

MULTIPLICITY AND MUTABILITY IN PROFESSIONAL LEGAL EDUCATION IN ENGLAND AND
WALES

*Jane Ching**

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* Professor of Professional Legal Education, Nottingham Law School, Nottingham Trent University, UK. ORCID ID: 0000-0002-9815-8804. I am indebted to my colleagues Professor Elizabeth Kirk and Associate Professor Graham Ferris for comments on an earlier draft of this article.

Abstract

The picture of legal services provision in England and Wales is highly complex, with multiple legal professions obliged, under the Legal Services Act 2007, to compete with each other. Each profession has its own qualification route or routes. Some are similar to the German dual vocational system. Others ostensibly rely on an undergraduate law degree that is not normally designed to align with practice (although some employers may prefer graduates of a one year conversion course) as the initial stage of a sequential approach involving a vocational course followed by a period of supervised practice. Government has, further, mandated new apprenticeship routes which speak closely to the culture of the professions that real learning to be a lawyer occurs in the workplace. Nevertheless, there are serious concerns about the diversity of some of the professions and the fact that in the higher-status, sequential models, young people can invest in two thirds of a qualification without being able to achieve the mandated work experience to complete it.

This article examines the current environment of regulation of legal professional education and proposed and actual changes made after the wide ranging Legal Education and Training Review (LETR) of 2013, concluding that although current developments emphasise choice they do not necessarily promote diversity in legal professionals.

A INTRODUCTION

This article examines changes to the qualification frameworks for lawyers in England and Wales that are being made in the context of an overarching neoliberal agenda that stretches across multiple legal professions. This agenda is articulated in the Legal Services Act 2007 (LSA 2007) which places an obligation on regulators both to “promot[e] *competition* in the provision of services”¹ but also to “encourage[e] an *independent, strong, diverse* and effective legal profession”² [my italics]. It is asserted by one of the legal professional regulators in particular that promoting competition in the provision of legal education to an extreme extent will thereby promote, *inter alia*, increased diversity in the profession. This goes far beyond the recommendations of the 2013 Legal Education and Training Review (LETR) which offered a more measured and, it is suggested, politically balanced, set of proposals.

The implementation of the LETR recommendations by the professional regulators aligns closely with “competition” but is far less likely, it will be argued, to make substantial headway in terms of the desired “independence” and “diversity”. If this is the case, then the changes to legal professional education in this country are fatally flawed, if not in their intent, then in their effect. This article uses the concepts of “competition” on the one hand and “independence” and “diversity” on the other to evaluate the proposed changes. Section C of this paper will, therefore, set out the different professional qualification structures. Sections D and E set out and evaluate the changes being made to them *following* – although not necessarily *as a result of* – the 2013 LETR report by reference to those concepts.

The starting point is, however, section B, an introduction to the background to, and key provisions of, the LSA 2007. This defines the domestic legal practice landscape for which aspiring lawyers are being trained. This landscape of multiplicity is complex and by no means coherent.

B THE LEGAL SERVICES ACT 2007

The LSA 2007, which applies only to England and Wales, was preceded by a sequence of reports criticising

¹ The LSB has recently articulated its view about the way in which education and training links to this objective: “Objective directly mentioned into our education and training guidance. Competition between training providers should lead to a variety of education pathways which could lead to more people completing training to become fully authorised legal services providers. This in turn gives more choice for consumers.” Legal Services Board, ‘Education and Training Project 2017/18’ (2 January 2009) <http://www.legalservicesboard.org.uk/projects/Education_And_Training_2017_18.htm> accessed 11 December 2017.

² The LSB’s understanding of this objective in terms of legal education is “Objective served by having an education and training regime which delivers legal professionals with the characteristics set out in this objective”, *ibid*.

lawyer monopolies³ in what was then a largely self-regulated system. Each regulated legal profession – barristers,⁴ solicitors,⁵ legal executives,⁶ notaries,⁷ licensed conveyancers,⁸ costs lawyers,⁹ patent attorneys¹⁰ and registered trade mark attorneys¹¹ – had a professional body that both represented and regulated its membership and controlled its route(s) to qualification.

The 2005 White Paper¹² that was the immediate precursor to the LSA 2007 suggested that new legislation should “put an end to the current regulatory maze”¹³ by prioritising the (assumed) needs of the consumer; simplifying regulation; permitting different kinds of organisation to deliver legal services and strengthening consumer complaint mechanisms. One might have thought that this would involve streamlining the plethora of legal professions and their “maze” of differing licensures and regulatory systems into one. Whether as a result of intensive lobbying or by design, however, the existing legal professions remained, provided their professional bodies separated their representative functions from their self-regulatory functions,¹⁴ and with the addition of a “super-regulator” above them, the Legal Services Board (LSB).¹⁵ Consequently, this statutory “simplification” now requires us to speak of both the Bar Council (representative) and Bar Standards

³ Specifically the following reports:

Office of Fair Trading, ‘Competition in Professions’ (Office of Fair Trading 2001)

<http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/reports/professional_bodies/oft328.pdf> accessed 20 January 2017.

David Clementi, ‘Report of the Review of the Regulatory Framework for Legal Services in England and Wales’ (2004)

<http://webarchive.nationalarchives.gov.uk/+http://www.legal-services-review.org.uk/content/consult/consult_reviewpaper.pdf> accessed 20 January 2017..

David Hunt, ‘The Hunt Review of the Regulation of Legal Services’ (Law Society of England and Wales 2009)

<http://www.nzls.org.nz/catalogue/opac/DigitalContent/Legal_Regulation_Report_FINAL.PDF?jsessionid=59C098BA43C679461703712227096824?parenttreeid=f4cb742268ce4c4984e1d382ea50d5f4&sessiondepth=1&k=18> accessed 20 January 2017.

Competition and Markets Authority, ‘Legal Services Market Study’ (*Gov.uk*, 15 December 2016) <<https://www.gov.uk/cma-cases/legal-services-market-study>> accessed 10 January 2017.

⁴ Bar Council of England and Wales, ‘About Barristers’ (*Bar Council of England and Wales*, 2017) <<http://www.barcouncil.org.uk/about-the-bar/about-barristers/>> accessed 30 March 2017.

⁵ Law Society of England and Wales, ‘For the Public’ (*Law Society of England and Wales*, 2017) <<http://www.lawsociety.org.uk/for-the-public/>> accessed 21 September 2017.

⁶ Chartered Institute of Legal Executives, ‘About CILEx Lawyers’ (*Chartered Institute of Legal Executives*, no date)

<<http://www.cilex.org.uk/about-cilex-lawyers>> accessed 10 January 2017.

⁷ Faculty Office, ‘Notaries and What They Do’ (*The Faculty Office*, 2013) <<http://www.facultyoffice.org.uk/notary/>> accessed 21 September 2017.

⁸ Council for Licensed Conveyancers, ‘Consumer Information’ (*Council for Licensed Conveyancers*, 2014)

<<http://www.conveyancer.org.uk/CLC-Consumers.aspx>> accessed 21 September 2017.

⁹ Costs Lawyer Standards Board, ‘What Is a Costs Lawyer’ (*Costs Lawyer Standards Board*, 2014) <<http://clsb.info/costs-lawyer/>> accessed 21 September 2017.

¹⁰ Chartered Institute of Patent Attorneys, ‘About Us’ (*Chartered Institute of Patent Attorneys*, No date) <<http://www.cipa.org.uk/about-us/about-us/>> accessed 10 January 2017.

¹¹ Chartered Institute of Trade Mark Attorneys, ‘About CITMA’ (*Chartered Institute of Trade Mark Attorneys*, 2016)

<https://www.citma.org.uk/about_citma/about_citma> accessed 10 January 2017.

¹² Department for Constitutional Affairs, ‘The Future of Legal Services: Putting Consumers First’ (Department for Constitutional Affairs 2005) Cm 6679 <<http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/legalsys/folwp.pdf>> accessed 20 January 2017.

¹³ *Ibid*, p 7.

¹⁴ The exception, given its genesis, is the Council for Licensed Conveyancers created by statute as a regulator *ab initio*.

¹⁵ Outside the ambit of the LSA 2007 are, for example, non-lawyer immigration advisors and claims management companies, mediators and arbitrators and, the statutory rights of some local government officials to appear as advocates.

A flavour of the relationship between the LSB and the individual front line regulations can be obtained by looking at the applications for changes to regulations made over time by each of the bodies and the LSB’s responses to them at Legal Services Board, ‘Closed Applications’ (*Legal Services Board*, 2 January 2009) <http://www.legalservicesboard.org.uk/what_we_do/regulation/applications.htm> accessed 10 January 2017 and Legal Services Board, ‘Current Applications’ (*Legal Services Board*, 2 January 2009) <http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/current_applications.htm> accessed 10 January 2017.

Board (BSB) (regulatory) and the Law Society of England and Wales (representative) and the Solicitors Regulation Authority (SRA) (representative) and so on for the smaller professions.

The regulation of the domestic legal professions under the LSA 2007 is clearly intended to facilitate freedom of “choice” for the consumer. In formalising “competition” in this way, it is an attack on the “traditional self-regulatory model [perceived to be] protectionist and anticompetitive”.¹⁶ Nevertheless, some of the traditional public good objectives assumed of professions were also retained, leading to a list of statutory regulatory objectives in the LSA 2007 that are explicitly in no order of preference,¹⁷ and could conflict:¹⁸

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services ...;
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.¹⁹

The choice for the consumer involves choosing not only a firm or individual lawyer, but a legal profession. For example, four different professions are licensed for property work.²⁰ Advocacy may be provided by a barrister, solicitor-advocate, or in their specialist fields, a legal executive advocate, OISC immigration adviser, patent or trade mark attorney advocate or costs lawyer. The business organisation providing the services may be a sole trader, partnership, limited liability partnership, corporate entity, in-house legal department, or, more recently, an “alternative business structure” (ABS) which can have non-lawyer ownership.²¹

Consumers are protected against unscrupulous providers of legal services through contract and consumer

¹⁶ Justine Rogers, Dimity Kingsford Smith and John Chellew, ‘The Large Professional Service Firm: A New Force in the Regulatory Bargain’ (2017) 40 University of New South Wales Law Journal 218, p 237. The discussion in that article is largely of the regulatory model adopted in New South Wales, but is of relevance as that model influenced the current approach in England and Wales.

¹⁷ Ministry of Justice, ‘Explanatory Notes to Legal Services Act 2007’ <<http://www.legislation.gov.uk/ukpga/2007/29/notes>> accessed 12 April 2017, para 28.

¹⁸ They assume, for example, that access to justice and protection of consumers are coterminous with competition between providers.

¹⁹ “(a) that authorised persons should act with independence and integrity,

(b) that authorised persons should maintain proper standards of work,

(c) that authorised persons should act in the best interests of their clients,

(d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and

(e) that the affairs of clients should be kept confidential.”

²⁰ a solicitor, notary, independent legal executive or licensed conveyancer.

²¹ It is important to stress, however, that the regulatory or business organisation construct does not of itself dictate the business model adopted by that organisation when delivering services. A traditional law firm is as free to offer legal services on a commoditised or unbundled basis as an ABS is to offer traditional, bespoke, face to face services through members of established legal professions.

law but also in two other ways. First, it is a criminal offence to pretend to be a member of one of the regulated legal professions²² that are regulated under the LSA 2007 in all their activities (“regulation by title”). There is a specialist ombudsman service covering those professions.²³ It is not, however, an offence to describe oneself as a “lawyer”²⁴ or “legal consultant” or one’s business as a “law firm”.

The second area of protection is the limited concept of unauthorized practice of law defined in the LSA 2007.²⁵ A short list of “reserved legal activities” is specifically regulated (“regulation by activity”) and it is an offence punishable by up to two years’ imprisonment²⁶ to provide any of these without authorisation through the LSB:

- (a) the exercise of a right of audience [oral advocacy in court];
- (b) the conduct of litigation;
- (c) reserved instrument activities; [some elements of conveyancing]
- (d) probate activities;
- (e) notarial activities;
- (f) the administration of oaths.²⁷

Not all of the regulated legal professions are authorised to provide all of the reserved activities and some are authorised to provide them only in their specialist fields.²⁸

The rationale for the choice of the reserved activities is, as Mayson points out, not clear.²⁹ It is not certainly not based on an assessment of their relative risk to the client.³⁰ The fixed list can be added to (but

²² See for example, LSA 2007, s 181 and as a recent example of a conviction under that provision: Neil Rose, ‘Jail for Man Who Posed as a Barrister to Defraud Clients’ <<http://www.legalfutures.co.uk/latest-news/jail-man-posed-barrister-defraud-clients>> accessed 21 September 2017.

²³ Legal Ombudsman, ‘Legal Ombudsman’ (*Legal Ombudsman*, 2017) <<http://www.legalombudsman.org.uk/>> accessed 21 September 2017.

²⁴ Max Walter, “‘Lawyer’ Label Can Be a Licence to Con’ *Law Society Gazette* (31 August 2017) <<https://www.lawgazette.co.uk/comment-and-opinion/lawyer-label-can-be-a-licence-to-con/5062543.article>> accessed 1 September 2017, considering a fraudster who was able legitimately to describe himself as “lawyer and advocate”.

²⁵ For a comparison, and discussion of ways in which business models such as LegalZoom avoid conflict with unauthorized practice rules in the USA, see Judith A McMorrow, ‘UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US’ (2015) 47 *Georgetown Journal of International Law* 665, p 667.

²⁶ LSA 2007, s 14.

²⁷ Legal Services Board, ‘Reserved Legal Activities’ (2 January 2009) <http://www.legalservicesboard.org.uk/can_we_help/faqs/Reserved_Legal_Activities.htm> accessed 20 January 2017.

²⁸ See LSA 2007, schedule 4.

²⁹ For discussion, see Legal Services Institute, ‘The Regulation Of Legal Services: Reserved Legal Activities – History And Rationale’ <<http://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2010-reserved-legal-activities-history-and-rationale.pdf>> accessed 21 September 2017; Legal Services Institute, ‘The Regulation Of Legal Services: What Is The Case For Reservation?’ <<http://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2011-what-is-the-case-for-reservation.pdf>> accessed 21 September 2017.

³⁰ Legal Services Board, ‘A Vision for Legislative Reform of the Regulatory Framework for Legal Services in England and Wales’ <http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2016/20160909LSB_Vision_For_Legislative_Reform.pdf> accessed 13 March 2017, p 14, recommending a more targeted, risk-based approach and, further, Charles Plant, ‘The Definition of Reserved Legal Activities Should Be Extended’ *Law Society Gazette* (18 August 2011) <<https://www.lawgazette.co.uk/analysis/the-definition-of-reserved-legal-activities-should-be-extended/61811.article>> accessed 15 February 2017.

apparently not reduced) by statutory instrument,³¹ and therefore, is far less responsive to new or ill-defined risks³² than the more generic US concept of “unauthorized practice of law”. Consequently it is entirely possible to work in the law in England and Wales without any particular qualifications – or having been suspended or struck off by a professional regulator – provided that that work does not trespass into the narrowly defined reserved activities. There is even evidence that specialists outside the LSA 2007 may be more effective than regulated lawyers.³³

Finally, to add to the complexity, regulation, under LSA 2007, is of both individual lawyers and of entities. This facilitates regulatory forum-shopping. For example, some solicitors’ firms with an advocacy specialism are now regulated by the Bar Standards Board (BSB) and may reduce their insurance premia as a result.³⁴ Several of the large accountancy firms host entities regulated by the Solicitors Regulation Authority (SRA)³⁵ so as to obtain access to the (wider) range of reserved activities available to solicitors.³⁶

There is also an element of regulatory grab for individuals, with rival professions advertising the status, quality, affordability or flexibility of their own qualifications.³⁷ This, therefore, brings us to a description of those qualification systems, as they stand at present, in more detail. This will allow us to understand, in the final sections of this paper, the extent to which changes since 2013 have changed the picture in relation to competition, independence and diversity.

