RESULTS OF PROJECT
RESEARCH-INFORMED SUPPORT AND PREPARATION FOR ACHIEVEMENT
OF THE WORK-BASED LEARNING OUTCOMES PROPOSED BY THE
SOLICITORS' REGULATION AUTHORITY

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Summary:
The proposed change to a summatively assessed work place learning within a competence framework is a major paradigm shift, *and the most significant change in pre-qualification education since 1993*.
This study explores and provides tentative conclusions as to
- Those aspects of the work-based learning outcomes which might require support by classroom-based activity.
- The place of reflective learning within the assessment structure consequently providing food for thought for those engaged in LPC provision as to the skills which it may be necessary for trainees to display to meet the challenges ahead.

Keywords: competences, work based learning, vocational preparation, reflection

> Competence is not the only thing of value in law practice, but without it, nothing else matters very much. The legal profession and the courts both recognise the inherent value of competence: competence is an ethical duty and gross incompetence is considered professional misconduct. To clients, competence is the bottom-line requirement they demand in their legal representatives.
>   But what exactly is competence? … Competence bears the same relation to professional work as truth does to art. Like truth in art, competence in legal practice can never be definitively analysed. It is one of those qualities best described by the label "you'll know it when you see it." … Apart from all the value it brings to clients, competence is worth pursuing for its own sake.
> Nathanson, (1997: 144)

Introduction
What is the training contract, in its current incarnation, for? Is it a "period of legitimate peripheral participation" (Lave and Wenger, 1991) by the end of which the apprentice is, if not a master, at least grounded in all aspects of his or her role with a completed, if miniature, apprentice piece to show? Boon and Whyte suggest, for example, that "from the views expressed to us, it appears that some employers expect trainees on day one to be consummate solicitors" (2002:32, see also Boon and Whyte, 2007). If not, is it more simply a period of socialisation (see Sommerlad, 2007, 2008) and learning of office practice, in which case, why not serve it in a different kind of office?

  The genesis of the SRA in a time of considerable pressure on the profession to gets its house in order in terms of quality of performance (Farrar, 2001; Clementi, 2004a and 2004b; DCA, 2005; Gibb, 2006) as well as to address matters of access to the profession, it is no surprise that its view of the period immediately prior to qualification is that it should be a time of working towards the meeting of objectively determined, cross-profession standards, not only those for the period of work-based learning but also the "day one outcomes"

(apparently drawing to some extent on the Australasian Professional Legal Education Council outcomes, 2000).

The intention is, after all, that the period of work based learning be summatively *assessed*. Whilst some firms will already use statements of competence in some form to delineate, for example, their expectations of what trainees might be expected to achieve after the first year, this paradigm shift into summative assessment (with the possibility of failure) is, I suggest, the most significant change in pre-qualification education since 1993.

Competence frameworks have been criticised as inhibiting, the very notion of a defined series of indicators suggesting exclusion of others; as mechanistically focussed on minimum level performance of tasks (Webb, in Webb and Maughan, 1996: 35) and that, given the diversity of professional work and the inchoateness of that work it would be impossible or impracticable to define meaningful competences (and/or to assess them) in any event (Law Society, 2001b: 6).

In the political climate in which the profession currently finds itself, the move to assessment of competence seeks to address political objectives at both ends of the spectrum "the one, because they form part of economic rationalism; the other because they demand accountability" (Gasteen, 1995:13) and as a means of increasing public confidence in the profession.

The task of those designing the competence framework then is to seek to achieve what has been described in Australia as:

> … a balance between the misguided extremes of fragmenting the occupation to such a degree that its character is destroyed by the analysis or adhering to a rigid, monistic holism that rules out all analysis.
> Hager, Gonczi and Athanasou, (1994:5)

whilst addressing the inhibiting and mechanistic criticisms by enfolding within it elements of the capability concept

> In its first sense capability has a present orientation and refers to the capacity to perform the work of the profession: capability is both necessary for current performance and enables that performance. In its second sense, capability can be said to provide a basis for developing future competence, including the possession of the knowledge and skills deemed necessary for future professional work.
> Eraut, (1994: 208)

so as also to meet the political agenda.

The shape of the WBL outcomes

The first group of (at that stage) "standards" for the period of work-based learning was disseminated for consultation in 2007 (SRA, February 2007). The refined set currently under pilot is to be found in the SRA's Handbook for that pilot (2008). These can be compared with the current requirements for training contracts (SRA, November 2000; SRA, July 2007a). In the current format, the outcomes are not only to be assessed at the end of the period but also as to "currency and consistency".

Outcomes are grouped into self-contained categories with the result that there is scope for some overlap between them (such as the "asking for help" outcomes 5.4, 6.3 and 7.2, or the existence of an outcome representing interviewing and advising (1.3.3) with separate outcomes for "effective questioning" (2.4) and "effective listening" (2.6)) and for generic and specific versions of a similar outcome to exist (such as 2.2, tailoring of communication style to fit the needs of the recipient generally, compared with 2.3 which involves tailoring of communications to the cultural diversity or vulnerability of recipients). Others involve a number of sub-competences, as for example, 5.6. The individual is required to have experience during the period of work-based learning in at least

three distinct areas of legal practice, including contentious and non-contentious work (SRA, 2008).

One significant area of difference between the 2008 outcomes and the current training contract requirements, aside from issues of assessment, is that they are framed in terms of effective use of skills. The current training contract requirements are phrased, for the most part, in terms of the trainee being enabled to "understand the importance of". The work-based learning outcomes, however, draw directly on the LPC competence, requiring *effective exercise* of, for example (at least) existing advocacy skills. The trainee, on the other hand, is required only to "understand":

- the communication skills of the advocate
- the techniques and tactics of examination, cross-examination and re-examination
- the need to act in accordance with the ethics, etiquette and conventions of the professional advocate

SRA (July 2007a)

and to "*grasp* the principal skills required to prepare, conduct and present a case" (my italics) without necessarily ever making an appearance in court him- or herself.

