed the Bone and Johnson report and concluded that there was no justification for dismantling the existing legal education scheme and that it was not in anyone’s interest to remove the requirement for vocational training.<sup>2</sup>

## **2. No demand from the profession for radical change to the current system**

The profession has expressed its need for trainee solicitors to be able to hit the ground running which many have understood to mean that LPC graduates should have more practical training, particularly through clinical legal education. This does not equate with widespread concern with the present system such that it should be radically changed to regulation of assessment instead of the training provision.

The present system does work and produces LPC graduates and trainee solicitors who in the large majority of cases qualify as well trained entrants to the profession as found in “Hitting the Ground Running”.<sup>3</sup> The system can be improved, and in particular made more flexible. But these needs do not justify removing the requirement for a law degree, CPE/GDL or the LPC.

The respondents to the Second Consultation wished to maintain the present system and to improve upon it, and did not seek to remove regulation from the provision of training, and to replace that with regulation of assessment. The analysis of the stakeholder’s responses does not state that the profession calls for the withdrawal of the requirement for candidates to complete and pass a law degree or the CPE/GDL and the LPC or the deregulation of the provision of courses leading to these qualifications. Indeed, we do not know of any such step being undertaken by the profession in other jurisdictions being successful.

During consultation meetings from February 2005 to date the profession has made it clear that there is no wish to remove the requirement for the law degree, CPE/GDL and LPC. Concern has been expressed at the amount of supervision required to prepare a trainee solicitor for assessment by portfolio and report.

## **3. Regulation of Assessment rather than training is a retrograde step**

To return to the old Law Society finals approach after having introduced the regulation of training standards for the LPC is to ignore the very positive change brought about by the introduction of the LPC. The Scottish Law Society abandoned the change to assessment-based regulation and its outcomes based approach after

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<sup>1</sup> Nick Johnson and Alison Bone: Report: Project to support the implementation of the Law Society’s new training framework review for solicitors qualifying in England and Wales. November 2004.

<sup>2</sup> Melissa Hardee and Phil Knott: Additional Paper on the Training Framework Review for consideration by the Law Society Standards Board at its meeting on 19<sup>th</sup> January 2005

<sup>3</sup> “Hitting the Ground Running” - research from UKCLE 2004.

conducting a pilot study. Consultants Bone and Johnson who reported on the vocational stage for the TFR Group in November 2004 were involved in the Test in Professional Competence for the Scottish Law Society.<sup>4</sup> Their conclusions are that it is important the candidates have contact time with course teaching in order to attain the required standard for assessment.

Assessment of certain day one outcomes must be course based, for example the knowledge and the understanding of the law to be examined in the qualifying law degree, the CPE/GDL and the LPC. For consistency it is preferable that vocational skills are assessed at course level in the LPC and in the integrated degree provided by the University of Northumbria. If standards are to be maintained then the Law Society must continue to have responsibility for regulation of the courses.

#### **4. Improvements to the current system would meet the needs of the TFR**

Greater flexibility appears to be acceptable to most stakeholders as a way of improving the system and attracting more diversity of candidates into the profession. It is said that potential candidates who at present find the length and expense of the vocational courses a barrier may find an outcomes assessment based scheme more attractive. It would give a candidate the flexibility to choose how and when they study. There is no reason why this degree of flexibility cannot be achieved within the current scheme. Providers have already started to address the issue of expense providing innovations in distance learning, block courses, part time study and e-learning. The integration of work based learning into the vocational stage through clinical legal education by students undertaking advice, casework and representation in student law offices and legal advice centres can be extended to develop sandwich courses integrating the training contract with courses of study at LPC level.

#### **5. Misinterpretation of the *Morgenbesser* case**

The TFR proposals justify the removal of prescription of courses of study (law degree, CPE/GDL, LPC) by its understanding of the ECJ case of *Morgenbesser*.<sup>5</sup> The TFR Group majority report says because the Law Society cannot prescribe courses of study for a person in a *Morgenbesser* situation then it cannot do so for students in England and Wales. The TFR Group minority report (Hardee and Knott) does not agree with this interpretation.

The *Morgenbesser* decision does not say that a regulator cannot prescribe courses of study. Instead it says that the Law Society, as regulator, must provide a means of assessing whether a person in a *Morgenbesser* situation can demonstrate that they meet requirements for qualification set by the Law Society. Other jurisdictions would be surprised to see the *Morgenbesser* decision used to justify the deregulation of the training requirements in England and Wales.

The ECJ has a consistent line of case law to say that when deciding whether an EU national can exercise his/her right of establishment under the same conditions as local nationals you have to determine the extent to which he/she has met those

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<sup>4</sup> in 2001

<sup>5</sup> “*Christine Morgenbesser v Consiglio dell’Ordine degli avvocati di Genova*” November ECJ.

requirements by previous qualifications and experience (See earlier case of Vlassopoulou) The requirement that the Italian authorities have to give credit to the equivalence of Morgenbesser's maitrise (4 years' law) and practice (8 months and the same in Italy) is hardly remarkable.