C LEGAL PROFESSIONALS AND THEIR EDUCATION

I Overview

³¹ LSA 2007, s 24.

³² Stephen Mayson (ed), ‘Legislative Options beyond the Legal Services Act 2007’ <http://www.legalservicesboard.org.uk/what_we_do/pdf/20150727_Annex_To_Submission_Legislative_Options_Beyond_LSA.pdf> accessed 20 February 2017, p 53.

³³ IFF Research, ‘Understanding the Consumer Experience of Will - Writing Services’ (Legal Services Board, Legal Services Consumer Panel, Office of Fair Trading and Solicitors Regulation Authority) <http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lwb_will_writing_report_final.pdf> accessed 21 April 2017, para 1.34.

³⁴ See for early examples: Chloe Smith, ‘Solicitor among the First Bar Entities Authorised’ *Law Society Gazette* (29 April 2015) <<https://www.lawgazette.co.uk/practice/solicitor-among-the-first-bar-entities-authorised/5048531.article>> accessed 19 April 2017; Chloe Smith, ‘Nottingham Firm Signs up with Bar Regulator’ *Law Society Gazette* (8 June 2015) <<http://www.lawgazette.co.uk/practice/nottingham-firm-signs-up-with-bar-regulator/5049261.fullarticle>> accessed 19 April 2017.

³⁵ See for example: Ernst and Young, ‘EY Granted Licence to Offer Legal Services in the UK’ (*Ernst and Young*, 1 December 2014) <<http://www.ey.com/UK/en/Newsroom/News-releases/14-12-01---EY-granted-licence-to-offer-legal-services-in-the-UK>> accessed 19 April 2017; KPMG, ‘KPMG Awarded Alternative Business Structure Licence’ (*KPMG*, 1 October 2014) <<http://www.kpmg.com/uk/en/issuesandinsights/articlespublications/newsreleases/pages/kpmg-awarded-alternative-business-structure-licence-to-expand-existing-legal-services-business.aspx>> accessed 19 April 2017.

³⁶ Nick Hilborne, ‘Legal Futures Large Law Firms “most Worried” about Threats from ABSs and Accountancy Firms’ <<http://www.legalfutures.co.uk/latest-news/large-law-firms-most-worried-about-threats-from-abss-and-accountancy-firms>> accessed 19 April 2017.

³⁷ See, for example, Chartered Institute of Legal Executives, ‘Infographic’ <<http://www.cilex.org.uk/pdf/Infographic%20A5.pdf>> accessed 19 April 2017.

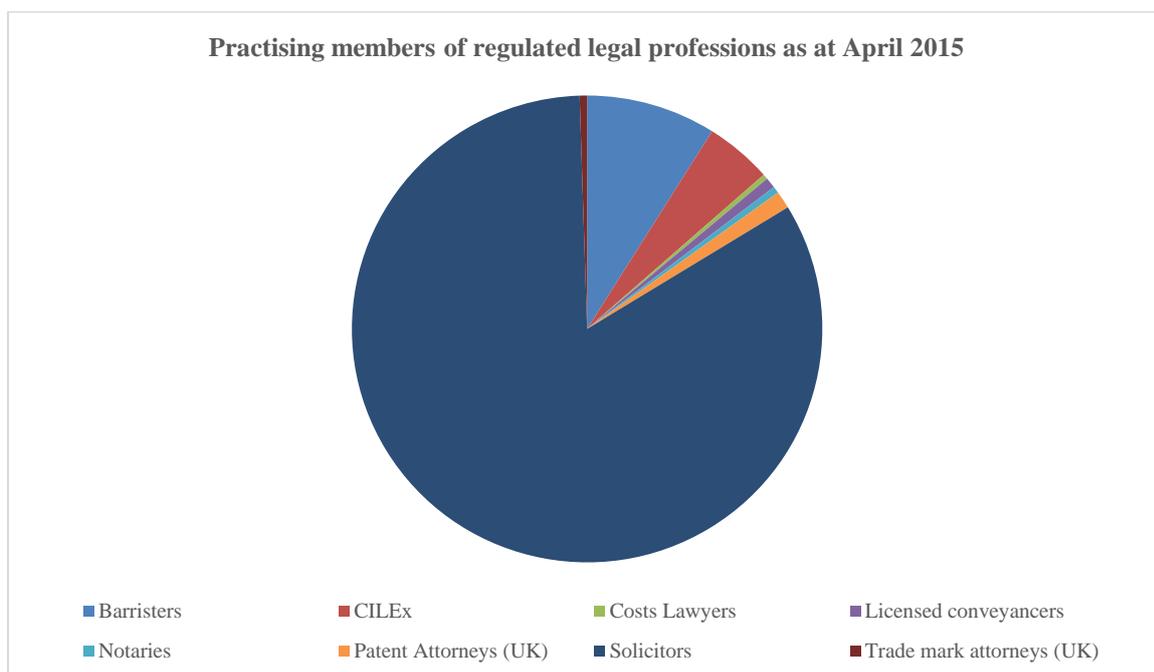


Figure 140

Historically entry to all of the different legal professions was through workplace apprenticeships offered to schoolleavers.⁴¹ Several of the smaller professions pride themselves on continuing to use this model. In doing so they adopt what Flood calls a monocentric approach,⁴² with a single qualification route involving part-time

³⁸ The Chartered Institute of Legal Executives has approximately 20,000 members in total, including those in intermediate grades of membership who may be either working towards full chartered status, or content to remain in an intermediate grade: Chartered Institute of Legal Executives, ‘Facts & Figures’ (*Chartered Institute of Legal Executives*, No date) <http://www.cilex.org.uk/media/interesting_facts/facts_figures> accessed 22 September 2017.

³⁹ The intellectual property attorneys are, unlike the other professions, regulated on a UK-wide basis.

⁴⁰ Legal Services Board, ‘FAQs - Legal Services Board’ (Legal Services Board, 2015) <http://www.legalservicesboard.org.uk/can_we_help/faqs/index.htm#lsblawyers> accessed 22 September 2017.

⁴¹ What is perhaps the first formal provider of legal education in the UK, the Inns of Court, modelled itself on the collegiate structure and architecture of Oxford and Cambridge universities. See, for a history, David Scott Clark, ‘Legal Education’ in David Scott Clark (ed), *Comparative Law and Society* (Edward Elgar Publishing 2012).

⁴² John Flood, ‘Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation’ <http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lbs_legal_education_report_flood.pdf> accessed 28 February 2017, p 14. Flood describes the UK as polycentric, but in this is thinking only of solicitors and barristers.

courses. These are generally configured so that work and classroom activities take place in parallel. They may, therefore, be similar to the German dual vocational model.⁴³

From 2016, the government-sponsored apprenticeship route reintroduces this workplace-based system for the majority, and higher-status, profession of solicitor. This has been welcomed in some quarters, possibly as it speaks strongly to the solicitors' professional culture that the "true" learning about how to be a solicitor occurs in the workplace. It has also been seen as a means of addressing diversity⁴⁴ as increases in tuition fees in England and Wales have made debt-averseness a factor in decisions about going to university.⁴⁵

The legal executives, barristers and solicitors are, however, more or less polycentric in their qualification structures in Flood's terms,⁴⁶ with multiple routes and multiple providers of courses and work experience that can lead to qualification. The legal executives, as we shall see in section C IV, have a plethora of entry and exit points with varied grades of membership.

The higher the status of the profession, the more likely it is in England and Wales that the qualification model is sequential,⁴⁷ with an academic stage followed by a vocational course accredited by the professional regulator, followed by a period of supervised practice known variously as "pupillage", "qualifying work experience" or "period of recognised training".⁴⁸ The latter is likely to have to take place in an organisation pre-approved as a training venue, overseen by employers and supervisors belonging to the relevant profession. This is the approach taken for intending barristers and solicitors.⁴⁹ Such a work placement, unlike the German

⁴³ Bundesministerium für Wirtschaft und Energie, Bundesministerium für Arbeit und Soziales and Bundesagentur für Arbeit, 'Vocational Training in Germany' <http://www.make-it-in-germany.com/fileadmin/content/make-it-in-germany/PDF/MIIG_Ratgeber_Ausbildung_en_150407.pdf> accessed 28 February 2017.

⁴⁴ See, for some examples: Tabby Kinder, 'Eversheds Launches Apprenticeship Route to Solicitor Status' (*The Lawyer Jobs*, 16 March 2016) <<http://jobs.thelawyer.com/article/eversheds-launches-apprenticeship-route-to-solicitor-status/>> accessed 29 March 2017; Katie King, 'ITV Launches New Training Scheme That Allows Students to Qualify as Solicitors' (*Legal Cheek*, 8 December 2015) <<http://www.legalcheek.com/2015/12/itv-launches-new-training-scheme-that-allows-students-to-qualify-as-solicitors/>> accessed 29 March 2017; Law Society of England and Wales, 'Apprenticeships' (*Law Society of England and Wales*) <<https://www.lawsociety.org.uk/support-services/practice-management/apprenticeships/>> accessed 29 March 2017; Neil Rose, 'Actually We Don't Mind Non-Graduates Becoming Solicitors, Says Law Society' (*Legal Futures*, 17 February 2016) <<http://www.legalfutures.co.uk/latest-news/actually-we-dont-mind-non-graduates-becoming-solicitors-says-law-society>> accessed 29 March 2017.

⁴⁵ Claire Callender and Geoff Mason, 'Does Student Loan Debt Deter Higher Education Participation? New Evidence from England' (2017) 671 *The Annals of the American Academy of Political and Social Science* 20. They conclude (*ibid*, p 30): "Although higher education participation rates have continued to grow in England, despite rises in tuition and student loan debt, policymakers and some researchers, also need to recognize that such changes can influence higher education enrolments, especially among underrepresented groups. Indeed, England's student funding system, predicated on the accumulation of student loan debt, potentially undermines widening participation policies rather than broadening and equalizing higher education participation. Income-contingent loans are not necessarily a protection against this, or student loan debt aversion."

⁴⁶ *Op cit*, p 14.

⁴⁷ Sequential models are also common in Scotland and in Australia and New Zealand.

⁴⁸ The title solicitor is not achieved until the period has been completed. By contrast, the barrister is "called" before the period starts but is unable to exercise practice rights until the period has been completed. The untitled limbo for the much greater number of aspiring solicitors has been exploited by CILEX, able to absorb them into a regulated junior membership title with the option of subsequently achieving fellowship and full qualified status.

⁴⁹ The routes for intending patent and trade mark attorneys have some characteristics of both systems. Applicants, especially patent attorneys, are generally graduates, and the academic stage of training precedes the vocational stage. The vocational stage takes place, however, in parallel with work experience, which the students have generally secured before starting the courses. This blended vocational model is also used for intending solicitors in the majority of EU jurisdictions, including Northern Ireland: European e-Justice Portal,

Referendariat, has to be obtained through competition in the labour market when the student has already invested significant time, emotion and money in completing the preceding courses. Competing for such a job may also involve periods of service as a paralegal or unpaid intern⁵⁰ demanded by employers as an additional price of qualification outside the regulatory framework. Some of those who fail to get the right kind of job may continue to seek it, remaining in limbo (“paralegal purgatory”⁵¹) in the hope of some day obtaining the particular kind of job that will permit them to qualify.

With these general points in mind, we now consider the multiplicity of individual professions in more depth. The two largest professions shown in Figure 1, solicitors and barristers, provide a useful starting point.

II Barristers and solicitors

The division between the barrister as advocate and the solicitor as transactional lawyer and, later, as non-advocate adviser to litigants, dates from the 16th century. Distinctions between the two professions are blurring. Barristers have been entitled to acquire rights to conduct litigation and to take instructions direct from clients without a solicitor as intermediary since 2004. Solicitors have been entitled to obtain rights of audience in the higher courts since 1990.⁵²

The “conventional” route to qualification for both professions, cemented by the 1971 Ormrod Report, is sequential, with the academic stage succeeded by a vocational stage in which a course (LPC⁵³ or BPTC⁵⁴) is followed by the period of supervised practice. Since 2014, intending solicitors (but not barristers) have been able to bypass any or all of these stages by demonstrating that the appropriate outcomes have been reached by “equivalent means”.⁵⁵ This scheme may assist those who have been in paralegal purgatory by treating it as equivalent to the required period of supervised practice. As equivalent means applications must be certified by employers, however, the profession retains ultimate control of entry. It is understood that only a small number of applications by this route have been made. There appears to be no publicly available data about this cohort.

‘Lawyers’ Training Systems in the Member States’ (*European e-Justice Portal*, 2016) <https://e-justice.europa.eu/content_lawyers__training_systems_in_the_member_states-407-en.do> accessed 10 October 2017.

⁵⁰ There is increasing concern about the morality and diversity effects of the unpaid internship. See generally Sutton Trust, ‘Internship or Indenture?’ (Sutton Trust 2014) <<http://www.suttontrust.com/researcharchive/internships/>> accessed 29 March 2017.

⁵¹ See, for example, Luke Murphy, ‘Paralegal Purgatory’ [2015] *Solicitors Journal* <<https://www.solicitorsjournal.com/node/199409>> accessed 17 February 2017; Richard Simmons, ‘Training: Paralegal Purgatory’ *The Lawyer* (24 March 2014) <<https://www.thelawyer.com/issues/tl-24-march-2014/training-paralegal-purgatory/>> accessed 17 February 2017.

⁵² In both cases on the basis of additional special licences obtained after qualification.

⁵³ Legal Practice Course (since 1993).

⁵⁴ Bar Professional Training Course (previously Bar Vocational Course).

⁵⁵ This operates separately for each stage so that, for example, someone with a law degree from the Republic of Ireland might seek exemption from the academic stage, but someone with substantial workplace experience seek exemption from the training contract. See Solicitors Regulation Authority, ‘Equivalent Means Information Pack’ (July 2014) <<http://www.sra.org.uk/students/resources/equivalent-means-information-pack.page>> accessed 21 April 2017.

Consequently it is impossible to tell what the reasons for the limited take up might be. It is more useful, therefore to discuss the components of the more conventional “Ormrod settlement” sequential route, taking them in their chronological sequence.

The academic stage

The academic stage is satisfied by an undergraduate degree in law (LLB) or a one year intensive course for graduates of other disciplines (the CPE or GDL). For solicitors, but not at present for barristers, the academic stage can also be completed by senior CILEx qualifications as well as by “equivalent means”.