Level at which to be assessed?
Johnson and Bone suggest that NVQ level 7 (*i.e.*, HE M level) is too high in terms of skills to be expected of a newly-qualified solicitor:

> … as at day one the solicitor appears to stride two levels – he or she has the graduate level (and on occasion master's level) of knowledge and understanding but his or her skills are not yet high enough to warrant the label of "manager" for which the NQF level 7 is primarily designed.
> Johnson and Bone (2004.: 4)

There is then a question, particularly with the category 1 outcomes described below which draw most explicitly on the LPC to be performed, at the end of the period of work-based learning, at a higher level than the LPC (mostly defined as HE level 3) or whether they to be performed at the same level but in a different context. If the law to be identified and applied (outcomes 1.1 and 1.2 in the 2008 iteration) is a JASB "foundation of legal knowledge" (Law Society, 2001a), should the level expected be higher than if it is a specialist area that the trainee has not met before or should credit be given for having to refresh the memory?

Is there scope for recognition of the "regression" that can be seen when trainee professionals move into more complex areas of their discipline (Boshuizen, in Boshuizen *et al*, 2004:85ff in the case of medical students and Arts, Gijselaers and Segers in Boshuizen *et al*, 2004: 97 at 104 in the case of management students)? The problem is, of course that, as in the Nathanson (1997) quotation at the head of this paper, an experienced training principal can recognise the appropriate level when he or she sees it and in the context of his or her organisation and the peculiarities of its practice. For my own part, I suspect the answer is somewhere between HE levels 3 and M. Even if atomistic dissection is unattractive, students are used to and will therefore expect some degree of clarity and transparency. As I will show, interviewees were particularly concerned that, if assessment were to take place, it should be fair and objective.

Intersections of 8 groups of outcomes with LPC activity
Whilst an element of employer support (and where relevant, that of any external assessment organisation) is inherent in the scheme currently being tested, that employer support may be variable or grudging and can in many cases be assumed to be provided by those unfamiliar with competence frameworks or their assessment (or even the nearest equivalent, the NVQs accredited by Skills for

Justice, 2006). The first challenge, then, in my suggestion, is for LPC teachers to have some familiarity with the outcomes, so that they can identify the linkages for students, and in particular the topics on which they can expect to be assessed again during the period of work-based learning. As the first two outcomes, however, involve an ability to identify relevant law and apply knowledge and understanding of the law, those whose focus is principally on the academic stage are not excluded. The list in the Appendix identifies the obvious linkages but also suggests, in parenthesis, areas where outcomes may be addressed in part or more tangentially, where the link might be made more explicit for the student. I do not expect these suggestions to be uncontroversial (and the answers might differ from LPC to LPC).

Reading this list demonstrates a significant aspect of the work-based learning outcomes. The move to competences for the period of work-based learning is a move to generic, cross-disciplinary competences, rather than, as at present, that trainees complete specific tasks in specific fields of practice. This is, presumably, to deal with some of the criticisms about the diffuse nature of practice that arose in the first consultation (Law Society, 2001b) but also has the effect of widening access to qualification by those working in more unusual environments within the legal services sector. This emphasis on generic communications, client relations, workload management and working with others, the latter two being aspects of socialisation into the workplace, may be susceptible of transfer from students' (particularly perhaps mature and part-time LPC students') previous experience of office life.

Design of the empirical study
I was fortunate in being awarded a research leave bursary by Nottingham Trent University, which enabled me to take time not only to supplement my initial interest by more sustained desk work but more particularly to carry out some empirical data collection amongst current trainees. My intention was to create a phenomenological description of the interaction of the current working experiences with the expectations shown in the outcomes and to collect descriptions of their evaluation of prospect of summative assessment. Following internal ethics approval of the project (and the precepts of BERA, 2004) and approaches to a number of gatekeepers, I interviewed (my initial plan for observation having proved impracticable) nine trainees at two firms each with a broadly, but not exclusively, commercial basis. Transcripts were forwarded to individuals after the event with an invitation to correct, add or further anonymise. An anonymised overall preliminary summary of results was provided to firm gatekeepers and to interviewees after the event.

Interviews then proceeded very simply by taking each outcome in turn, in the order in which they were presented in the relevant draft and inviting the interviewee to explain whether he or she had the opportunity to demonstrate that outcome (and if so, recalling the "currency and consistency" criterion; with what degree of frequency). Use of the word "demonstrate" was deliberate, as for the purposes of assessment, not only must the individual participate in the activity but also provide evidence of their having done so and their competence in doing so. The second part of the interview was considerably less structured and allowed for discussion about the concept of assessment, including assessment of the reflective learning envisaged by outcome 7.3.

Analysis
Analysis was aided by use of an ATLAS.ti database for code and retrieval purposes. For the purposes of this paper I have broken results from the first part of the interviews down into four main groups: understanding of the wording; emotion and embarrassment; opportunity to perform and finally, and leading into my discussion of the results of the second part of the interviews, how outcomes might be demonstrated.

Understanding the outcomes

It is fair to say that issues of understanding emerged to a greater extent in the 2007 iteration than for the 2008 version. I have coded 29 quotations under the heading "don't understand the question" although it is of course also possible that interviewees might provide a creative reading (possibly even one more creative than the drafters of the outcomes anticipated) or that interviewees were simply querying wording for reassurance. Understanding of the outcomes will, of course, be a critical issue for these former law students, more than used to semantic analysis. To the extent that they are required, in the future, to take responsibility for showing achievement of the outcomes, a level of commonality about what the outcomes are intended to cover will be critical.

The phrase "ethical dilemma" produced curiosities of interpretation which could transcend the mundanity of the *Solicitors Code of Conduct 2007* (SRA, July 2007b), raising issues of personal morality:

> *Opportunity to demonstrate identification of potential/actual ethical dilemmas (2007 iteration: I replaced the expression "flag up" with "identify" in the interview schedule)*
> Well, the way I see this is having to work on a file where I don't necessarily agree with doing it.
> Interviewee 1, 4th seat at time of interview
>
> *8.2 Opportunity to demonstrate exercise of effective judgment in relation to ethical dilemmas and professional conduct requirements (2008 iteration)*
> "Ethical dilemmas", you have to understand what "ethical dilemmas" means. What could that mean in a professional working environment? It could mean a number of things. If a client is doing something that is immoral and wants advice on that. You have a duty to the client to act in its best interest, you have a duty to the court, you have a moral duty, a personal moral duty.
> Interviewee 2, nearing end of 2nd seat at time of interview

The more widespread issue with the Business Awareness pair (in the 2008 iteration) of outcomes lies, I suggest in its seeking to combine two concepts which may be separate in the minds of some interviewees or labelled with different terminology (such as "commercial awareness").