The decision has to be seen in the context of the French and Italian training systems. In France there is a training school run and financed by the local Bars. Less than 15% of those with a maitrise get in and thus do not go on to become avocats. Even after bar school the avocat has to do 2 years *stage* but like English barristers (and unlike solicitors) has the title of avocat stagiaire during this time.

In Italy the law graduates out of University traditionally go on to do 2 years of *stage* (or "praticanti patrocinanti") before taking their bar exams. As a result to achieve something similar to the vocational training schools in UK or France a period of professional training and exams is being tacked on to the University course. The decision in Morgenbesser deals with the old system (she was refused admission to the register of praticanti) and simply says that when deciding whether she was eligible to take the Bar exams the Italian bar had to give credit for her French law diploma and her post university experience.

## **6. Damage to the international reputation of the Law Society and Solicitors**

It is a matter of concern that there are already questions raised by overseas practitioners as to the direction in which the TFR is proceeding. Our training and qualification regime needs to be of the highest possible standard in order to maintain the high level of esteem, which the qualification attracts. Practitioners in other jurisdictions question whether the deregulation of training provision by the Law Society is a wise move. If the Law Society relinquishes responsibility for the regulation of the standards of training then there is a high level of risk that solicitors admitted post TFR will not enjoy the same acceptance of their qualification as that which at present prevails.

The TFR proposals are to adopt in part the Italian model, which the Italians themselves are already moving away from. The *STAGE* programme on European legal training (now under the umbrella of the European Federation of Bars (FBE)) has always campaigned for a minimum level of post university training in a professional training school. It would be inappropriate for the Law Society of England and Wales to adopt a discredited model at a time when other countries are calling for the adoption of our own current system.

The Scottish Law Society experimented with a similar approach as that proposed in the Third Consultation. The proposals were abandoned after the pilot. The Bar Council has recently voted to retain the Bar Vocational Course. It would be perverse if the Law Society decided to adopt an approach already discredited and abandoned in other jurisdictions. Furthermore in international terms, a difference in perception of the standards of training for barristers and solicitors will have a detrimental effect on solicitors in foreign jurisdictions. Barristers will continue to receive the same recognition, and solicitors may not. This is particularly ironic at a time when there is some amount of cross over between barristers and solicitors and a recognition of the equivalence of our training and level of competence

International Bar associations work with governments to harmonise and enhance the training and qualification requirements of lawyers. A major incentive for improving requirements is to maintain the confidence of foreign investors in the lawyers' profession. Any reduction in quality or even a perceived reduction in the quality of the training requirement for solicitors in England and Wales may have a detrimental effect on the confidence of foreign investors and commercial partners.

Solicitors trained in England and Wales need to be on a level playing field with lawyers trained in other jurisdictions. There is already an increasing tendency for foreign Bars to challenge the adequacy of solicitors' training for admission to their Bars.

The Society considers it important to maintain good relations with our counterparts in other jurisdictions. We are aware of how failures by overseas Bars to maintain the quality of lawyer's training has incurred strong criticism from international Bar associations. The committee would be unable to justify the full force of the TFR proposals in respect of the training and assessment of future solicitors. The Society recommends greater investigation of where flexibility can be introduced into the current scheme of training and assessment and the rejection of the current proposals to make radical changes to the assessment system for qualification.

## **Part Three**

### **Conclusions**

The Society welcomes the TFR and the discussions taking place within and beyond the profession regarding the criteria and qualifications needed to produce future entrants to the profession of the highest standard and who will be best equipped to practise. The Society entirely agrees that there should be the widest possible accessibility to the profession, consistent with producing entrants of the necessary quality.

The Society believes that the following safeguards should be retained or introduced:

- (a) A core of compulsory examinations or assessments to be set and marked by the Law Society which would have to be passed by all candidates, subject to very limited exceptions or special arrangements. The Society strongly recommends the continuation of the current Legal Practice course in substantially its present form;
- (b) Publication and regular revision of syllabuses by the Law Society for all parts of the qualification process but with a particular importance attached to the compulsory elements;
- (c) The continuation of an accreditation system for courses and teaching institutions but with more scope for part time, distance learning and other flexible methods of qualification;

- (d) A mandatory training contract of at least two years for all candidates, subject to very few exceptions or rights to minor waivers of time;
- (e) A modest amount of work based assessment but on the understanding that the burden for assessing trainee solicitors should not fall to a significant extent on practising solicitors in a candidate's own firm or employer. Work based projects assessed by external examiners would raise issues about client confidentiality which have not been covered in the Law Society's proposals or yet satisfactorily resolved;
- (f) Any reforms to the qualification process must ensure that the recognition of the Solicitors' qualification by other professional institutions in this country and abroad is maintained. The Law Society should consider very carefully and compare the existing qualification regimes of English barristers, Scottish solicitors and advocates and English accountants before departing significantly from those models.
- (g) Ways should be found to reduce the cost of the course fees for the current Legal Practice course and care should be taken not to introduce yet further cost barriers to those seeking to enter the profession;
- (h) Re-introduce the excellent system which allowed non graduates to serve five years articles, pass professional examinations and qualify as solicitors.

*Submitted by the City of Westminster and Holborn Law Society  
July 2005*