There is no consensus that the undergraduate law degree (LLB) is - or should be - particularly well aligned with the knowledge, skills and attributes required for legal practice. By contrast with German law degrees, it is perceived by many of those working in it as a kind of humanities degree.⁵⁶ Further, the national quality assurance organisation for higher education provides a benchmark for all law degrees offered in the country which states explicitly:

... law degrees are foremost an academic qualification and provide a route to a range of careers, the legal profession being just one career.⁵⁷

Nevertheless, the Bar and the solicitors’ professions at present continue to specify the characteristics of an LLB that, as a “qualifying law degree” permits entry into those two professions in England and Wales.⁵⁸ It is clearly possible to offer a law degree that is not a qualifying law degree, but there appears to be no market for it for domestic students. Whatever the academics and the quality assurance organisation say, students wish to have

⁵⁶ Mathias M Siems and Daithi Mac Sithigh, comparing two German, two UK and one Irish law faculty in ‘Why Do We Do What We Do? Comparing Legal Methods in Five Law Schools Through Survey Evidence’ (Social Science Research Network 2015) SSRN Scholarly Paper ID 2625473 <<https://papers.ssrn.com/abstract=2625473>> accessed 5 July 2017.

⁵⁷ Quality Assurance Agency, ‘Subject Benchmark Statement: Law’ <<http://www.qaa.ac.uk/publications/information-and-guidance/publication?PubID=2966#.WN0dI2dumM8>> accessed 30 March 2017, p 7.

⁵⁸ Solicitors Regulation Authority, ‘Joint Statement by the Law Society and the General Council of the Bar on the Academic Stage of Training’ (*Solicitors Regulation Authority (SRA)*, 1999) <<https://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>> accessed 25 September 2017. The 2007 iteration of the QAA benchmark, compiled by a different panel of legal academics, and apparently on a different conceptual basis, operated in parallel with the joint statement, obliging law faculties to comply with two sets of validation criteria: Quality Assurance Agency, ‘Subject Benchmark Statement - Law’ <<http://www.qaa.ac.uk/en/Publications/Documents/Subject-benchmark-statement-law.pdf>> accessed 11 December 2017. The two conflicted: Julian Webb and others, ‘Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales’ (2013) <<http://letr.org.uk/the-report/index.html>> accessed 14 July 2017, Chapter 4, Annex III.

the opportunity to qualify into these two high-status professions.⁵⁹

At the time of the Ormrod Report, graduatisation was increasing, at 40% of new solicitors⁶⁰ and 80% of new barristers. The smaller professions will often recognise and provide exemption for law graduates, even if they are not their target or natural demographic. These professions are also, necessarily, recruiting from a population that contains an increased percentage of graduates.⁶¹ It is yet to be seen whether tuition fees on the one hand and government-sponsored apprenticeships on the other, will cause a lasting change in this respect. As some of the smaller professions move towards graduatisation, however, the solicitors' profession is again⁶² moving away from graduatisation, at least *in law*.

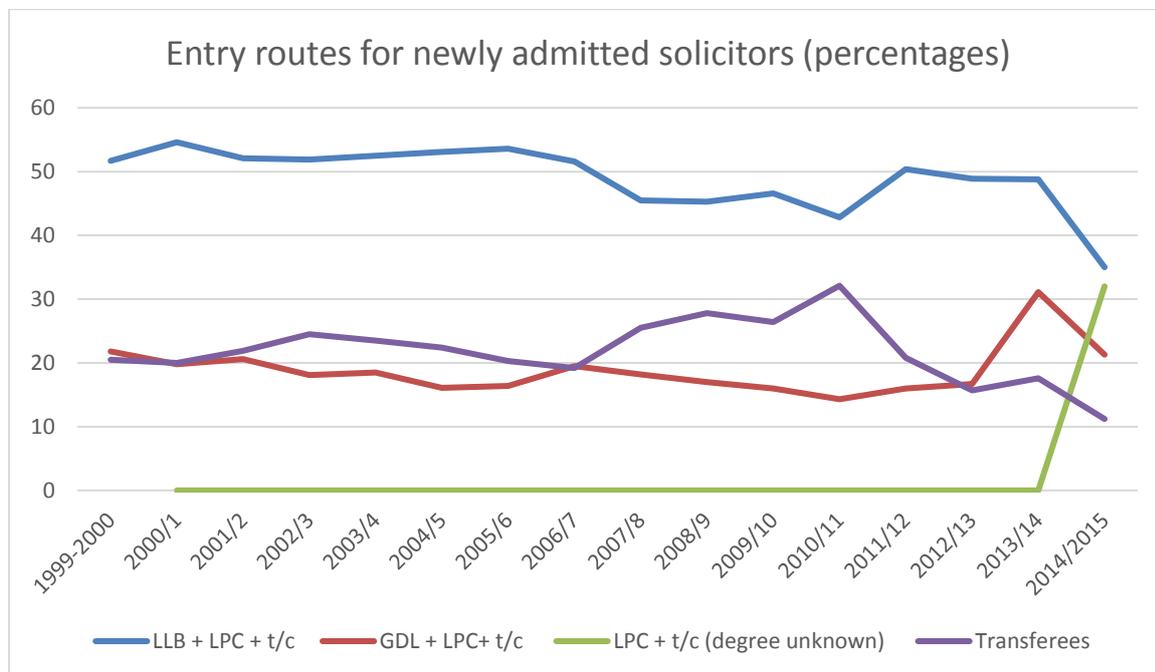


Figure 2⁶³

The top line (blue) represents the proportion of new solicitors this century who have entered by the

⁵⁹ Hardee found that almost 80% of new law undergraduates wished to enter a legal profession: Hardee M, 'Career Aspirations of Students on Qualifying Law Degrees in England and Wales.' (Higher Education Academy 2014)

<https://www.heacademy.ac.uk/resources/detail/disciplines/law/Hardee_InterimReport_2014FINAL> accessed 4 October 2017, p 34.

⁶⁰ The remainder would have pursued a longer apprenticeship route. This "five years' articles" route persisted into the 1980s: Andrew Boon and Julian Webb, 'Legal Education and Training in England and Wales: Back to the Future?' (2008) 58 *Journal of Legal Education* 79, p 87.

⁶¹ "Overall participation in higher education increased from 3.4% in 1950, to 8.4% in 1970, 19.3% in 1990 and 33% in 2000" Paul Bolton, 'Education: Historical Statistics' (House of Commons Library 2012) SN/SG/4252 <<http://dera.ioe.ac.uk/22771/1/SN04252.pdf>> accessed 4 October 2017, p 14. The number of new undergraduates has been comparatively stable since then: Higher Education Statistics Authority, 'Students and Graduates' (*Higher Education Statistics Authority*, 2016) <<https://www.hesa.ac.uk/data-and-analysis/students>> accessed 4 October 2017.

⁶² Boon and Webb point out that the initial Victorian graduatisation of both professions involved exemption for graduates of any discipline, op cit, p 87. The pendulum has swung to the extent that the new proposals for solicitors' qualification discussed below demand a graduate level qualification, but in any discipline.

⁶³ Figures derived from statistics provided by the Law Society of England and Wales.

“conventional” sequential route.⁶⁴ The red line represents the most well known alternative route for graduates of other disciplines through the GDL in place of the LLB. The rationale for the spike in 2013 is not clear. The purple line represents transferees, including barristers, CILEx and lawyers from other UK and foreign jurisdictions, the majority of whom as a group, will have law degrees (or, if barristers from England and Wales, a GDL). The spike in transferees in 2010/2011 is explained by the change, the following year, from the Qualified Lawyers Transfer Test to the more rigorous Qualified Lawyers Transfer Scheme. The way in which data is recorded has now been changed so that it no longer differentiates between LLB and GDL graduates. Consequently, results in the green “degree unknown” figure spike towards the end of the period.

What these figures demonstrate is not a decrease in interest, from *schoolleavers*, in taking the domestic law degree.⁶⁵ What they indicate is ambivalence, at best, on the part of recruiters, about the domestic *law* degree as preparation being a solicitor.⁶⁶ The position of the Bar is complicated by the fact that a substantial proportion of BPTC students are international students who, once called to the Bar in England and Wales, return to practise in their own country. Around half of new pupil barristers entering practice in the *domestic* market, however, have graduated from only 10 universities, and similarly, just under half are law graduates.⁶⁷

If the academy and the national quality assurance organisation do not see the LLB as a preparation for legal practice,⁶⁸ then the attitude of these professions in not requiring entrants to have an LLB is comprehensible. What both professions are wedded to is the more nebulous concept of “graduateness”, although whether this is because graduates have superior skills, or because of its symbolic value in comparison with other domestic professions or professions overseas, is unclear.⁶⁹ The view of employers remains, nevertheless, that the GDL, one year of intensive study at third year undergraduate level of seven core substantive legal subjects, is sufficient academic study of law for these two professions.⁷⁰ In this they both have

⁶⁴ Some students on a part-time LPC have been allowed to overlap at least part of their training contract with the LPC.

⁶⁵ Applications fell slightly in 2014 but otherwise have shown steady increase from 103,610 in 2012 to 118,630 in January 2016 (UK figures): UCAS Analysis and Research, ‘January Deadline Analysis: Subjects’ <https://www.ucas.com/file/50981/download?token=K_FIpOWT> accessed 12 April 2017.

⁶⁶ See, for example, Natalie Gil, ‘What’s the Best Route into Law?’ *The Guardian* (28 August 2014)

<<https://www.theguardian.com/law/2014/aug/28/law-degree-best-route-law>> accessed 19 April 2017

⁶⁷ Bar Standards Board, ‘Bar Barometer: Trends in the Profile of the Bar.’ (Bar Standards Board 2014)

<http://www.barcouncil.org.uk/media/287767/bar_barometer_report__updated_-_june_2014_.pdf> accessed 25 September 2017.

⁶⁸ Some LLBs may be more aligned to practice than others, but the larger firms will tend to recruit from the higher status universities whose LLB is less likely to be aligned to practice. Competition to provide the LLB and GDL now extends not only to established private universities such as the University of Buckingham, but also to large commercial organisations previously known for their vocational courses but now granted degree awarding powers and university status: the University of Law and BPP University. The Higher Education and Research Act 2017, ss 42 and 56 extend powers to authorise institutions to award degrees and use the title “university”.

⁶⁹ The Bar Standards Board has, however, made some attempt to articulate “graduateness” and its utility for legal practice: Bar Standards Board, ‘Future Bar Training Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training’ <https://www.barstandardsboard.org.uk/media/1700434/fbt_triple_consultation_july_2015.pdf> accessed 17 January 2017.

⁷⁰ One thing that can be said about GDL students, however, is that they have made a conscious choice to train for the Bar or for the solicitors’ profession. Employers may welcome this level of commitment but it may be more limiting for the individual: Tom Webb, ‘You Have To Go All The Way With The GDL – But An LLB Gives You Options’ <<http://www.legalcheek.com/2013/04/you-have-to-go-all-the-way-with-the-gdl-but-an-llb-gives-you-options/>> accessed 11 April 2017.

their cake and eat it.⁷¹ They can recruit graduates from disciplines which may be actively useful to their practice (eg modern languages, science subjects, built environment subjects). Alternatively they benefit from the symbolic value of being a “graduate profession”, without the tedium of being expected to, or expecting their regulators to, monitor the teaching or curricula of those non-law degrees in the way that they have monitored the teaching and curricula of the LLB.⁷²

The vocational stage

A separate vocational stage of education is comparatively common in the common law world (with the exception of the USA). As Boon and Webb point out in their history of legal education in this jurisdiction,⁷³ mandatory courses for legal apprentices developed from the 19th century. In its present form, the year long Legal Practice Course (LPC) for intending solicitors began in 1993,⁷⁴ building on Australian and Canadian models to encompass areas of law, professional ethics and procedure, as well as skills including advocacy, writing and drafting, interviewing and practical legal research, all of which are summatively assessed.⁷⁵ The equivalent for barristers, in its modern form (Bar Professional Training Course or BPTC), is also highly skills-focused with, as might be expected, an emphasis on advocacy.⁷⁶

Opportunities to undertake both the academic and vocational courses are widespread,⁷⁷ if expensive,⁷⁸

⁷¹ German equivalents for this aphorism may be *Wasch mir den Pelz, aber mach mich nicht nass* or *Man kann nicht auf zwei Hochzeiten tanzen*.

⁷² Solicitors Regulation Authority, ‘Joint Statement by the Law Society and the General Council of the Bar on the Academic Stage of Training’ (*Solicitors Regulation Authority (SRA)*, 1999) <<https://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>> accessed 25 September 2017. For challenges in this relationship, see Tim Vollans, ‘The Law School with Two Masters?’ (2008) 2 *Web Journal of Current Legal Issues* <<http://www.bailii.org/uk/other/journals/WebJCLI/2008/issue2/vollans2.html>> accessed 25 September 2017.

⁷³ *Op cit*.

⁷⁴ For a description of its development at one institution, see Scott Slorach and Stephen Nathanson, ‘Design and Build the Legal Practice Course at Nottingham Law School’ (1996) 30 *The Law Teacher* 187.

⁷⁵ Solicitors Regulation Authority, ‘Legal Practice Course Outcomes’ <<http://www.sra.org.uk/students/lpc.page>> accessed 25 September 2017.

⁷⁶ Bar Standards Board, ‘Bar Professional Training Course Handbook 2017/18’ <https://www.barstandardsboard.org.uk/media/1846141/bptc_handbook_v2.pdf> accessed 25 September 2017.

⁷⁷ Solicitors Regulation Authority, ‘Qualifying Law Degree Providers’ (*Solicitors Regulation Authority*, No date) <<http://www.sra.org.uk/students/courses/Qualifying-law-degree-providers.page>> accessed 21 April 2017 lists 110 providers of law degrees that satisfy the requirements of a “qualifying law degree” including the LLB in International Legal Studies offered by Friedrich Schiller University Jena.

There are 35 LPC providers, Solicitors Regulation Authority, ‘Legal Practice Course (LPC) Providers’ (*Solicitors Regulation Authority*, No date) <<http://www.sra.org.uk/students/courses/lpc-course-providers.page>> accessed 21 April 2017. There are 14 BPTC providers: Bar Standards Board, ‘BPTC Providers’ (*Bar Standards Board*, No date) <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/current-requirements/bar-professional-training-course/bptc-providers/>> accessed 21 April 2017.

⁷⁸ “The Law Society estimates that it costs £25,000-£50,000 [€30,000-60,000] to qualify as a solicitor, while the President of the Bar Council said that qualifying as a Barrister may cost up to £127,000 [€150,000]”, All Party Parliamentary Group on Social Mobility, ‘The Class Ceiling: Increasing Access to the Leading Professions’ (Sutton Trust 2017)

<https://d3n8a8pro7vhm.cloudfront.net/labourclp269/pages/941/attachments/original/1484611647/APPG_Report_-_Access_to_Leading_Professions_Inquiry.pdf?1484611647> accessed 11 April 2017, p 12, my conversion to euros.

The figure for solicitors does not appear to include living costs: Law Society of England and Wales, ‘Costs of Qualifying’ (*Law Society of England and Wales*, 2017) <<http://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/costs-of-qualifying/>> accessed 21 April 2017.

and it is the final stage of supervised practice that the challenges of paralegal purgatory occur. These challenges are facilitated, further, by the fact that, unlike the smaller professions, which generally prescribe that supervised practice has to take place under the supervision of a member of the profession, or in a particular kind of work, the Bar and the solicitors' profession have also required the period to be served in an organisation that has been pre-emptively approved by the regulator as a suitable venue for training.⁷⁹

Both professions have in the past resisted suggestions that they should merge, or share anything more than the academic stage of training (although it is now possible to be dual qualified).⁸⁰ Nevertheless, this bipartite division into two legal professions has never in fact been the entirety of the picture. The smaller professions are also of interest from perspectives of both competition and independence/diversity.