> *Opportunity to demonstrate an appreciation of the business context in which working (2007 iteration)*
> • *external*
> And in terms of external, I don't know whether you'd count things like going to graduate recruitment fairs and talking to undergraduates about the firm. Not so much the hard sell, but, you know, you're explaining to them the context in which we're working. I've done quite a few of those.
> Interviewee 3, starting 4th seat at time of interview
>
> *4.1 Opportunity to demonstrate an appreciation of the internal and external business context of your work (2008 iteration)*
> And external I guess that means in terms of external clients possibly our appreciation of the business context in which they're working. … it's commercial clients and tying in with their expectations, their objectives, you have to understand their business model and how the transaction fits in with what they're doing and the ramifications for their business as well.
> Interviewee 8, 2nd seat at time of interview

Emotion and embarrassment

Outcomes relating to broader social issues, or issues that were potentially more personally sensitive – such as those explicitly related to accommodating social and cultural diversity and treating others with respect – caused some difficulty for some interviewees. This was not because the outcomes were perceived to represent inappropriate desiderata: quite the contrary. Embarrassment seemed to be related more accurately to the suggestion that

one could or should be called upon positively to demonstrate what interviewees felt ought to be a given.

> *Opportunity to demonstrate sensitivity to social/cultural diversity in communication with colleagues (2007 iteration)*
> How do you demonstrate sensitivity? … I think first just working with people, …
> Interviewee 3, starting 4th seat at time of interview

> Again, I don't know whether or not that's something that I would consider to be a given. And so, therefore demonstration of sensitivity to it is a, it's almost like an artificial thing, it's like a "demonstrate that you're being sensitive to diversity". To an extent as far as I'm concerned, you should do anyway.
> Interviewee 4, starting 4th seat at time of interview

> *6.4 Opportunity to demonstrate treating colleagues and others with respect and professionalism (2008 iteration)*
> And I think my mum taught me respect so I hope that I do come across like that.
> Interviewee 6, 4th seat at time of interview

> I'd like to think 6.4 was a daily thing really! I'd be worried if it was anything other.
> Interviewee 8, 2nd seat at time of interview

Whilst these responses pay tribute to interviewees' integrity, other outcomes with a possible emotional context might (or might not) involve unacceptable confession of personal weakness:

> *Opportunity to demonstrate awareness of own professional limitations (2007 iteration)*
> I think you've got to have an *awareness* of it. Whether or not you'd want to *demonstrate* your own limitations is another completely different kettle of fish. … Interviewee 4, starting 4th seat at time of interview

It should be said, however, that where interviewees had specific recollections of specific examples in practice of *clients* with disability or vulnerability, such embarrassment tended not to be shown. Examples of such issues arising in relation to colleagues, on the other hand, were rarer.

Opportunity to perform the outcomes
One of the intended objectives of this project was to seek to identify and provide tentative conclusions as to those aspects of the work-based learning outcomes which might in practice require support, strengthening or, indeed, delivery by classroom-based activity for learners and/or their supervisors. There are a number of firms, with the resources to do so, who are satisfying the current criteria for provision of the required range of experience for trainees by a combination of simulation and pro bono work. There is nothing in the proposals for the work-based learning scheme that would necessarily dislodge this need for alternative provision: if a firm cannot supply litigation experience now, the position is unlikely to change by 2011. The change to assessment of performance and assessment of quality of performance, however, raises a number of other potential challenges to a work-based and evidence-based assessed system, even though the outcomes are not tied to any particular field of practice (with the exception of advocacy). For example:

1. This activity is not performed in this organisation at all.
2. This activity is performed but not by trainees.
3. This activity is performed by trainees but with substantial filtering before the output reaches the client.
4. This activity is performed by trainees in some seats but not in others.

5.   This activity is performed by trainees but it is fortuitous whether it will occur in a two year period.

6.   This activity is performed by trainees but only towards the end of the period/end of the seat.

7.   This activity is performed by trainees but it is difficult to provide satisfactory evidence of it (especially to a third-party assessor outside the firm).

Whilst I strove, during interviews, to refocus individuals' minds on the questions of their own performance and demonstration of competence in that performance, the attractiveness of the outcomes as a set of general desiderata for good practice sometimes caused difficulty in assessing whether positive responses were to the individual's own performance of the competence, as opposed to their recognition of the competence as something that the firm or the team needed to do.

I don't do that

Three main categories emerged from the data under this heading. Six of the nine interviewees, including some who were on the verge of qualification, had carried out no advocacy in court or tribunal. The fact that the outcome is defined in terms of application of skills from the LPC (combined with the political aspect tied to solicitors' rights of audience discussed above) suggests that the intention of the drafters was to focus on advocacy in its more conventional sense. Advocacy then, remains the most challenging of all the outcomes.

The majority of interviewees also expressed difficulty with the group of outcomes related to appropriate response to cultural and social diversity (and, in the 2007 iteration, disability) both within the workplace

> If I'm honest, I think, while we all have different backgrounds, we probably aren't overly diverse in the workplace. I mean there's different people from all different parts of the world and different parts of the UK, I suppose, but I don't think the opportunity arises to be sensitive to our differences because we're professional.
> Interviewee 2, 5 months into training contract at time of interview

and with clients.

> And obviously in terms of clients I don't know how you would demonstrate it, other than … act in a respectful approach which I think I do.
> Interviewee 3, starting 4th seat of training contract at time of interview

A minority of interviewees was, however, able to point to specific examples of clients with emotional or mental health issues or faith requirements that involved, for example, not contacting them at particular times. It is possible that candidates in the future might benefit from discussion of "tailoring communication" and possible solutions, in the LPC classroom to help them address this outcome in the workplace.