III A snapshot of the smaller professions

Civil notaries have existed since the 12th century and continue to be regulated through Anglican ecclesiastical authorities.⁸¹ As the work of solicitors covers most of the transactional work carried out by notaries in civil law countries, Anglo-Welsh notaries only have a monopoly over “notarial activities”⁸² and are largely concerned with the translation and certification of documents for use outside the UK. The majority of notaries outside London are solicitors with dual qualification.⁸³

The intellectual property attorneys⁸⁴ are also well established. The Chartered Institute of Patent Attorneys was founded in the late 19th century⁸⁵ with statutory recognition in the Patents Act 1907, s 84. The Chartered Institute of Trade Mark Attorneys was founded in the 1930s.⁸⁶ Intellectual property attorneys have been able to

The figure for barristers is calculated on the basis of study and living throughout all stages in London, and assumes a non-law undergraduate degree followed by the one year law conversion course: Owen Bowcott, ‘Qualifying as a Barrister “May Cost New Students up to £127,000”’ *The Guardian* (23 February 2016) <<https://www.theguardian.com/law/2016/feb/23/qualifying-barrister-may-cost-new-students-127000>> accessed 21 April 2017.

⁷⁹ Bar Standards Board, ‘Pupillage Handbook’

<https://www.barstandardsboard.org.uk/media/1841538/bsb_pupillage_handbook_2017_1.8.17.pdf> accessed 10 October 2017, Chapter 7; Solicitors Regulation Authority, ‘SRA Training Regulations 2014 - Qualification and Provider Regulations’ (*Solicitors Regulation Authority*, 2014) <<http://www.sra.org.uk/solicitors/handbook/trainingregs2014/content.page>> accessed 10 October 2017; Part 4.

⁸⁰ The Bar seems, however, to be relaxing that position: Bar Standards Board, ‘Future Bar Training Consultation on the Future of Training for the Bar: Future Routes to Authorisation’

<https://www.barstandardsboard.org.uk/media/1794621/future_bar_training_routes_consultation_final.pdf> accessed 25 September 2017, para 50.

⁸¹ Faculty Office, ‘Notaries and What They Do’ (*Faculty Office*, 2013) <<http://www.facultyoffice.org.uk/notary/>> accessed 25 September 2017.

⁸² LSA 2007 s 12.

⁸³ See further Gisela Shaw, ‘Notaries in England and Wales: Modernising a Profession Frozen in Time’ (2000) 7 *International Journal of the Legal Profession* 141.

⁸⁴ Formerly “agents”, see The Register of Patent Agents and the Register of Trade Mark Agents (Amendment) Rules 1999 No. 983.

⁸⁵ Chartered Institute of Patent Attorneys, ‘About Us’ (*Chartered Institute of Patent Attorneys*, No date) <<http://www.cipa.org.uk/about-us/about-us/>> accessed 10 January 2017.

⁸⁶ Chartered Institute of Trade Mark Attorneys, ‘About CITMA’ (*Chartered Institute of Trade Mark Attorneys*, 2016) <https://www.citma.org.uk/about_citma/about_citma> accessed 10 January 2017.

obtain rights to conduct litigation and to appear as advocates since the 1990s.⁸⁷ They share a professional regulator (the Intellectual Property Regulation Board). They are also the only professions to be regulated on a UK-wide basis rather than by reference to the four component nations. They have a peculiarly international and European orientation, given their rights to appear in European Patent Office hearings.⁸⁸

Following a review in 2002⁸⁹ the trade mark attorneys adopted a monocentric, partly sequential training model, which involves an academic course and a vocational course similar to the LPC, both studied in parallel with working in the field. Something similar is also being implemented for patent attorneys⁹⁰ who have historically relied on a sequence of assessments set by the professional body, without an accompanying mandatory course.

Law costs draftsmen (from 2011, “costs lawyers”) became occupationally organised in the 1970s. They are specialists in drawing up bills of lawyers’ fees and defending them in the “loser pays” approach to funding of civil litigation in England and Wales.⁹¹ The Association of Law Costs Draftsmen became an authorised professional body in 2006,⁹² and can license its members to appear as advocates and conduct litigation in costs cases.⁹³ Qualification as a costs lawyer is by part-time study of a modular course, recently benchmarked at third year undergraduate level, covering technical issues and some skills and again intended to be studied part-time while working in the field.

The tradition then has been for individuals working in identifiable sub-sets of legal practice to evolve into an occupational community that provides mutual support at grass roots level. This community is then acknowledged in statute so as to protect the professional title, confer legal professional privilege where necessary and permit the profession to regulate itself and establish its own qualification mechanisms. The rise of the legal executive is the most vigorous example of this process.

⁸⁷ Courts and Legal Services Act 1990, ss 27 and 28.

⁸⁸ They generally also obtain the European qualification: European Patent Office, ‘Regulation on the European qualifying examination for professional representatives’ <http://archive.epo.org/epo/pubs/oj011/12_11/12_sup0.pdf> accessed 25 September 2017.

⁸⁹ A Sherr and R Harding, ‘Where Science Meets Law – Report of a Review of the Education, Training and Examinations for the Chartered Institute of Patent Agents and the Institute of Trade Mark Attorneys’ (CIPA/ITMA 2002).

⁹⁰ See, for example, Intellectual Property Regulation Board, ‘Consultation on Simplifying and Modernising the Examination System for Qualifying as a Patent Attorney’ <http://ipreg.org.uk/wp-content/files/2013/07/Consultation-on-simplifying_and_modernising_the_examination_system_for_qualifying_as_a_Patent-Attorney.pdf> accessed 25th September 2017; Intellectual Property Regulation Board, ‘IPReg Accreditation Handbook (Accreditation of Qualifying Examinations)’ <<http://ipreg.org.uk/ipreg-accreditation-handbook-accreditation-of-qualifying-examinations/>> accessed 25th September 2017.

⁹¹ ‘Rule 44.2’ (*Civil Procedure Rules 1998*) <<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-44-general-rules-about-costs>> accessed 6 November 2017.

⁹² Association of Law Costs Draftsmen Order 2006 SI 2006/333.

⁹³ This is by virtue of Courts and Legal Services Act 1990, ss 27 and 28. See also Costs Lawyer Standards Board, ‘Association of Costs Lawyers’ (*CLSB : Costs Lawyer Standards Board*, 3 June 2014) <<http://clsb.info/whos-who/association-of-costs-lawyers/>> accessed 10 January 2017.

IV Legal executives

The development of CILEx from Victorian “solicitors’ clerks” (in modern terms, paralegals), shows a steep trajectory. The professional body was formed in the 1890s⁹⁴ and occupational recognition was obtained in the mid 1920s.⁹⁵ Rights to become advocates and judges⁹⁶ and partners in law firms were acquired from 2011.⁹⁷ Independent practice outside solicitors’ firms became possible in 2014.⁹⁸ CILEx regulated entities are now possible⁹⁹ and ABSs are likely in the near future.¹⁰⁰ The CILEx qualification structure of modular part-time courses is designed to operate in parallel with supervised practice,¹⁰¹ and may be embedded into a part time degree.¹⁰² As the structure offers staggered entry points for a wide variety of entry demographics, including school-leavers, existing legal secretaries and paralegals and LLB, LPC, BPTC graduates, CILEx has an enviable reputation for diversity in its membership.¹⁰³

The system aligns particularly well with the modern apprenticeship movement.¹⁰⁴ It also offers a clear career paralegal option for those who wish to stop partway without progressing to the final stage of Fellowship. CILEx is alone amongst the legal professions in operating this kind of stepped progression of membership grades from Associate to Fellow, only the latter grade being properly described as Chartered Legal Executive.

It could be said that CILEx has, in principle, overcome the problems of paralegal purgatory for LPC and BPTC graduates, by very deliberately offering a distinct entry point, and the title Graduate Member (GCILEx), for entrants with these qualifications.¹⁰⁵ As a kind of “ward” of the solicitors’ profession in its early days, there is a well-established short cut route for Fellows to become solicitors. It is symptomatic of the increased rights

⁹⁴ It acquired corporate status in the 1960s.

⁹⁵ Joyce Arram, ‘History of CILEx’ (*Chartered Institute of Legal Executives*, no date)

<http://www.cilex.org.uk/about_cilex/who_we_are/history-of-cilex> accessed 10 January 2017.

⁹⁶ Chartered Institute of Legal Executives, ‘Chartered Legal Executive Judges’ (*Chartered Institute of Legal Executives*, No date)

<<http://www.cilex.org.uk/about-cilex-lawyers/why-be-a-cilex-lawyer/cilex-judges>> accessed 21 April 2017.

⁹⁷ Chartered Institute of Legal Executives, ‘“This Is Only the Beginning”... as 100 Partners and 1st ILEX Judge Celebrate’

<http://www.cilex.org.uk/media/media_releases/partners__judge_celebrations> accessed 21 April 2017.

⁹⁸ CILEx Regulation, ‘First Cohort of CILEx Practitioners Recognised at CILEx Regulation Launch’

<<http://www.cilexregulation.org.uk/news/first-cohort-of-cilex-practitioners-recognised>> accessed 21 April 2017.

⁹⁹ CILEx Regulation, ‘IPS Launches Entity Regulation’ <<http://www.cilexregulation.org.uk/news/entity-regulation-opens>> accessed 21 April 2017. CILEx Regulation, ‘CILEx Authorised Entities’ (*CILEx Regulation*, No date)

<<http://www.cilexregulation.org.uk/consumers/who-we-are/cilex-authorised-entities>> accessed 6 November 2017.

¹⁰⁰ CILEx Regulation, ‘CILEx Applies to Be ABS Licensing Authority’ (*CILEx Regulation*, 11 September 2017)

<<http://www.cilexregulation.org.uk/news/abs>> accessed 25 September 2017.

¹⁰¹ Chartered Institute of Legal Executives, ‘Chartered Legal Executive Lawyer Qualifications’ (*Chartered Institute of Legal Executives*)

<http://www.cilex.org.uk/study/lawyer_qualifications.aspx> accessed 25 September 2017

¹⁰² City Law School and CILEx Law School, ‘LLB in Legal Practice’ (*CILEx Law School*, 2013)

<http://www.cilexlawschool.ac.uk/LLB_Hons_in_Legal_Practice> accessed 25 September 2017.

¹⁰³ Chartered Institute of Legal Executives, ‘CILEx and Social Mobility’ (*Chartered Institute of Legal Executives*, No date)

<http://www.cilex.org.uk/about_cilex/who_we_are/equality_and_diversity/cilex-and-social-mobility> accessed 10 October 2017. The statement that opens this page, however, is demonstrably incorrect, as it is possible, in some, possibly limited circumstances, to enter most of the other legal professions without “university attendance” and in the case of licensed conveyancers and costs lawyers, doing so is the norm.

¹⁰⁴ Chartered Institute of Legal Executives, ‘Apprenticeships in Law and Legal Services’ (*Chartered Institute of Legal Executives*, No date)

<<http://www.cilex.org.uk/study/apprenticeships>> accessed 25 September 2017.

¹⁰⁵ Chartered Institute of Legal Executives, ‘Graduate Membership’ (*Chartered Institute of Legal Executives*, No date)

<http://www.cilex.org.uk/employers/cilex_membership_grades/graduate_membership> accessed 6 November 2017.

and status of legal executives that the desire (or need) to transfer seems to have reduced significantly.¹⁰⁶ In this, the legal executive profession poses a threat to the hegemony and identity of the solicitors' profession in particular, openly stating that "new emerging rights means that the role and standing of Chartered Legal Executive lawyers and solicitors is moving ever closer".¹⁰⁷ CILEx has, in effect, attained independence from its parent and intends to compete with it. We explore this question of threats further in the next section.

V Threats to the (solicitors') profession from its competitors

Competition from legal executives is likely to be in family law, conveyancing and criminal law. Although many solicitors are specialists and those specialisms may overlap with those of the specialist professions, for example, in conveyancing or intellectual property work, the solicitors' professional and regulatory bodies remain wedded to the idea of their profession as at least in principal generalist, able to deal with multi-facted problems that extend across different areas of law in a way that the other professions cannot.

A striking inroad into any market advantage of solicitors and an exception to the evolutionary pattern of development of professions is the creation of the licensed conveyancer profession in England and Wales (only) by the Administration of Justice Act 1985. This was a deliberate government move, to break the effective monopoly that solicitors then had on conveyancing work,¹⁰⁸ the continuation of which had been endorsed by the Benson Report in 1979 for England and Wales¹⁰⁹ A school leaver can qualify with the CLC by undertaking diplomas offered by a number of colleges, and successfully completing a period of supervised practice.¹¹⁰

By 2008, licensed conveyancers had obtained rights to carry out probate work in addition to conveyancing and the LSA 2007 reinforced rights in relation to entities¹¹¹ and conferred the right to administer oaths.¹¹² The

¹⁰⁶ See, for example Jane Ching and Pamela Henderson, 'Pre-Qualification Work Experience in Professional Legal Education: Report' (Solicitors Regulation Authority 2016) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/workplace-learning.page>> accessed 25 September 2017, para 7.3. The cost of the additional qualifications measured against the benefit of questionable higher status is a key factor in the changed attitude.

¹⁰⁷ Chartered Institute of Legal Executives, 'About CILEx Lawyers' (*Chartered Institute of Legal Executives*, no date) <<http://www.cilex.org.uk/about-cilex-lawyers>> accessed 10 January 2017.

¹⁰⁸ The manoeuvre seems to have had some success: Neil Rose, 'Pity the Poor Conveyancer' *The Guardian* (19 January 2012) <<https://www.theguardian.com/law/2012/jan/19/conveyancers-struggle-to-survive>> accessed 31 March 2017, reporting that two large firms of licensed conveyancers now carry out "more transactions than any solicitors' practice".

¹⁰⁹ Frank H Stephen, James H Love and Alan A Paterson, 'Deregulation of Conveyancing Markets in England and Wales' (1994) 15 *Fiscal Studies* 102; James H Love and Frank H Stephen, 'Deregulation and Professional Boundaries: Evidence from the English Legal Profession' (1997) 26 *Business and Economic History* 792.

Elliott comments on the irony that the Hughes report for Scotland *did* endorse the adoption of a licensed conveyancer profession, but the profession came into being in England and Wales but not in Scotland: Robert C Elliot, 'Legal Profession at the Crossroads: A Chance for the Academics?' (1988) 22 *The Law Teacher* 34. Licensed conveyancers can also be found in Australia, New Zealand and (as a specialist accreditation for qualified lawyers) South Africa.

¹¹⁰ Council for Licensed Conveyancers, 'CLC - Our Diplomas' (*Council for Licensed Conveyancers*) <<http://www.conveyancer.org.uk/trainee-lawyer/How-to-Qualify.aspx>> accessed 10 January 2017.