The third category here is also related to an outcome that interviewees had in some cases struggled to understand. Five interviewees had not had the opportunity to demonstrate dealing with an "ethical dilemma":

> Ethical dilemmas, I haven't really encountered any of that yet, which is good. I don't intend to either.
> Interviewee 7, 2nd seat at time of interview

Whilst, of course, clarity about the meaning of an "ethical dilemma" and how it is distinguished from a (mere) "professional conduct requirement" (2008 iteration) would be helpful, I suggest again that discussion of ethical dilemmas already probably makes its way into the LPC Professional Conduct classroom, even if not

under that name. The outcomes do assume that, at some level, trainees might engage in client contact (even if only on discrete matters) and that they might be responsible for analysis and provision of solutions. Trainees did not, however, necessarily see themselves as performing such tasks, perhaps because they assumed that the primary responsibility for a transaction was intended:

> *Opportunity to demonstrate identification of client's objectives and priorities(2007 iteration)*
> Again I think I will have the opportunity to do that in the next couple of weeks. I still haven't had that opportunity to see clients from the very start and you know that's normally my supervisor doing that. Or, yeah I think that's something which more falls to supervisor and fee-earner who takes the initial instructions. …
> Opportunity to demonstrate taking accurate instructions (2007 iteration)
> That's made my point. I don't think I possibly have that option. No, that's always fallen to someone slightly more [senior?].
> Interviewee 3, starting 4th seat at time of interview

although some interviewees did distinguish between primary responsibility and a trainee-level of activity (which might usefully be articulated in a statement of level attached to the outcomes):

> *1.3.3 interviewing and advising (2008 iteration)*
> The only time that I suppose I think a trainee would be asked to interview a client, would be for example in taking witness statements and I've done that to a large extent in the latter seat.   In terms of advising, those are, you're given less responsibility to advise face to face but when you're speaking with a client on the telephone, or writing to the client by email or letter, then certainly you will be advising the client. But face to face meetings, for some reason, although it can be exactly the same process, that's carried out by your supervisor or a more senior lawyer.
> Interviewee 9, 2nd seat at time of interview

I do it but it is filtered before it reaches the client
Setting an appropriate "trainee-level" as to complexity and degree of responsibility for the whole or part only of a transaction will vary between employing organisations but also between seats (in the same firm, for example, the PI department may have a number of small files; whilst the commercial property department works in teams on large transactions). Established schemes for assisting in law or legal advice centres might be employed to supplement workplace activity.

   Whilst one can envisage it being difficult to "take accurate instructions", even on part of a transaction, without direct client contact, other outcomes are perhaps susceptible of being assessed legitimately on the basis of the trainee's first draft, knowing that the final version will be reworked, or at least delivered, by someone more senior.

> *2.1 Opportunity to demonstrate use of clear, concise and unambiguous language in communications with clients and other recipients (2008 iteration)*
> I think as trainees, you're given ample opportunity to demonstrate all of the above there. In the letters you write, in the emails you send out, they're constantly checked by your supervisor who will go to town on them if they don't think that you've written them in an unambiguous way. Simply because I think they're aiming to show you at an early stage of your career, that the correct way of writing something. …
> Interviewee 9, 2nd seat at time of interview

My opportunities to do this vary between seats
Given the requirement for assessment with "currency and consistency", to the extent that this is the case, there might, in a sequential seat system, be challenges where opportunities to demonstrate a particular outcome occur only in earlier seats rather than towards the end of the period when overall competence might be expected to be higher.

Three main areas were identified as differing between seats: involvement with the law; client interaction and opportunity to manage concurrent tasks. Law was seen to arise first of all more in contentious activity than in contract-driven non-contentious work:

> *Legal research (2007 iteration)*
> Legal research, I think I've done lots of. I'd say that was something I do pretty much daily, depending on which seat I'm in. For my first 6 months that was pretty much what I did. So with other seats where I haven't done so much, [non-contentious property] for instance, but I'd say that's something that I feel very confident with.
> Interviewee 3, starting 4th seat at time of interview

and the quality of research required might also differ:

> *Legal research (2007 iteration)*
> … when I was in [contentious seat] and also when I was in [1st property seat] they're more long-term, they're bigger problems which require more analysis and so therefore it's different types of research depending on your department.
> Interviewee 4, starting 4th seat at time of interview

and the extent to which one needed to keep up to date:

> *Opportunity to demonstrate keeping up to date with law (2007 iteration)*
> That was most common in my [contentious] seat I have to say. Because, again, it's more, it's a strange thing to say, but it's more important and it's more changeable in litigation because another case will come in and completely change the whole precedent basis of a particular facet of law. In [non-contentious] for example, it will mean a new statute so when the new Companies Act comes in. And, so, it's a lot easier to maintain, to kind of show you're keeping up to date with the law in a discipline which is changing all the time. …
> Interviewee 4, starting 4th seat at time of interview

Related to this is the opportunity to demonstrate management of workload, which might well depend on the way in which the supervisor allocated work to the trainee, as well as on the nature of the work carried out by each department.

> *Opportunity to demonstrate management of a number of cases/tasks concurrently (2007 iteration)*
> Yeah. I think particularly in [property] that's true because you have this, you know, lots of files and you are managing, you are keeping an eye on them all so yes, definitely.
> Interviewee 5, 2nd seat at time of interview

It is fortuitous whether I would have the opportunity to do that
Where outcomes manifest fortuitously, one might argue that it is as difficult for the individual and for their employer as if the outcome could routinely be said not to occur at all but where steps can be put in place (for example by making arrangements for secondment). Whilst fortuitous opportunities may be more imagined than real, if the opportunity exists to work with the candidate to identify the range of activity intended to be covered by the relevant outcome, they will also raise problems of demonstrating currency and consistency. Fortuitous examples cited by the interview group included secondment to a client; unusual cases (where there was, perhaps no existing expertise within the firm); standing in for a sick colleague and cases that raised particular ethical or professional conduct issues. Although these unusual experiences, perhaps because of their unusual characteristics are full of resonance for interviewees, it seems ironic, to say the least that in some cases it is work that is out of the ordinary that may prove to be an important means of demonstrating outcomes intended to represent the generality of practice. The distinction then is between treating the

outcomes as a demonstration of what candidates do do (competence) and what they can do (capability), even in circumstances which arise rarely.

I will only do that towards the end of the period or the end of the seat
The end-loading demanded by the "currency and consistency" criterion which I have identified as causing challenge where opportunities arise at the beginning of the period is, of course, helped by the increasing responsibility and autonomy demonstrated by interviewees towards the end of a seat or of the period itself. Interviewees spoke of being given greater responsibility in, for example, responsibility for file-opening; of increased confidence in understanding and application of new law which they had had to learn within a seat (rather than apply form the academic stage or LPC); increased efficiency in knowing what to listen for or ask about as well as to estimate how long tasks would take; being able to evaluate alternative courses of action and increased awareness of others' skills enabling them to make more effective use of their colleagues.

How to demonstrate achievement of the outcomes
A small minority of interviewees had some understanding of providing evidence for assessment of a competence framework or of reflective writing, either because they themselves had had to do it before, or because they had friends or relations qualifying into other professions, who had. Otherwise, it provided difficult to encourage interviewees, during the first stage of the interview at least, to think about *proving* the quality of their performance. Some of the outcomes that had provoked responses of emotion or embarrassment did so because they were perceived as a given which perhaps could only be demonstrated in the negative.

> *Opportunity to demonstrate working to put clients at ease (2007 iteration)*
> It's another one of those demonstrate ones. I'm not sure how you would demonstrate these things. I mean it's all very well saying that yes I can keep the client informed or: I suppose that's e-mail, keeping the client informed. "Opportunity to demonstrate putting clients at ease", I just don't understand how you - other than getting the client to write a little thing saying, you know, "I was put at ease by X trainee" - I mean you can send e-mails with you being nice to clients, but how else do you? You're going to want to know what I think about the questions, aren't you?
> Interviewee 3, starting 4th seat at time of interview
>
> *5.1 Opportunity to demonstrate management of a number of cases/tasks concurrently so as to meet all objectives, priorities and deadlines relating to those tasks (2008 iteration)*
> *Demonstrate* management of a number of cases: well I guess the fact that you have to do it is a demonstration I think as much as anything! …
> Interviewee 8, 2nd seat at time of interview

Even then, therefore, there is a range of understanding from a focus on examples of activity which demonstrate an outcome to the question of (potentially paper) evidence of performance which could legitimately be assessed by a third party.

> If there was another assessment after two years, it won't be a full reflection anyway, because maybe they'll just look at some folder and "This is what the person wrote": that could be anything that that person wrote. You know, if there anyone, is your supervisor going to, like, comment on this like "This person hasn't lied and this is what they've done" or is it solely going to be judged on just on the written pieces of work? Because, yes, they might have really good on the written pieces of work, but how are their oral skills or how are they with the clients? Or are the SRA actually going to come and watch you one day when you're sitting in a client meeting or when you're talking to the client?
> Interviewee 7, 2nd seat at time of interview

Reflection and assessment

The second objective of this study was to examine the place and practicability of reflective learning within the period of work-based learning and the methods of support which might be suitable for promoting it. Despite the best efforts of UKCLE, (Hinett, 2002), reflective learning may still be less than common during the academic stage. As far as the LPC is concerned, ability to deploy the technique occupies a middle ground: desirable but not assessable:

> … students should
> 1) be able to reflect on their learning
> … the Legal Practice Course Written Standards can provide a valuable starting point, enabling the student to plan his or her future educational needs, according to the strengths and weaknesses identified by them during the course.
> SRA (November 2004)
>
> However, while a student is expected to be able to 'reflect on their learning and identify their learning needs' as a consequence of undertaking the course and should undertake reflective evaluation of their performance during the course, it is not expected that this outcome will be explicitly assessed.
> SRA, (April 2008)

Assuming, of course, that we can all agree on what "reflection" is in the educational context - Brockbank and McGill (2007) found six different concepts at large amongst university tutors, encompassing varying degrees of reflexivity and criticality inside and outside "experiential" learning environments – if students are not taught to recognise and deploy reflective learning in the academic or vocational stages, or do not realise that they are being taught to do so, the profession has to assume that the technique can be learned, effectively deployed and assessed as competent, entirely in the workplace:

> **7 Self- awareness and development**
> By the end of the period ... a successful candidate should be able to
> 7.1 evaluate accurately the strengths and weaknesses of his or her professional skills and knowledge
> 7.2 identify situations where the limits of his or her abilities are reached, and the next steps in such cases, in clients' best interests
> 7.3 reflect on experiences and mistakes so as to improve future performance
> 7.4 identify areas where skills and knowledge can be improved, and plan and effect those improvements
> Work-based learning outcomes

The model of the reflective process, then, is three dimensional although Moon (1999:154) has attempted to map it two-dimensionally, representing the initial, more mechanistic aspect of reflection as process (noticing, making sense, and making meaning) as "surface" and the final stages of working with meaning and transformative learning as involving "depth" with its concomitants of double-loop learning and reflexivity. As identified by Cowan (2006), there is a forward trajectory in reflection whereby the learner moves toward further action ("AE") and further reflection rather than, as might be inferred from the two-dimensional layout of the Kolb (1984) cycle, remaining static. Reflection-on-action as a positive learning strategy, leading to transfer and improved future performance (part of the capability agenda), is seen by Eraut as involving a series of interrelated activities which bear comparison with Moon's:

> 1 the extraction of potentially relevant knowledge from the context(s) of its acquisition and previous use;
> 2 understanding the new situation – a process that often depends on informal social learning;
> 3 recognizing what knowledge and skills are relevant;
> 4 transforming them to fit the new situation;
> 5 integrating them with other knowledge and skills in order to think/act/communicate in the new situation.
> Eraut (2004:256)

Whilst some researchers have detected an age-related aspect to an ability to engage in reflection-in-action (as defined by Schön, 1983), that is, as problem-solving process (King and Kitchener (1994), others have suggested that reflective problem-solving can be engaged in by novices (Ferry and Ross-Gordon, 1998) and yet others have suggested that, as reflection-on-action, it requires a considerable amount of prior experience. Atkinson and Claxton suggest, for example, that "considerable tacit expertise" may be necessary before the process of "explicating and theorizing one's competence through discussion and reflection" is possible or appropriate (2000:3). Ecclestone (1996), further, suggests that Dreyfus proficiency is the watershed, and this seems to be consistent with the view of Marsick and Watkins (1990:76). The difficulty for new practitioners will be, I suggest, items 3-5 in Eraut's list or the "depth" factors of Moon's where prior experience (unless it can be transferred directly from LPC experience) is relevant.