¹¹¹ Administration of Justice Act 1985, s 32a

¹¹² Administration of Justice Act 1985, s 33A

Council for Licensed Conveyancers (CLC)¹¹³ was the first of the professional regulators to obtain permission to authorise ABSs with non-lawyer ownership under the LSA 2007, in late October 2011.¹¹⁴ The CLC actively solicits regulator shopping.¹¹⁵ Amendments made in s 87 of the Deregulation Act 2015 provide the basis for what seems to have been an ambition of the CLC since at least 2011, to acquire rights for its members to carry out litigation and advocacy (although only in relation to property matters).

Two accountancy bodies are also authorised under the LSA 2007 to provide legal services in probate matters and employ regulator-shopping at present to extend the range of legal services they can provide in direct competition with solicitors.¹¹⁶ Small businesses are already more likely to obtain their legal advice from their accountant than to approach a solicitor.¹¹⁷ Like the smaller legal professions, the accountancy professions generally operate their training in parallel with (paid) workplace experience, whether or not the entry point is at graduate level. The Institute of Chartered Accountants in England and Wales has sought rights to authorise its members to conduct all the reserved activities, including litigation and advocacy, in the field of taxation.¹¹⁸ Although this proposal was approved by the LSB, at the time of writing it has been rejected by the Ministry of Justice.¹¹⁹ The rush to extended rights for both conveyancers and accountants, however, indicates that regulation by *title* has, through the facilitation of competition in the LSA 2007, trumped concepts of consistent regulation of *activity*.

The social status of accountants, by contrast with the social status of some of the smaller legal professions, coupled with the flexibility and affordability of the qualification routes, however, may come to present an entirely different threat to the solicitors' profession: one of recruitment. The landscape in which a young person makes decisions about what to study, at what level; through a monocentric route or a polycentric

¹¹³ See Nicholas Smedley, 'The Smaller Approved Regulators An Assessment of Their Capacity and Capability to Meet the Requirements of the Legal Services Act 2007, with Analysis and Recommendations' (Legal Services Board 2011) <http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf> accessed 5 June 2014, pp 23-25

¹¹⁴ Council for Licensed Conveyancers, 'CLC - ABS' (*Council for Licensed Conveyancers*, 2014) <<http://www.conveyancer.org.uk/Regulation-by-CLC/ABS.aspx>> accessed 10 January 2017.

¹¹⁵ Council for Licensed Conveyancers, 'Switching to CLC Regulation' (*Council for Licensed Conveyancers*, 2014) <<http://www.conveyancer.org.uk/CLC-Lawyer/Changing-Regulators.aspx>> accessed 25 September 2017.

¹¹⁶ The issue is recognised in Law Society of England and Wales, 'The Future of Legal Services' (Law Society of England and Wales 2016) <<http://www.lawsociety.org.uk/support-services/research-trends/the-future-of-legal-services/>> accessed 14 September 2017, p 50.

¹¹⁷ Robert Blackburn, John Kitching and George Saridakis, 'The Legal Needs of Small Businesses' (Kingston University 2015) <<https://research.legalservicesboard.org.uk/reports/consumers-unmet-legal-needs/the-legal-needs-of-small-businesses-2015-survey-3/>> accessed 4 October 2017, p 8; Legal Services Board, 'Small Business Legal Needs Analysis 2017 FINAL' (Legal Services Board 2017) <<https://research.legalservicesboard.org.uk/wp-content/media/Small-Business-Legal-Needs-Analysis-2017-FINAL.pdf>> accessed 29 September 2017.

¹¹⁸ Institute of Chartered Accountants in England and Wales, 'Proposed ICAEW Reserved Legal Services Application' (*Institute of Chartered Accountants in England and Wales*, 2017) <<http://www.icaew.com/en/about-icaew/act-in-the-public-interest/policy/consultations-and-representations/proposed-icaew-reserved-legal-services-application>> accessed 21 September 2017

¹¹⁹ John Hyde, 'MoJ Says No to Accountancy Body Regulating All Legal Services' *Law Society Gazette* (21 September 2017) <<https://www.lawgazette.co.uk/law/moj-says-no-to-accountancy-body-regulating-all-legal-services/5062929.article>> accessed 22 September 2017

route; in parallel with work experience or with work experience as the final stage in a sequence; in preparation for a specialist or a generalist profession is, therefore, highly complex. On the one hand, the variety of routes and qualifications demonstrate the competition in the market between and within professions. On the other, the smaller professions, without a norm of graduate entry and (therefore) of lower social status, are more socially diverse. It was implicit that LETR should investigate and attempt to resolve some of those contradictions.

D THE LEGAL EDUCATION AND TRAINING REVIEW AND CHANGES TO QUALIFICATION FRAMEWORKS

Wholesale reviews of legal education are a feature of the modern global landscape, and rightly so.¹²⁰ Although individual professions had carried individual reviews of all or part of their systems,¹²¹ the most recent wide ranging review of legal (professional) education in England and Wales prior to the Legal Education and Training Review in 2011, had been the Ormrod Report of 1971.¹²² It was to be expected that in the age of the LSA 2007, the LSB should commission, through the three largest regulators, a review of the *regulation* of legal education insofar as it affected the legal professions.¹²³ Those regulators sponsored the research phase of the project, carried out by a group of independent academics, although the remit of the investigation extended beyond those professions and the regulated sector:

¹²⁰ See, for some examples:

Bangladesh: Law Commission, 'Review of Legal Education in Bangladesh-Final Report' (Law Commission 2006)

<<https://www.scribd.com/document/339032231/Review-of-Legal-Education-in-Bangladesh-Final-Report>> accessed 4 October 2017.

Caribbean: Lloyd Barnett and others, 'Report of the Review Committee on Legal Education in the Caribbean' (Hugh Wooding Law School/Norman Manley Law School 1996) <http://www.clecaribbean.com/download/barnett_report.pdf> accessed 9 August 2017.

France: Jean-Michel Darrois, 'Rapport sur les professions du droit' (Ministère de la Justice 2009)

<http://www.justice.gouv.fr/art_pix/rap_com_darrois_20090408.pdf> accessed 4 October 2017.

Netherlands: Nederlandse orde van advocaten, 'Consultatie Toekomstbestendige Beroepsopleiding Advocaten van Start' (*Nederlandse orde van advocaten*, July 2017) <<https://www.advocatenorde.nl/nieuws/consultatie-toekomstbestendige-beroepsopleiding-advocaten-van-start>> accessed 24 July 2017.

Northern Ireland: Education Review Working Group, 'Shaping the Future of Legal Education 2' (Law Society of Northern Ireland 2009)

<<https://www.lawsoc-ni.org/dataeditoruploads/doc/Education%20Brochure%202%20web.pdf>> accessed 24 July 2017.

Scotland: Law Society of Scotland, 'Leading Legal Excellence – How Can We Best Ensure That Our Education and Training Standards Are Flexible, Promote Equal Access to and Drive Excellence within the Legal Profession?' <<https://www.lawsoc.org.uk/news/2017/01/do-we-need-alternative-routes-to-the-profession-in-scotland/>> accessed 25 July 2017.

¹²¹ For example: Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC), 'Report on Legal Education and Training' (Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC 1996); 'Continuing Professional Development for Solicitors and Barristers: A Second Report on Legal Education and Training' (Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) 1997); A Sherr and R Harding, 'Where Science Meets Law – Report of a Review of the Education, Training and Examinations for the Chartered Institute of Patent Agents and the Institute of Trade Mark Attorneys' (CIPA/ITMA 2002); Julian Webb and Amanda Fancourt, 'The Law Society's Training Framework Review: On the Straight and Narrow or the Long and Winding Road?' (2004) 38 *Law Teacher* 293.; Bar Standards Board, 'Review of the Bar Vocational Course: Report of the Working Group' (Bar Standards Board 2008) <https://www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf> accessed 4 October 2017; Bar Standards Board, 'Review of Pupillage: Report of the Working Group' (Bar Standards Board 2010) <https://www.barstandardsboard.org.uk/media/1383787/pupillage_report.pdf> accessed 4 October 2017.

¹²² Roger Ormrod, 'Report of the Committee on Legal Education' (HM Stationery Office 1971) Cmnd. No.4595.

¹²³ David Edmonds, 'Training the Lawyers of the Future – A Regulator's View' (2011) 45 *Law Teacher* 4.

1. What are the skills/knowledge/experience currently required by the legal services sector?
2. What skills/knowledge/experience will be required by the legal services sector in 2020?
3. What kind of legal services education and training (LSET¹²⁴) system(s) will deliver the regulatory objectives of the Legal Services Act? [ie both competition and independence/diversity]
4. What kind of LSET system(s) will promote flexibility, social mobility and diversity?¹²⁵ [a further reinforcement of the diversity agenda]
5. What will be required to ensure the responsiveness of the LSET system to emerging needs?
6. What scope is there to move towards sector-wide outcomes/activity-based regulation?
7. What need is there (if any) for extension of regulation to currently non-regulated groups?

Quantitative and qualitative data was collected through 56 interviews, 39 focus groups (involving 251 participants) and an online survey with 1,128 respondents as well as discussion papers, briefing papers and their responses, and a conference in July 2012. The project was also informed by a study of continuing professional development (CPD) for solicitors, commissioned by the SRA.¹²⁶ Following presentation of the final report and its 26 recommendations (see Appendix 2) in 2013,¹²⁷ the LSB issued statutory guidance to all the regulated legal professions, that:

1. Education and training requirements [must] focus on what an individual must know, understand and be able to do at the point of authorisation
2. Providers of education and training [should] have the flexibility to determine how to deliver training, education and experience that meets the outcomes required
3. Standards are [to be] set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements
4. Regulators [must] successfully balance obligations for education and training between the individual and the entity both at the point of entry and on an ongoing basis

¹²⁴ This acronym was adopted during the review to address the assumption in some quarters that “legal education” referred only or mainly to the law degree.

¹²⁵ A summary of the pre-LETR state of affairs, citing the then proposed LETR project, is provided in Chapter 3 of Alan Milburn, ‘Fair Access to Professional Careers. A Progress Report by the Independent Reviewer on Social Mobility and Child Poverty’ (2012) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61090/IR_FairAccess_acc2.pdf> accessed 29 March 2017.

¹²⁶ Pamela Henderson and others, ‘Solicitors Regulation Authority: CPD Review.’ (Solicitors Regulation Authority 2012) <<http://www.sra.org.uk/sra/news/wbl-cpd-publication.page>> accessed 20 April 2017.

¹²⁷ Julian Webb and others, ‘Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales’ (Legal Education and Training Review 2013) <<http://letr.org.uk/the-report/index.html>> accessed 20 April 2017.

5. Regulators [must] place no inappropriate direct or indirect restrictions on the numbers entering the profession¹²⁸ [numerals added]

Each of the three largest professions filed statements of intent in response to the recommendations,¹²⁹ and, in the case of the SRA's Training for Tomorrow and the BSB's Future Bar Training in particular have variously rejected, adapted, or superseded the LETR recommendations. Some, but not all, the smaller professions have addressed the recommendations at least in part. The only substantial changes made by the notarial profession, for example, have been to allow legal executives to cross-qualify and to strengthen coverage of professional ethics. Although the applications to the LSB to authorise these changes do not mention LETR, the increased focus on cross qualification and on ethics as an integral part of the qualification requirements is at least consistent with the recommendations.¹³⁰

By coincidence, the duration of the LETR investigation paralleled that of the ABA Task Force in the USA.¹³¹ The principal divergence between the conclusions of the two investigations, which expressed shared concerns about information available to entrants and about cost, was that in the USA there was, largely, no desire to threaten the status of the JD as the sole route to practice. By contrast, given in part what seemed the unlikelihood of moving towards a single profession in England and Wales, the LETR report emphasised the domestic issues of multiplicity, including problems of entry and exit points, and different routes to comparable ends.

The LETR approach sought to balance, as far as they could be balanced, the poles of competition and independence/diversity. The 26 detailed recommendations are listed in the Appendix. As implemented, however, the question of balance is less clear. The SRA, in particular, has chosen to take the question of competition to something of a radical extreme.

Some of the recommendations related to very specific issues, such as the content of the LLB and GDL

¹²⁸ Legal Services Board, 'Guidance on Regulatory Arrangements for Education and Training Issued under Section 162 of the Legal Services Act 2007' <http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf> accessed 17 February 2017, pp 2-3.

¹²⁹ HM Government, 'Cutting Red Tape Home Page' (*Cutting Red Tape*, No date) <<https://cutting-red-tape.cabinetoffice.gov.uk/>> accessed 19 April 2017.

¹³⁰ Legal Services Board, 'Current Applications' (*Legal Services Board*, 2 January 2009) <http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/current_applications.htm> accessed 10 January 2017.

¹³¹ ABA Task Force, 'Report and Recommendations American Bar Association Task Force on the Future of Legal Education' (American Bar Association 2014) <http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf> accessed 4 October 2017.

(recommendations **10** and **11**)¹³², LPC (recommendation **12**)¹³³ and BPTC (recommendation **13**)¹³⁴, which are of limited interest to an international audience.

The report also recommended (**17-19**) that England and Wales should follow the trend of other professions (but with some exceptions,¹³⁵ not generally legal professions) in moving away from inputs-oriented, hours-counting models of post-qualification CPD towards something oriented more closely to the outputs of learning, “continuing competence” and enhanced practice. This has had some traction, with several professions adjusting their CPD schemes, but is outside the remit of this paper. The alacrity with which the regulators have moved to outputs focused approaches to CPD has been so swift as to supersede recommendation **19** on cross recognition of CPD activities.

The desire for more information, and for a centre to enhance legal education generally, appears both in the ABA report¹³⁶ and in LETR recommendations **20** and **25**. It is unfortunate that recommendation **25** for a central hub of information under the auspices of a legal education council, was the one recommendation explicitly rejected by the regulators, on the grounds of expense. The same regulators have, however, been able to co-operate in a website designed to explain the different kinds of lawyers and legal services to potential *clients*.¹³⁷ Consequently, rather than finding a similar central source of information, *aspiring lawyers* are left to navigate between guidance offered by each of the professions (presupposing they know that the professions exist) or careers guidance websites that may summarise routes,¹³⁸ but can struggle to deal effectively with paralegal purgatory or provide accurate information about misconceptions.¹³⁹ The fact that lack of information continues to be a key barrier has recently been reaffirmed in a study for the BSB.¹⁴⁰

¹³² Recommendation **10**, as to discrepancies between the benchmark set for law degrees by the Quality Assurance Agency and the benchmark set by the solicitors and barristers’ professions was met by abolition of the professional benchmark. Recommendation **11** has not been commented on or implemented.

¹³³ As will be seen, the current plans of the SRA do not mandate completion of an LPC so this recommendation has been superseded.

¹³⁴ comparison of the 2014 and 2016 BPTC handbooks shows the topic of ADR changing from being categorised as a “knowledge area” to being categorised as a “skill”, in line with recommendation **13**. Recommendation 8 on advocacy more generally appears quietly to have been implemented by the BSB: Bar Standards Board, ‘The Professional Statement for Barristers’ <https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf> accessed 11 April 2017, 3.6.

¹³⁵ See for examples: Law Society of Alberta, ‘Continuing Professional Development’ (2017) <<https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/>> accessed 6 November 2017; New Zealand Law Society, ‘Continuing Professional Development’ (*New Zealand Law Society*, 2017) <<https://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/continuing-professional-development>> accessed 6 November 2017.

¹³⁶ Bar Standards Board, ‘The Professional Statement for Barristers’ <https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf> accessed 11 April 2017, A2-A4.

¹³⁷ Legal Choices, ‘Types of Lawyers’ (*Legal Choices*) <<http://www.legalchoices.org.uk/types-of-lawyers/>> accessed 13 April 2017.

¹³⁸ Lawcareers.net, ‘Legal Career Paths’ (*LawCareers.Net*, No date) <<http%3a%2f%2fwww.lawcareers.net%2fCourses%2fLegalCareerPaths>> accessed 13 April 2017.

¹³⁹ An example of such a misconception is that, as LPC and BPTC graduates without a training contract are eligible to take some US bar examinations and qualify as a US attorney, that expending money on doing so will improve chances of employment, whether in the UK or in the USA.

¹⁴⁰ Kotecha M and others, ‘Barriers to Training for the Bar: A Qualitative Study’ (NatCen 2017) <http://www.barstandardsboard.org.uk/media/1910425/barriers_to_training_for_the_bar_research.pdf> accessed 11 December 2017

This section therefore considers the more generic LETR recommendations that have implications for competition, independence and diversity.

I Independence and diversity

Diversity

LETR research question 4 demanded that attention be paid to questions of professional legal education systems that could “promote flexibility, social mobility and diversity?”¹⁴¹ The solicitors’ and barristers’ professions are particularly sensitive to these questions, and statistics demonstrate that there continue to be problems, particularly perhaps for the working class¹⁴² who are less likely to attend elite universities and thereby to be recruited or promoted.¹⁴³ Nevertheless, some progress has been noted,¹⁴⁴ as, possibly as a result of drives in recent years to increase university participation, more than half of solicitors are now the first in their family to go to university.¹⁴⁵ Nevertheless, the proposal by the LSB that it should extend its interest in the diversity of the legal workforce beyond requiring regulators to collect and publish diversity statistics¹⁴⁶ has been controversial in some quarters.¹⁴⁷

Valuable and useful access schemes for disadvantaged groups are in place,¹⁴⁸ often representing

¹⁴¹ A summary of the pre-LETR state of affairs, citing the then proposed LETR project, is provided in Chapter 3 of Alan Milburn, ‘Fair Access to Professional Careers. A Progress Report by the Independent Reviewer on Social Mobility and Child Poverty’ (2012) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61090/IR_FairAccess_acc2.pdf> accessed 29 March 2017.

¹⁴² Anna Zimdars, ‘The Profile of Pupil Barristers at the Bar of England and Wales 2004-2008’ (2010) 17 *International Journal of the Legal Profession* 117, p 129

¹⁴³ Women and graduates of universities other than Oxford and Cambridge are less likely to obtain the rank of QC, a stepping stone to the judiciary, than men and graduates of those universities: Michael Blackwell, ‘Taking Silk: An Empirical Study of the Award of Queen’s Counsel Status 1981–2015’ (2015) 78 *Modern Law Review* 971, p 996. See also Philip Kirby, ‘Leading People 2016: The Educational Backgrounds of the UK Professional Elite’ (Sutton Trust 2016) <http://www.suttontrust.com/wp-content/uploads/2016/02/Leading-People_Feb16.pdf> accessed 11 April 2017, p 51.

¹⁴⁴ Bar Standards Board, ‘Practising Barristers’ (*Bar Standards Board (BSB)*, 2016) <<https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>> accessed 11 April 2017; Law Society of England and Wales, ‘Annual Statistics Report 2015’ (Law Society of England & Wales 2016) <<http://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2015/>> accessed 11 April 2017.

¹⁴⁵ Law Society of England and Wales, ‘Diversity Profile of the Solicitors Profession 2015’, p 23. Although a higher proportion of solicitors than the general public were educated at fee-paying schools, the Law Society seems to dispute reports that more than half of partners in the elite, magic circle law firms came from such schools, reported in Philip Kirby, ‘Leading People 2016: The Educational Backgrounds of the UK Professional Elite’ (Sutton Trust 2016) <http://www.suttontrust.com/wp-content/uploads/2016/02/Leading-People_Feb16.pdf> accessed 11 April 2017, p 33

¹⁴⁶ Legal Services Board, ‘Diversity Data Collection and Transparency’ (Legal Services Board 2015) <<https://research.legalservicesboard.org.uk/wp-content/media/Diversity-data-collection-and-transparency.pdf>> accessed 11 April 2017 and revisions to its policy at Legal Services Board, ‘LSB Revises Its Diversity Guidance’ (*Legal Services Board*, 15 February 2017) <http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2017/20170215_LSB_Revises_Its_Diversity_Guidance.html> accessed 6 November 2017.

¹⁴⁷ Association of Costs Lawyers, ‘LSB Puts Onus on CLSB and Others to Improve Diversity’ <<http://www.associationofcostslawyers.co.uk/news/acl-e-bulletin/lsb-puts-onus-on-clsb-and-others-to-improve-diversity>> accessed 8 March 2017

¹⁴⁸ The recent all-party parliamentary group considering this issue noted that “... some sectors have developed far more sophisticated solutions to the challenges than others, notably accountancy and to a lesser extent law...” All Party Parliamentary Group on Social Mobility, ‘The Class Ceiling: Increasing Access to the Leading Professions’ (Sutton Trust 2017) <https://d3n8a8pro7vhmx.cloudfront.net/labourclp269/pages/941/attachments/original/1484611647/APPG_Report_-_Access_to_Leading_Professions_Inquiry.pdf?1484611647> accessed 11 April 2017, p 4

collaboration between members of the profession¹⁴⁹ and the academy,¹⁵⁰ but there is no obvious single source of information about them¹⁵¹ and they may be limited to young people in a particular geographic area¹⁵² or with particular characteristics.¹⁵³ One of the components of the ill-fated LETR recommendation 25 was that some of this information should be collated and evaluated at a single site.¹⁵⁴ The need for information identified in LETR has, however, been vindicated to some extent by the emphasis in the recent report of the All-Party Parliamentary Group on Social Mobility¹⁵⁵ on the need not only for good careers information but on positive liberty interventions to improve awareness in specific groups and co-ordination of initiatives.¹⁵⁶ The SRA in particular asserts that the radical approach that it has adopted will increase opportunities and thereby, it is implied, diversity¹⁵⁷

The fact that the discourse of the All-Party Parliamentary Group on Social Mobility is at a wider level than the LSB or the legal professions is likely, I suggest, to have more impact on domestic legislators than the LETR investigations, even though its findings and recommendations mirror those of the LETR report.¹⁵⁸ There

¹⁴⁹ Alex Aldridge, 'Are Law Firms Doing Enough to Encourage Diversity?' *The Guardian* (22 August 2014) <<https://www.theguardian.com/law/2014/aug/22/law-firms-importance-of-diversity>> accessed 11 April 2017.

¹⁵⁰ Sarah Murray, 'Law Schools Experiment to Increase Ethnic Diversity' *Financial Times* (20 November 2016) <<https://www.ft.com/content/4a9b0564-9ace-11e6-8f9b-70e3cabccfae>> accessed 11 April 2017.

¹⁵¹ The list of 24 such schemes on a well-known law careers website is headed by the statement: "There is a growing movement in the legal profession to create a more diverse workforce, with ever more diversity projects and access schemes springing up. Below is a list of several such schemes, *but it is by no means definitive – if you're aware of a scheme that isn't on here, please email us ...*"; [italics added] Lawcareers.net, 'Diversity Access Schemes' (*LawCareers.Net*, 2017) <<http://www.lawcareers.net/MoreLaw/DiversityAccessSchemes>> accessed 11 April 2017. This fragmentation is not limited to law, as the All Parliamentary Group recommended that "national leadership" was needed to address it.

¹⁵² For example, City Solicitors Horizons, 'City Solicitors Horizons' (*City Solicitors Horizons*, No date) <<http://citysolicitorshorizons.org/home.html>> accessed 11 April 2017 is at present limited to young people from disadvantaged backgrounds attending universities in London and the South East.

¹⁵³ Freshfields Bruckhaus Deringer, 'The Freshfields Stephen Lawrence Scholarship Scheme' (*Freshfields Bruckhaus Deringer*, 2017) <http://www.freshfields.com/freshfields_stephen_lawrence_scholarship/> accessed 11 April 2017.

¹⁵⁴ Recommendation 24 extending the requirement to produce diversity data about students to educational providers outside the public university sector, is related to this question of transparency. Higher Education Institutions are required under the Equality Act 2010 to publish equality data on some, but not all "protected characteristics". It was proposed to extend this duty in more recent legislation relating to higher education specifically: Equality and Human Rights Commission, 'Higher Education and Research Bill House of Lords Report Stage Advice for Parliamentarians on Amendments to Clause 10 and Clause 32' <<https://www.equalityhumanrights.com/en/parliamentary-library/higher-education-and-research-bill-house-lords-report-stage>> accessed 11 April 2017. As enacted, the Higher Education and Research Act 2017 contains provisions that could lead to publication of diversity data in sections 9, 32, 64 and 65.

¹⁵⁵ Previous governmental investigation on this topic in 2009 was available during the LETR enquiry: A Milburn, 'Unleashing Aspiration: The Final Report of the Panel on Fair Access to the Professions' (Central Office of Information 2009) <<http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf>> accessed 29 March 2017. A Milburn, 'Fair Access to Professional Careers. A Progress Report by the Independent Reviewer on Social Mobility and Child Poverty' (2012a) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61090/IR_FairAccess_acc2.pdf> accessed 29 March 2017.

¹⁵⁶ All Party Parliamentary Group on Social Mobility, 'The Class Ceiling: Increasing Access to the Leading Professions' (Sutton Trust 2017) <https://d3n8a8pro7vnmx.cloudfront.net/labourclp269/pages/941/attachments/original/1484611647/APPG_Report_-_Access_to_Leading_Professions_Inquiry.pdf?1484611647> accessed 11 April 2017, pp 6-7

¹⁵⁷ Solicitors Regulation Authority, 'SRA Proposals Could Create More Opportunities' (*Solicitors Regulation Authority*, 24 March 2017) <<http://www.sra.org.uk/sra/news/press/bridge-group-report-sqe.page>> accessed 13 April 2017; reporting on Bridge Group, 'Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity' (Solicitors Regulation Authority 2017) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources.page>> accessed 18 October 2017.. It is fair to say that the diversity impact report commissioned by the SRA is at best ambivalent in this respect: Richard Moorhead, 'SRA, Lacking the Confidence Not to Spin?' <<https://lawyerwatch.wordpress.com/2017/03/25/sra-lacking-the-confidence-not-to-spin/>> accessed 28 July 2017.

¹⁵⁸ Compare, for example, the LETR data:

"Your CV looks good, but you don't speak enough languages. You haven't travelled".

".. I can't afford to travel places, I'm trying to pay debts? ... I'm sorry I couldn't go to Cambodia."

with a statement made to the all party parliamentary group, p 10 by a legal trainee; "...[E]mployers too often expect persons to have certain character traits or to have certain experiences that are linked to their background. She said in an interview she was asked 'why she hadn't been travelling', when this was not something she could afford.

are nevertheless several points of clear comparison, not the least of which is the attention paid to unpaid internships, a phenomenon that concerned the LETR inquiry (recommendation 20);¹⁵⁹ is castigated more strongly in the All-Party Parliamentary Group report in their recommendations for law, finance and other professional services: “Employers should ban all unpaid internships and need to review their work experience policies to ensure access is fair and transparent”¹⁶⁰ and by the Social Mobility Commission.¹⁶¹ Some efforts, but as guidance from the representative body rather than rules imposed by the regulator, have been made to address the question of internship.¹⁶²

Similarly, although the legal professions have not implemented recommendation 9 that CPD schemes should include mandatory coverage of equality and diversity issues, the All-Party Parliamentary Group strongly recommended unconscious bias training for recruiters.

Independence

Gordon debates a number of possible meanings for legal independence in the US context, including self-regulation (diluted by the LSA 2007); autonomy in choice and conditions of work (a luxury available to only the top echelons in practice) and positive function as a force for social good.¹⁶³ In this third formulation it is related to what may have been envisaged by the drafters of the LSA 2007 and which could more prosaically be put as “the right to say no”; to act as an “officer of the court”; to refuse to comply with illegitimate instructions from a client and not to bow to influence. In this sense it is clear that a robust ethical stance is required and, in a more competitive market, increasingly required.¹⁶⁴

¹⁵⁹ Sutton Trust, ‘Internship or Indenture?’ (Sutton Trust 2014) <<http://www.suttontrust.com/researcharchive/internships/>> accessed 29 March 2017.

Philip Kirby, ‘Leading People 2016: The Educational Backgrounds of the UK Professional Elite’ (Sutton Trust 2016) <http://www.suttontrust.com/wp-content/uploads/2016/02/Leading-People_Feb16.pdf> accessed 11 April 2017, recommends at p 5 that after 4 weeks all interns should be paid the national living wage. All Party Parliamentary Group on Social Mobility, ‘The Class Ceiling: Increasing Access to the Leading Professions’ (Sutton Trust 2017) <https://d3n8a8pro7vnmx.cloudfront.net/labourclp269/pages/941/attachments/original/1484611647/APPG_Report_-_Access_to_Leading_Professions_Inquiry.pdf?1484611647> accessed 11 April 2017.

¹⁶⁰ Ibid, p 7.

¹⁶¹ Social Mobility Commission, ‘Unpaid Internships Are Damaging to Social Mobility’ (23 October 2017) <<https://www.gov.uk/government/news/unpaid-internships-are-damaging-to-social-mobility>> accessed 11 December 2017.

¹⁶² Bar Council of England and Wales, ‘Work Experience and Mini Pupillages’ (Bar Council of England and Wales, 2017) <<http://www.barcouncil.org.uk/careers/mini-pupillages/work-experience/>> accessed 28 February 2017. Law Society of England and Wales, ‘Best Practice Guidance: Work Experience Placements’ (*Law Society of England and Wales*, 24 February 2016) <<http://www.lawsociety.org.uk/support-services/advice/articles/best-practice-guidance--work-experience-placements/>> accessed 28 February 2017.

¹⁶³ Robert W Gordon, ‘The Independence of Lawyers’ (Yale Law School 1988) Paper 1361 <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2368&context=fss_papers> accessed 18 October 2017

¹⁶⁴ For pressure by clients, see, for example: Ronit Dinovitzer, Hugh P Gunz and Sally P Gunz, ‘Reconsidering Lawyer Autonomy: The Nexus Between Firm, Lawyer, and Client in Large Commercial Practice’ (2014) 51 *American Business Law Journal* 661 and, in the UK Claire Coe and Steven Vaughan, ‘Independence, Representation and Risk’ (Solicitors Regulation Authority 2015) <<http://www.sra.org.uk/sra/how-we-work/reports/independence-report.page>> accessed 6 November 2017.

The LETR recommendations about ethics have had some effect.¹⁶⁵ Competences or learning outcomes about some or all of ethics, research and written and oral skills now appear in the majority of the professional qualification frameworks described below (recommendation 6). Recommendation 7 about ethics and morality in the wider sense was consciously articulated so as to apply to even the most junior practitioners, including those in technician, apprentice or paralegal roles. The extent to which ethics appears in the curriculum even as part of professional deontology (recommendation 6) may not be clear, particularly at the career paralegal level. The notaries and patent attorneys, however, appear to have included explicit coverage of professional ethics in their curricula more strongly than before.