> *7.4 Opportunity to demonstrate identification of areas where skills and knowledge can be improved and plan and effect those improvements (2008 iteration)*
> It's like what you said. In the beginning, you don't know what your limitations are. Certain areas, you know "This is what I can do" because either it's pretty simple, straightforward and you've got clear, concise instructions or it's something you've done on a regular basis, it's repetitive. And that's useful, so you know "I can do this, this is the way, how you go about it". Or, if there's a new thing, sometimes it's better to actually realise "I've never done this before, this is my limitation" or "I don't know the full knowledge of it" and seek assistance and advice on that. Give it your best shot and see how it goes from there. That's the, generally you do kind of realise "Oh, I may have the theory behind all this work, but the practical knowledge, I'm a bit limited in that sense". So that can only improve on exposure over a period of time.
> Interviewee 7, 2nd seat at time of interview

A further hurdle may be an assumption that learning in the workplace is (only) unconscious learning leading to tacit knowledge, an assumption that must be dislodged in practice by what are now the group 7 outcomes

> *Opportunity to demonstrate working to continuously improve oneself as a professional (2007 iteration)*
> … it should be really a kind of process of osmosis: absorbing knowledge and getting better ... If you're a good trainee, if you're ambitious, then you should almost do that without thinking about it actually.
> Interviewee 5, 2nd seat at time of interview.

Anders Ericsson, adopted by van de Wiel and others (in Boshuizen *et al*, 2004: 184), suggests a mode of "deliberate practice" particularly in routine activity, focussing on preparation and deliberate debriefing and seeking of feedback which might be useful as a precursor to more classically reflective activity and a technique which can be introduced (indeed is probably already implicitly present) in the LPC and identified for transfer into the workplace. This leads me to a useful distinction made by Brockbank and McGill between "evaluative" reflection (the retrospective evaluation of performance in terms of strengths and weaknesses expressed in outcomes 7.1 and 7.4 of the 2008 iteration) which may be susceptible of independent performance by trainees but may be assisted by a more experienced view:

> … I think it would be useful for supervisors to also record how you've done on them because I think if this whole kind of self-praise has got kind of limited value, because we could all say "Oh we did this absolutely marvellously" when in reality actually we made a bit of a hash of it.
> Interviewee 5, 2nd seat at time of interview

This is to be contrasted with "critical reflection" which involves Moon's phases of working with meaning and transformative learning (Mezirow, 1990). Identifying how to improve future performance normally involves active assistance from others. Indeed, of the eight responses on the explicitly "reflective" outcome (7.3 in the 2008 iteration), six referred explicitly to assistance from others, either supervisors providing feedback or appraisal structures. Of the two who described a more self-directed approach to reflection, both had been triggered by difficult emotional circumstances.

Brockbank and McGill counsel that care should be taken in teaching reflection: if it is seen as yet another example of transfer of rules from an "expert" as this "will not engender the concept of a reflective learner, because the one-way process of transmission is antithetical to the means by which a person can become a reflective learner" (2007:61). Nevertheless, I suggest that reflective learning is a technique allied to critical thinking, that can be engaged in by the novice, but that it requires validation and support, *i.e.*, that the reflection being assessed is and has to be, assisted reflection. Whether that support comes from the LPC team or from the supervisor in the workplace, or both, will emerge in the next few years.

Whether reflection as a process is capable of or should be assessed is one of some controversy (Moon, 1998, 2004, for example, has expressed substantial doubts about assessing "raw" reflection).

> And I think as you, when I hear "reflective" I think I'm thinking of things like, you know, how can I show that, you know, "What did I do here?"; "How did I do it?"; "How would I approach the same situation again?" You know, "How do I think I did with it?" and I think it's, it's looking at … But I don't know how you would record it, because in terms of, you know, could you do a daily diary? That would take forever and we work long enough as it is, if I'm honest.
> Interviewee 3, starting 4th seat at time of interview

Interviewees' concerns about assessment extended beyond reflection *per se* into the whole concept of what the SRA now terms "evidence" to be gathered of achievement of the outcomes (SRA, 2008) and objective assessment:

> You know, how do you police the people supervising it? …what one person thinks is on a scale of 1-5 is good, can be what they are doing [is] comparing a trainee against a qualified person, whereas another supervisor you go to, when they say "good", they're comparing you on a trainee level. I think that comes up an awful lot in assessments. It's purely subjective, depending on who you get, and I think that kind of, how much work is that, to someone objectively looking at it, when, you know, you don't know the context in which it's been done? So, I think my queries on that would be: who would, who's checking to check that it's done properly?
> Interviewee 3, starting 4th seat at time of interview

Implications for the LPC

A first, and not unreasonable, question might be: why should this have any implications at all? As an LPC teacher I get on with delivering an LPC which is as good as possible. The training contract is for the profession to deal with. But if we have a joined up system, then just as changes to the LPC might be expected to have implications for the degree (aside from that little difficulty in identifying whether the degree is preparation for the profession or something else); changes to the training contract should have implications for the way in which we deal with the LPC which is intended to be preparation for it (Fancourt, 2004; Boon and Whyte, 2002 and 2007).

> I would be quite resistant to the idea of a further assessment heading into your training contract because I think there's this kind of great relief when you get to the end of your LPC, your days of being assessed, in a kind of exam room sense, are over. … Do as much as you can within the LPC to really reflect what it's going to be like when you are in the office so I think to have some sort of

> interaction between the workplace and the classroom more than you've spent a year on the LPC and you then go do 2 years of a training contract, if there was more of a merger between those 2 processes, I think that would be quite a helpful thing. I would prefer that to bringing more kind of LPC type assessment into a training contract if you know what I mean? I'd want the whole thing kind of geared towards being a practising lawyer rather than the tail end of an academic career. I think that's my feeling.
> Interviewee 5, 2nd seat at time of interview

Assuming that the proposal is implemented in 2011 in much the same format as it is being piloted, the 2010 full time intake (and those of the 2009/10 full time intake who do not obtain a training contract immediately) will have this further hurdle to surmount prior to qualification. The 2009/2011 part-time intake will meet the hurdle dead on.

So what might an LPC tutor do:

- Talk to students – scotch the rumours (whilst some particularly organised firms may be able to absorb it into their existing structures comparatively easily,

    > To be honest I don't know if bringing it in would make me a better solicitor when I qualify or any worse because you know big firms have standards they want to achieve anyway.
    > Maybe for a smaller firm who, [gives example of a trainee elsewhere whose experience appeared exploitative] so I can see why it might be important to have a checklist if the firm doesn't have the infrastructure. Certainly the infrastructure here is quite good and we're quite lucky I think to have that.
    > Interviewee 2, 5 months into training contract at time of interview

    it is not intended to be an *alternative* to the training contract: it is what the training contract will become);
- Use the terminology (business awareness, ethical dilemma, reflect);
- Make the connections, particularly as the outcomes the work-based learning outcomes will assess may be implicit or at the periphery of the LPC;
- Help them reflect:

    > I don't know whether or not it might be worth just giving some indication of what you might have to do as a trainee, in the LPC. On that level, it's obviously very good at [comments on own LPC provider] telling us all about the law, which is obviously the most essential, but it's not so; you don't often hear what you might have to do as a trainee on a kind of basic, in this kind of sense and I don't know whether you could do it. It's very, very firm-specific and, or whether or not students will listen to you; because if you can't apply it, it's what can you do really.
    > Interviewee 4, 4th seat at time of interview

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Appendix - Links between LPC and Work based learning outcomes

WBL outcomes (2008)	Nearest equivalent generic LPC outcome	Questions and comments
1 Application of Legal Expertise By the end of the period ... a successful candidate should be able to 1.1 <u>Identify</u> the relevant law and legal implications associated with an issue	Practical Legal Research 2(1): identify and apply current case law, statute law, statutory instruments, regulations and rules to the research problem	Specifically, as arising in different subject areas (could the link be made?)
1.2 <u>Apply effectively</u> knowledge and understanding of the law to the key factual and legal issues that are relevant to a client's needs, objectives and priorities	Practical Legal Research 1(4): address all relevant legal and factual issues Interviewing and Advising 2(1): advise the client taking into account the client's objectives, priorities and constraints and addressing all relevant factual, practical and legal issues.	Specifically, as arising in different subject areas (could the link be made?)
1.3 <u>exercise effectively</u>, both separately and in combination, relevant skills in areas of practice including	LPC outcomes: the course skills …. Students should also be able to transfer skills learnt in one context to another LPC course skills, item 8: be able to use the skills in combination where appropriate.	Are students aware when they are using skills in combination?
1.3.1 practical legal research	Practical Legal Research	
1.3.2 writing and drafting	Writing and Drafting	
1.3.3 interviewing and advising	Interviewing and Advising	
1.3.4 advocacy	Advocacy	
1.4 <u>Keep up-to-date</u> with changes in law and practice relevant to his or her work		This will arise in terms of ensuring research results are up to date. Do we discuss it more generally?
2 Communication By the end of the period ... a successful candidate should be able to 2.1 <u>use</u> clear, concise and unambiguous language in all communications with clients and other recipients.	LPC course skills items: 2: be familiar with methods of communication and able to choose and tailor the communication form and style to suit the purpose of the communication and needs of different recipients 3: be able to communicate orally and in writing and draft and amend documents in a form, style and tone appropriate for the recipients and the context 4: demonstrate attention to detail Writing, 2: writing style	Specifically – as arising in individual subject areas. (To what extent do we explicitly deal with non-client recipients?)

2.2 <u>Tailor</u> his or her style of communication to suit the purpose of the communication and needs of different clients and other recipients	LPC course skills items: 2: be familiar with methods of communication and able to choose and tailor the communication form and style to suit the purpose of the communication and needs of different recipients 3: be able to communicate orally and in writing and draft and amend documents in a form, style and tone appropriate for the recipients and the context 4: demonstrate attention to detail Writing, 1(3): be able to tailor the written communication to suit the purpose of the communication and the needs of different clients or recipients	Specifically – as arising in individual subject areas. (To what extent do we explicitly deal with non-client recipients?)
2.3 <u>demonstrate sensitivity to</u> clients' and other recipients' diversity and to any vulnerability or disadvantage, and <u>make appropriate adaptations to</u> the style and content of communications	LPC course skills: , item 7: demonstrate sensitivity to issues of culture, diversity and disability in communication with clients, colleagues and others Professional Conduct and Regulation 1(8): avoiding discrimination and promoting equality and diversity	(To what extent do we explicitly deal with this issue?)
2.4 <u>elicit</u> relevant information through effective questioning	Interviewing and Advising, 1(4): be able to listen actively and use appropriate questioning techniques	(Might we consider other circumstances in which questioning takes place, such as questioning of a supervisor on an allocated task?)
2.5 <u>address</u> all relevant factual and legal issues in client communication	Practical Legal Research 1(4): address all relevant legal and factual issues Writing 3(2): addresses accurately and correctly all the relevant legal and factual issues and, where appropriate, identifies practical options including the costs, benefits and risks of those options. Interviewing and Advising 2(1): advise the client taking into account the client's objectives, priorities and constraints and addressing all relevant factual, practical and legal issues.	Specifically – as arising in individual subject areas.
2.6 <u>listen effectively</u> to others	Interviewing and Advising, 1(4): be able to listen actively and use appropriate questioning techniques	(Could we make the link when covering other circumstances in which listening takes place, such as taking a witness statement?)
3 Client Relations By the end of the period … a successful candidate should be able to 3.1 <u>promote</u> clients' confidence and trust through <u>an organised, focussed and professional approach</u>	Professional Conduct and Regulation 2: understand the organisation, regulation and ethics of the profession Interviewing and Advising 1(5): be able to establish a professional relationship	(Do we discuss what a "professional" approach might entail?)