Only CILEx, which did so in parallel with the LETR investigations rather than as a result of them has, in the spirit of recommendation 9, required a professional conduct element in its CPD scheme.

II Competition

Competition, as indicated above, impacts on the sector in multiple ways: competition between legal services providers; competition between regulators, and competition for work experience places that permit graduates to qualify as solicitors or barristers. We deal with the latter point first, before closing this discussion with the recommendations about competence statements that have been largely accepted but whose implications have been somewhat surprising.

Supervised practice and paralegal purgatory

As described above, the higher status professions of barrister and solicitor define their periods of required supervised practice by reference to pre-approved training organisations, rather than by the professional title of the supervisor or the nature of the work, as is common in the smaller professions. This clearly exacerbates the competitive recruitment element, as there is a cost and a constraint in complying with these requirements, and one that may deter smaller firms or more unusual legal environments in, for example, in-house work. Consequently, LETR recommendation 15 called for a relaxation in unnecessary restrictions on training

¹⁶⁵ For further commentary on the ethics-related recommendations, see Graham Ferris, 'Values Ethics and Legal Ethics: The QLD and LETR Recommendations 6, 7, 10, and 11' (2014) 48 *The Law Teacher* 20.

environments and **22** for a means of career progression for paralegals.¹⁶⁶ Recommendation **23**, for a voluntary certification scheme for paralegals, has been implemented through creation of the Professional Paralegal Register as a voluntary regulatory body. The apprenticeship routes, endorsed in recommendation **14**, have their own momentum as a government initiative described earlier in this paper.

Both solicitors and the Bar¹⁶⁷ seem to be responding to these suggestions about limitations on accrediting workplace experience and the SRA is also, it appears, now prepared to sanction accredited supervised practice taking place in a wider range of environments, for example, under the auspices of the academy, in clinics and placements¹⁶⁸ with supervisors who are both lawyers and educationalists. Nevertheless, the value of supervised practice is contingent on the quality of supervision,¹⁶⁹ and recommendation **16**, seeking to bolster the capability of supervisors and assure to some extent that periods of supervised practice are valuable learning environments, appears to have been sidelined in the rush to extend the range of training environments.¹⁷⁰

If supervisors are not to be required to demonstrate competence as supervisors, however, another way in which some element of regulatory control can be exerted over what is learned in the period of supervised practice is to set learning outcomes for it in the shape of a competence statement defining the scope and quality of knowledge, skills and attitudes to be demonstrated at the point of qualification.

Competence statements and routes to achieve competence

The aspect of the LETR recommendations (**1-7** and **14**) that has been leapt on by most of the regulators with most alacrity involves looking at qualification systems, not from their starting point, but from their endpoint. Regulators had, hitherto, focused to a large extent on regulation of inputs of individual stages: the

¹⁶⁶ Institute of Paralegals, 'The Professional Paralegal Register' (*Institute of Paralegals*, No date) <<http://www.theiop.org/news/97/55/The-Professional-Paralegal-Register-PPR/d,Detail-A.html>> accessed 20 October 2017; Professional Paralegal Register, 'PPR | Professional Paralegal Register' (*Professional Paralegal Register*, 2016) <<http://ppr.org.uk/>> accessed 20 October 2017.

¹⁶⁷ Bar Standards Board, 'BSB Policy Statement on Bar Training' (Bar Standards Board 2017) <https://www.barstandardsboard.org.uk/media/1825162/032317_fbt_-_policy_statement_version_for_publication.pdf> accessed 20 October 2017, para 36.

¹⁶⁸ Solicitors Regulation Authority, 'Consultation - A New Route to Qualification: The Solicitors Qualifying Examination (SQE)' (25 April 2017) <<http://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>> accessed 20 October 2017.

¹⁶⁹ Trainees are vocal about the "priceless" nature of good supervision and highly critical of failures: Jane Ching and Pamela Henderson, 'Pre-Qualification Work Experience in Professional Legal Education: Report' (Solicitors Regulation Authority 2016) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/workplace-learning.page>> accessed 3 May 2017, para 8.4.3.

¹⁷⁰ There is informal guidance of various kinds. See, for example: Bar Council of England and Wales, 'Supporting Colleagues, Pupils and Students with Dyslexia' <http://www.barcouncil.org.uk/media/554942/bar_council_dyslexia_guide_2017.pdf> accessed 20 October 2017; Law Society of England and Wales, 'Supervision' (*Law Society of England and Wales*, 6 October 2011) <<http://www.lawsociety.org.uk/support-services/advice/practice-notes/supervision/>> accessed 4 May 2017.

Unlike their solicitor colleagues, bar supervisors are required to undergo a training course although at least historically the utility of this training has been questioned: Fernanda Pirie and Justine Rogers, 'Pupillage: The Shaping of a Professional Elite' in J Abbink and T Salverda (eds), *The Anthropology of Elites: Power, Culture, and the Complexities of Distinction* (Springer 2013), p 153.

subjects to be covered in a qualifying law degree; the validation of LPCs offered by different providers; the requirement to pass a BPTC; the experience to be provided during a training contract, and so on. How these stages, particularly in the sequential models, interacted, and how they combined (if they did) to produce a “solicitor” or a “barrister” at the end of the process was largely taken on trust. Taken on trust especially because the final part of the sequence, completion of the period of supervised practice, was certified by the employer.

The idea of a professional regulator identifying, monitoring and assessing the output of a pre-qualification education by reference to the competences¹⁷¹ needed for practice, by contrast with routes and inputs that may, or may not, share the aim of preparing for practice or for a single profession, and may, or may not, equip aspirants with what is needed for practice is, of course, entirely consistent with the outcomes focussed regulatory approach demanded by the LSB. What was envisaged by the LETR research team was, however, that at some stage a sector wide statement might be created (recommendation 5) defining what was required to work safely and effectively in the law. I suggest that this could then have acted as a benchmark that the individual professions could refine to reflect their own distinct identities and specialisations. This might have aided competition between professions in articulating rather more clearly than at present the differences between the different kinds of lawyers available for the same work. It is not always clear precisely how the statements have been created for the individual professions, but similarities in the wording suggest an element of copying and pasting between them: a kind of sector-wide competence statement by default.

The ways in which competence statements have been adopted by the professions varies.¹⁷² The notarial profession is, at present, the only one of the eight regulated legal professions not to have adopted one, and there seems to be no indication that they will. The intellectual property professions describe theirs as for “guidance” and therefore their effect on what intellectual property lawyers actually learn is unclear. CILEx has had its framework in place for some time and assesses all its components, including those learned in the workplace, by

¹⁷¹ This concept may be similar to that of *Kompetenz*, Stefan Faas, Petra Bauer and Rainer Treptow, *Kompetenz, Performanz, soziale Teilhabe: Sozialpädagogische Perspektiven auf ein bildungstheoretisches Konstrukt* (Springer-Verlag 2013), p 10. However, Faas et al also use *Befähigungen* and *Verwicklichungschancen* to describe the concept: Stan Lester and Jolanta Religa, “Competence” and Occupational Standards: Observations from Six European Countries’ (2017) 59 *Education + Training* 201, p 203.

¹⁷² Bar Standards Board, ‘The Professional Statement for Barristers’ <https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf> accessed 11 April 2017, Chartered Institute of Legal Executives, ‘Day One Outcomes - Fellow’ <http://www.cilexregulation.org.uk/~media/pdf_documents/cilex-regulation/resources/day-one-outcomes-may-2015.pdf?la=en> accessed 10 April 2017
Costs Lawyer Standards Board, ‘Competence Framework’ <http://www.associationofcostslawyers.co.uk/wordpress/wp-content/uploads/2016/08/ACLT_SP-CompFramework_Appendix-SP2_2016_V1.0.pdf> accessed 11 April 2017,
Intellectual Property Regulation Board, ‘Competency Framework - Patent’ <http://ipreg.org.uk/wp-content/files/2014/08/IPReg-Skill-Set-Table-Patent_FINAL1.pdf> accessed 10 April 2017.,
Intellectual Property Regulation Board, ‘Competency Framework - Trade Marks’ <<http://ipreg.org.uk/wp-content/files/2014/08/IPReg-Skill-Set-Table-TM-Final1.pdf>> accessed 11 April 2017, p 6
Council for Licensed Conveyancers, ‘Proposed CLC Lawyer Standards for Newly Qualified Licensed Conveyancers and Licensed Probate Practitioners Proposed CLC Education Framework’ <<http://www.conveyancer.org.uk/CLCSite/media/Consultation-Documents/20160627-CLC-Education-Consultation-FINAL.pdf>> accessed 8 February 2017. Solicitors Regulation Authority, ‘Statement of Solicitor Competence’ (*Solicitors Regulation Authority*, 2015) <<http://www.sra.org.uk/solicitors/competence-statement.page>> accessed 10 April 2017.

a portfolio submitted to the employer and to the regulator on application for fellowship.

A competence statement could be regarded as a useful example of transparency, setting out clearly and impartially the attributes required for a role or activity in a way that can be compared with similar statements for other professions. It could provide leverage for the trainee lawyer in negotiating opportunities to develop those competences with their employer. That that might be necessary is shown by recent empirical work demonstrating that existing trainee solicitors are not necessarily given work enabling them to achieve the elements of the *Statement of Solicitor Competence* related to advocacy, client contact and negotiation.¹⁷³

Critics of such statements would argue that they inappropriately atomise an activity (legal practice) that cannot be dissected into individual items in this way. They might also point out that a competence statement of itself does not resolve the recruitment problem: it does not stop a recruiting employer, faced with numerous applicants who have achieved what is by definition a minimum statement of competence, demanding other things (unpaid internship) or other attributes (social capital, elite university). A competence statement, further, does not obviously accommodate someone who has skills or attributes that are not included in the statement, and falls down in those that have been chosen. For example, a lawyer whose written English is not good, but whose spoken Urdu is a positive asset to a firm with a substantial immigration law practice or a lawyer whose legal research skills are outstanding but whose interpersonal skills are so limited that they cannot be exposed to clients.

The competence statement is, it is suggested, a useful starting point, simply because it seeks to articulate what has previously been tacit. It facilitates innovation in different ways in which those competences might be achieved. However, this trend towards competence statements has facilitated the most radical manifestation of outcomes focused regulation: the SRA's current proposals. This was, in its initial iteration, entirely outcomes focused in that, provided an aspirant could succeed in a knowledge and skills test¹⁷⁴ (the Solicitors Qualifying Examination (SQE)) assessing the contents of the competence framework,¹⁷⁵ he or she could be admitted, irrespective of antecedents. The examination will be broken into two parts, SQE 1, an assessment combining it appears the knowledge elements of the LLB and the content of the LPC, intended to be taken during or shortly

¹⁷³ Jane Ching and Pamela Henderson, 'Pre-Qualification Work Experience in Professional Legal Education: Report' (Solicitors Regulation Authority 2016) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/workplace-learning.page>> accessed 25 September 2017, figure 4.

¹⁷⁴ Based on the existing Qualified Lawyers Transfer Scheme (QLTS) for incoming foreign lawyers. This is itself based on models of assessment used in medicine: Solicitors Regulation Authority, 'Qualified Lawyers Transfer Scheme' (*Solicitors Regulation Authority*, 10 August 2017) <<http://www.sra.org.uk/qlts/>> accessed 20 October 2017..

¹⁷⁵ Solicitors Regulation Authority, 'Solicitors Qualifying Examination: Draft Assessment Specification' (*Solicitors Regulation Authority*, July 2017) <www.sra.org.uk/documents/sra/news/sqe-draft-assessment-specification.pdf> accessed 11 December 2017.

after university and SQE 2, more skills based, intended to be taken after “the bulk” of the workplace experience has been completed. Discussions about the quality of the assessment model are outside the remit of this paper, although it remains controversial, particularly in relation to SQE 1. Further, universities, particularly perhaps those higher status universities that do not currently offer an LPC, are exercised about the extent to which they can, or should, attempt to reconfigure law degrees as SQE-preparation; acknowledge that the position of the Bar on the LLB has not changed; or opt-out of a relationship with the solicitors’ profession altogether.¹⁷⁶ There is also concern in the academy about the SRA’s evidence base for the proposed changes.¹⁷⁷

More recently, the SRA has indicated that it will require some form of graduate level education - not necessarily in law - as a precursor, and that a period of supervised practice, so dear to the profession, will also be required.¹⁷⁸ As there seems to be no requirement that the SQE assess anything that can *only* be learned in the workplace, the latter requirement may come to be rather more related to acquisition of the professional habitus than acquisition of any of the competences. However, indications about the size and shape of the workplace requirement suggests that some attention has been paid to LETR recommendations **15** and **22**, which might go some way towards breaking paralegal purgatory for LPC graduates already in the workplace.¹⁷⁹

The significant aspect of this model is, however, that there will be no required courses, or suggested courses to be taken to prepare for this examination. One can, therefore, envisage every possibility from autodidacticism to carefully organised masters’ degrees. Some candidates, whether through employer pressure or lack of resource will no doubt attempt the assessments without any formal preparation. Others, no doubt, will be fully and elaborately supported by their firms. As is the case for the QLTS and, indeed for self-standing bar examinations elsewhere in the world, including Germany,¹⁸⁰ an independent and competitive market in “crammers” for the SQE is inevitable. These will not be regulated by the SRA, as their interest is in the terminal assessment that maps against the competence statement. That is, in the outcomes.

Although the SRA claims that this move – from prescribing multiple routes to, in effect, prescribing an infinity of routes - promotes social mobility, at present this seems more aspirational than real, with the SRA itself admitting that it could represent diagnosis, rather than cure:

¹⁷⁶ Mark Davies, ‘Changes to the Training of English and Welsh Lawyers: Implications for the Future of University Law Schools’ (2017) 51 *The Law Teacher* 1.

¹⁷⁷ Elaine Hall, ‘Notes on the SRA Report of the Consultation on the Solicitors Qualifying Exam: “Comment Is Free, but Facts Are Sacred”’ (2017) 51 *Law Teacher* 364.

¹⁷⁸ Solicitors Regulation Authority, ‘Consultation - A New Route to Qualification: The Solicitors Qualifying Examination (SQE)’ (25 April 2017) <<http://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>> accessed 20 October 2017

¹⁷⁹ Julia Black, ‘SQE: High Standards, More Opportunities’ *Law Society Gazette* (17 October) <<https://www.lawgazette.co.uk/practice-points/sqe-high-standards-more-opportunities/5058269.article>> accessed 7 March 2017.

¹⁸⁰ Heinrich Amadeus Wolff, ‘Bar Examinations and Cram Schools in Germany’ (2006) 24 *Wisconsin International Law Journal* 109.

The assessment would not, of itself, get rid of prior educational and social disadvantage. However it might shine a light on any differences in attainment between different groups, so we could focus attention on doing our part to address the problem.¹⁸¹

It is perhaps worth pointing out that the BSB has carried out such a diagnosis rather less invasively and with significantly less impact on individuals' careers, through an empirical study.¹⁸² A variety of routes can be enabling: it is a characteristic of the successful CILEx qualification route and, less explicitly, of the existing routes to qualification as a solicitor. It is also the approach now to be adopted for intending barristers. The BSB has opted for four possible routes, having "agreed with the many consultation respondents who argued that too many training options could cause confusion for prospective barristers and training providers, damage diversity and increase regulatory cost".¹⁸³ The BSB, unlike the SRA, proposes to retain a requirement for a law degree or equivalent legal qualification:

The law degree and GDL will continue to cover the seven "Foundations of Legal Knowledge" as they currently stand, and the skills associated with graduate legal work such as legal research. We will, however, be encouraging innovation by academic institutions in the ways that these subjects are taught: through their provision, for example, of opportunities for students to gain work based experience or undertake clinical legal education.¹⁸⁴

Evaluating multiple options, whether for the aspirant or the employer, is complex, but it is at least possible when, as with the BSB proposal, those options are finite with some reassurance that each route has some credibility, and that its provider is accountable for its outcomes. Arguments that polycentric systems create two-tier professions¹⁸⁵ are, I suggest both specious and correct in different ways.

¹⁸¹ Liz Walters, 'Can the Solicitors Qualifying Examination Help Social Mobility?' <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/T4T-Blog/Can-the-Solicitors-Qualifying-Examination-help-social-mobility-.page>> accessed 13 April 2017. See also for comment on an apparently ambivalent report commissioned by the SRA into the effect of the proposals on diversity in the profession, Richard Moorhead, 'SRA, Lacking the Confidence Not to Spin?' <<https://lawyerwatch.wordpress.com/2017/03/25/sra-lacking-the-confidence-not-to-spin/>> accessed 13 April 2017 and the report itself Bridge Group, 'Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity' (Solicitors Regulation Authority 2017) <<http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources.page>> accessed 18 October 2017.

¹⁸² BSB Research Team, Oliver Jackling and Lisa Webley, 'Exploring Differential Attainment at BPTC and Pupillage' (Bar Standards Board 2017) <http://www.barstandardsboard.org.uk/media/1910429/differential_attainment_at_bptc_and_pupillage_analysis.pdf> accessed 11 December 2017.

¹⁸³ Bar Standards Board, 'BSB Announces Decision on the Future of Bar Training' (*Bar Standards Board*, 24 March 2017) <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-announces-decision-on-the-future-of-bar-training/?utm_content=buffer02120&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer> accessed 4 April 2017.

¹⁸⁴ Bar Standards Board, 'Academic Learning' (*Bar Standards Board*, No date) <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/future-ways-to-qualify-as-a-barrister/academic-learning/>> accessed 11 December 2017.

¹⁸⁵ See for example Dan Bindman, 'SRA-Backed Report: SQE "Risks Creating Tiered System" That Favours Privileged Students' <<http://www.legalfutures.co.uk/latest-news/sra-backed-report-sqe-risks-creating-tiered-system-favours-privileged-students>> accessed 13

They are specious because, given the known preferences of employers for particular universities, for GDL graduates and because of the invisible additional competences in social and cultural capital that are valued by employers but not included in the competence frameworks, there is *already* a two (or more) tier system, at least for the Bar and for solicitors. The historical reticence of solicitors who qualified through the (lower status) CILEx route about their origins is testament to this. Increasing the number of routes makes, therefore, a quantitative, rather than a qualitative, difference to highly stratified professions.

The arguments are, however, correct because, without more, without information and without support for the disadvantaged, and in a sequential system, the risk that students embark on initially cheap or otherwise attractive routes which do not in fact lead to anything beyond paralegal purgatory, is increased. The profession is simply gifted the opportunity to discriminate against a wider range of prior experiences than they do at present. They will justify doing so on the basis that they do not have the resources to evaluate or understand new qualification routes,¹⁸⁶ or that some of the things for which they filter that do not appear in the competence framework are nevertheless important or demanded by their clients:

These changes have the potential to support diversity through greater flexibility in training pathways, but also carry risks with routes to qualification becoming increasingly complex and challenging to navigate, and because some legal employers will give continued, or possibly increased, currency to traditional pathways. It is imperative that the SRA, training providers and employers all embrace and enact their responsibilities to mitigate for these risks and support fair and equitable entrance to the profession.¹⁸⁷

Competition is, it is suggested, increased at the expense of diversity:

E CONCLUSION

This article has examined the current environment of regulation of legal professional education and proposed and actual changes made after the wide ranging Legal Education and Training Review (LETR) of 2013. There is some evidence of an increased reinforcement of legal ethics in professional qualification frameworks. To the

April 2017; Chloe Smith, 'Single Exam Plan Could Create Two-Tier Legal Profession – City' *Law Society Gazette* (March 2016) <<https://www.lawgazette.co.uk/practice/single-exam-plan-could-create-two-tier-legal-profession--city/5054057.article>> accessed 7 March 2017.

¹⁸⁶ Solicitors Regulation Authority, 'SRA Proposals Could Create More Opportunities' (*Solicitors Regulation Authority*, 24 March 2017) <<http://www.sra.org.uk/sra/news/press/bridge-group-report-sqe.page>> accessed 13 April 2017. See also Michael Cross, 'SQE Won't Widen Access to Profession, Says University of Law' *Law Society Gazette* (6 January 2017) <<https://www.lawgazette.co.uk/practice/sqe-wont-widen-access-to-profession-says-university-of-law/5059293.article>> accessed 7 March 2017.

¹⁸⁷ Nicholas Miller, director of the Bridge Group, quoted in Solicitors Regulation Authority, 'SRA Proposals Could Create More Opportunities' (*Solicitors Regulation Authority*, 24 March 2017) <<http://www.sra.org.uk/sra/news/press/bridge-group-report-sqe.page>> accessed 6 November 2017.

extent that this supports young lawyers in taking ethical stances and behaving as independent professionals, this is to be welcomed.

Using diversity and competition as criteria, however, it is possible to conclude that, for the SRA, competition, in the sense of a choice for aspiring lawyers and for employers amongst an infinite number of ways to achieve the benchmark of competence, has the upper hand. The SQE has yet to be implemented, so it remains entirely unknown whether that level of competition between routes to qualification, aligned with only one of the objectives of the LSA 2007, will also achieve the diversity required by another objective of the same act. It may in fact be impossible to achieve an equipoise between those two regulatory objectives. The SRA seems to have acknowledged the implications without as yet being in a position to make any guarantees about the results.

We recognise the need for students to have access to reliable, independent information about the outcomes they can expect from pursuing different routes into the profession, and for employers to have access to information that could help support diversity in recruitment. Should the SQE be introduced, we would work with all partners to provide guidance and support on the changes to help entrants to the profession navigate the new system.¹⁸⁸

It is, perhaps, too soon to say whether or not LETR has succeeded or failed. Perhaps it could only ever have a limited effect because it was able to address only the commissioning regulators and had no power to effect change, exception by persuasion, in other actors in the existing system, recruiters in particular. It is somewhat galling to find some of the same points about diversity being raised, almost five years later, by the All Party Parliamentary Group, a body with a louder voice than that of a group of academic researchers. In an early stage of the LETR process, a discussion paper explored the implications of abolition of each of the conventional structures in both the parallel and sequential systems, including the vocational courses.¹⁸⁹ The SRA has taken the concept far further than the research team envisaged. The SQE will not be in place for all applicants, nevertheless, before 2020. Much may surprise us in the interim, not least the aspiration of the LSB, currently in the process of conducting another review into legal education,¹⁹⁰ to move away from the multiplicity of competing professions towards regulation by activity:

¹⁸⁸ Dan Bindman, 'SRA-Backed Report: SQE "risks Creating Tiered System" that Favours Privileged Students' <<http://www.legalfutures.co.uk/latest-news/sra-backed-report-sqe-risks-creating-tiered-system-favours-privileged-students>> accessed 13 April 2017, quoting the SRA's director of Education and Training.

¹⁸⁹ Julian Webb and others, 'Discussion Paper 01/2012: Key Issues (1): Call for Evidence' <<http://letr.org.uk/wp-content/uploads/Discussion-Paper-012012.pdf>> accessed 20 October 2017, p 22.

¹⁹⁰ Legal Services Board, 'Education and Training Project 2017/18' (2 January 2009) <http://www.legalservicesboard.org.uk/projects/Education_And_Training_2017_18.htm> accessed 11 December 2017.

Regulation should not be based on professional title. However, the strong brand power of some protected titles (eg solicitor and barrister) means that transitional arrangements will be required during a further shift to activity-based regulation. Award of professional title should therefore continue to be the responsibility of the relevant regulator for the time being, where this is currently the case.¹⁹¹

¹⁹¹ Legal Services Board, 'A Vision for Legislative Reform of the Regulatory Framework for Legal Services in England and Wales' <http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2016/20160909LSB_Vision_For_Legislative_Reform.pdf> accessed 13 March 2017, p 19.

Appendix: Recommendations of the Legal Education and Training Review (2013)

1. *Learning outcomes should be prescribed for the knowledge, skills and attributes expected of a competent member of each of the regulated professions. These outcome statements should be supported by additional standards and guidance as necessary.*
2. *Such guidance should require education and training providers to have appropriate methods in place for setting standards in assessment to ensure that students or trainees have achieved the outcomes prescribed.*
3. *Learning outcomes for prescribed qualification routes into the regulated professions should be based on occupational analysis of the range of knowledge, skills and attributes required. They should begin with a set of 'day one' learning outcomes that must be achieved before trainees can receive authorisation to practise. These learning outcomes could be cascaded downwards, as appropriate, to outcomes for different initial stages or levels of LSET. Learning outcomes may also be set (see below) for post-qualification activities.*
4. *Mechanisms should be put in place for regulators to co-ordinate and co-operate with relevant stakeholders including members of their regulated profession, other regulators, educational providers, trainees and consumers, in the setting of learning outcomes and prescription of standards.*
5. *Longer term, further consideration should be given to the development of a common framework of learning outcomes and standards for the legal services sector as a whole.*
6. *LSET schemes should include appropriate learning outcomes in respect of professional ethics, legal research, and the demonstration of a range of written and oral communication skills.*
7. *The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values.*
8. *Advocacy training across the sector should pay greater attention to preparing trainees and practitioners in their role and duties as advocates when appearing against self-represented litigants.*
9. *Learning outcomes should be developed for post-qualification continuing learning in the specific areas of:*
 - *Professional conduct and governance.*
 - *Management skills (at the appropriate points in the practitioner's career. This may also be targeted to high risk sectors, such as sole practice).*
 - *Equality and diversity (not necessarily as a cyclical obligation)*
10. *The balance between Foundations of Legal Knowledge in the Qualifying Law Degree and Graduate Diploma in Law should be reviewed, and the statement of knowledge and skills within the Joint Statement should be reconsidered with particular regard to its consistency with the Law Benchmark statement and in the light of the other recommendations in this report. A broad content specification should be introduced for the Foundation subjects. The revised requirements should, as at present, not exceed 180 credits within a standard three-year Qualifying Law Degree course.*
11. *There should be a distinct assessment of legal research, writing and critical thinking skills at level 5 or above in the Qualifying Law Degree and in the Graduate Diploma in Law. Educational providers should retain discretion in setting the context and parameters of*

the task, provided that it is sufficiently substantial to give students a reasonable but challenging opportunity to demonstrate their competence.

12. *The structure of the Legal Practice Course stage 1 (for intending solicitors) should be modified with a view to increasing flexibility of delivery and the development of specialist pathways. Reduction of the breadth of the required technical knowledge-base is desirable, so as to include an appropriate focus on commercial awareness, and better preparation for alternative practice contexts. The adequacy of advocacy training and education in the preparation and drafting of wills needs to be addressed.*
13. *On the Bar Professional Training Course (for intending barristers), Resolution of Disputes out of Court should be reviewed to place greater practical emphasis on the skills required by Alternative Dispute Resolution, particularly with regard to mediation advocacy.*
14. *LSET structures which allow different levels or stages (in particular formal education and periods of supervised practice) to take place concurrently should be encouraged where they do not already exist. It should not be mandated. Sequential LSET structures, where formal education is completed before starting supervised practice, should also be permitted where appropriate. In either case, consistency between what is learned in formal education and what is learned in the workplace is encouraged, and facilitated by the setting of 'day one' outcomes.*
15. *Definitions of minimum or normal periods of supervised practice should be reviewed in order to ensure that individuals are able to qualify or proceed into independent practice at the point of satisfying the required day one outcomes. Arrangements for periods of supervised practice should also be reviewed to remove unnecessary restrictions on training environments and organisations and to facilitate additional opportunities for qualification or independent practice.*
16. *Supervisors of periods of supervised practice should receive suitable support and education/training in the role. This should include initial training and periodic refresher or recertification requirements.*
17. *Models of CPD that require participants to plan, implement, evaluate and reflect annually on their training needs and their learning should be adopted where they are not already in place. This approach may, but need not, prescribe minimum hours. If a time requirement is not included, a robust approach to monitoring planning and performance must be developed to ensure appropriate activity is undertaken. Where feasible, much of the supervisory task may be delegated to appropriate entities (including chambers), subject to audit.*
18. *There should be regular and appropriate supervision of CPD, and schemes should be audited to ensure that they correspond to appropriate learning outcomes. Audit should be a developmental process involving practitioners, entities and the regulator.*
19. *In the short to medium-term, regulators should cooperate with one another to facilitate the cross-recognition of CPD activities, as a step towards more cost-effective CPD and harmonisation of approaches in the longer term.*
20. *In the light of the Milburn Reports on social mobility, conduct standards and guidance governing the offering and conduct of internships and work placements should be put in place.*
21. *Work should proceed to develop higher apprenticeship qualifications at levels 5-7 as part of an additional non-graduate pathway into the regulated professions, but the quality and diversity effects of such pathways should be monitored.*
22. *Within regulated entities, there is no clearly established need to move to individual regulation of paralegals. Regulated entities must however ensure that policies and procedures are in place to deliver adequate levels of supervision and training of paralegal staff, and*

regulators must ensure that robust audit mechanisms provide assurance that these standards are being met. To ensure consistency and enhance opportunities for career progression and mobility within paralegal work, the development of a single voluntary system of certification/licensing for paralegal staff should also be considered, based on a common set of paralegal outcomes and standards.

23. *Consideration should be given by the Legal Services Board and representative bodies to the role of voluntary quality schemes in assuring the standards of independent paralegal providers outside the existing scheme of regulation. The Legal Services Board may wish to consider this issue as part of its work on the reservation and regulation of general legal advice.*
24. *Providers of legal education (including private providers) should be required to publish diversity data for their professional or vocational courses, Qualifying Law Degrees and Graduate Diplomas in Law and their equivalents.*
25. *A body, the 'Legal Education Council', should be established to provide a forum for the coordination of the continuing review of LSET and to advise the approved regulators on LSET regulation and effective practice. The Council should also oversee a collaborative hub of legal information resources and activities able to perform the following functions:*
 - *Data archive (including diversity monitoring and evaluation of diversity initiatives);*
 - *Advice shop (careers information);*
 - *Legal Education Laboratory (supporting collaborative research and development);*
 - *Clearing house (advertising work experience; advising on transfer regulations and reviewing disputed transfer decisions).*
26. *In the light of the regulatory objectives and the limited engagement by consumers and consumer organisations in the research phase of the LETR, it is recommended that the regulators ensure that appropriate consumer input and representation are integrated into the consultation and implementation activities planned for the next phase of the LETR.*