to the relationship with clients		
3.2 identify clients' needs, objectives and priorities with clarity, and take accurate instructions which reflect those needs, objectives and priorities.	LPC outcomes 2: identify the client's objectives and different means of achieving those objectives and be aware of • The financial , commercial and personal priorities and constraints to be taken into account • The costs, benefits and risks involved in transactions or courses of action Writing 3(3): identifies clearly clients' objectives and priorities, addresses their concerns and carries out their instructions Interviewing and Advising 1(3): understand how to conduct an effective interview that elicits the relevant information, allows the client to explain any concerns, anticipates the client's questions and has clear outcomes.	(Do we make the link between the interview and taking or recording "accurate" instructions?)
3.3 exercise effective judgment in evaluating alternative courses of action or possible solutions in the light of clients' needs, objectives and priorities.	LPC outcomes 2: identify the client's objectives and different means of achieving those objectives and be aware of • The financial , commercial and personal priorities and constraints to be taken into account • The costs, benefits and risks involved in transactions or courses of action Writing, 3(2): addresses accurately and correctly all the relevant legal and factual issues and, where appropriate, identifies practical options including the costs, benefits and risks of those options Interviewing and Advising 2(2): Identify possible courses of action, the legal and non-legal consequences of a course of action (including the costs, benefits and risks) and assist the client in reaching a decision	Note LPC outcomes use "identify" – does "exercise effective judgment" go further? Specifically – as arising in different subject areas.
3.4 take appropriate steps to inform clients of key issues including relevant facts, progress towards their objectives, and costs	Professional Conduct and Regulation 1(3): principles and practices of good client relations, client care and information about cost	(Do we discuss client reporting as arising in different subject areas?)
3.5 manage clients' expectations about likely outcomes.	Interviewing and Advising 2(3): identify any further decisions to be made or steps to be taken and manage the client's expectations including likely outcomes and timescales.	(Do we discuss management of expectations as arising in different subject areas?)
4 Business Awareness By the end of the period … a successful candidate	LPC course skills item 5, be aware of the practical, commercial and personal considerations which should	(Do we discuss the legal services market?)

should be able to 4.1 demonstrate an appreciation of the internal and external business context of his or her work	be taken into account. Professional Conduct and Regulation 2(2): in-house practice, including non-commercial advice services Professional Conduct and Regulation 2(3): business management of private practice, including the supervision of solicitors' offices, sole principals, partnerships and incorporation	
4.2 demonstrate an understanding of the costs and benefits of alternative courses of action in relation to business decisions	LPC outcomes 2: identify the client's objectives and different means of achieving those objectives and be aware of • The financial , commercial and personal priorities and constraints to be taken into account • The costs, benefits and risks involved in transactions or courses of action Writing, 3(2): addresses accurately and correctly all the relevant legal and factual issues and, where appropriate, identifies practical options including the costs, benefits and risks of those options Interviewing and Advising 2(2): Identify possible courses of action, the legal and non-legal consequences of a course of action (including the costs, benefits and risks) and assist the client in reaching a decision	Specifically – as arising in different subject areas.
5 Workload Management By the end of the period ... a successful candidate should be able to 5.1 manage a number of tasks concurrently so as to meet all objectives, priorities and deadlines relating to those tasks		(Do we discuss these topics with students, even in relation to managing their LPC workload?)
5.2 exercise effective judgment regarding the effective use or his or her time		
5.3 exercise effective judgment in respect of realistic timescales for completion of tasks and delivery of objectives		
5.4 raise any issues relating to completion of tasks and delivery of objectives with colleagues		
5.5 use resources effectively		
5.6 use and maintain files and other business systems appropriately to ensure that the organisation's regulatory obligations and business		Is this a potential Professional Conduct issue?

objectives are met, including accessibility of material to colleagues wherever appropriate		
5.7 <u>record accurately</u> his or her work to a level of detail appropriate to the work and the organisation	Practical Legal Research 3(1): keep a methodical, accurate and complete record of the research undertaken Writing 3(4): accurately and systematically records a meeting or presentation and its outcomes Interviewing and Advising 2(4): accurately record an interview, advice given orally, decisions made by the client and follow-up steps and, where appropriate, confirm instructions in each case in accordance with the outcomes for Writing	
Working with others By the end of the period ... a successful candidate should be able to 6.1 <u>demonstrate awareness of</u> the impact of his or her actions on others and on the organisation's objectives		(Do we discuss these, even in relation to students' working with other students?)
6.2 <u>co-operate with, support and share information with</u> colleagues to further the organisation's objectives.		
6.3 <u>identify</u> situations where the support of colleagues is needed, and <u>make effective use</u> of that support	Professional Conduct and Regulation 1(2): acting only when competent to do so Interviewing and Advising 2(5) identify the circumstances in which to take instructions or seek advice from a supervising solicitor	
6.4 <u>treat</u> colleagues and others with respect and professionalism	Professional Conduct and Regulation 2: understand the organisation, regulation and ethics of the profession Interviewing and Advising 1(5): be able to establish a professional relationship	(What "professionalism" might entail in relation to colleagues?)
7 Self- awareness and development By the end of the period ... a successful candidate should be able to 7.1 <u>evaluate accurately</u> the strengths and weaknesses of his or her professional skills and knowledge		(Do we ask students to do this in relation to their LPC studies?)
7.2 <u>identify</u> situations where the limits of his or her abilities are reached, and the next steps in such	Professional Conduct and Regulation 1(2): acting only when competent to do so	

cases, in clients' best interests	Interviewing and Advising 2(5) identify the circumstances in which to take instructions or seek advice from a supervising solicitor	
7.3 reflect on experiences and mistakes so as to improve future performance	LPC outcomes item 7: reflect on their learning and identify their learning needs	(Do we ask students to do this in relation to their LPC studies?)
7.4 identify areas where skills and knowledge can be improved, and plan and effect those improvements	LPC outcomes item 7: reflect on their learning and identify their learning needs	(Do we ask students to do this in relation to their LPC studies?)
8 Professional Conduct By the end of the period ... a successful candidate should be able to 8.1 interpret any situation in the light of solicitors' core duties and any other relevant professional conduct requirements, and act accordingly	LPC outcomes item 4: understand where the rules of professional conduct may impact and be able to apply them in context Item 5: demonstrate their knowledge, understanding and skills in the areas of: Professional Conduct and Regulation … LPC course skills item 6: deal appropriate with relevant professional conduct issues Professional Conduct and Regulation 1(1): the core duties of solicitors under rule 1 (etc)	
8.2 exercise effective judgment in relation to ethical dilemmas and professional conduct requirements	LPC outcomes item 4: understand where the rules of professional conduct may impact and be able to apply them in context Item 5: demonstrate their knowledge, understanding and skills in the areas of: Professional Conduct and Regulation … LPC course skills item 6: deal appropriate with relevant professional conduct issues Professional Conduct and Regulation i1(1): the core duties of solicitors under rule 1 (etc)	(Do we ask students to identify "ethical dilemmas" and/or to exercise judgment?)