



## **Priorities ahead for legal education and training**

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I am delighted to be here with you today at the Westminster Legal Policy Forum.

I think every speech - particularly one coming at the end of an event, as this one does - should start with an inspirational quotation. Here is a good one from Malcolm Forbes, of Forbes Magazine fame. He said that education's purpose is to replace an empty mind with an open one. I suspect that this is too high-level an outcome for inclusion in outcomes-focused regulation, but I think it is a good position to start from!

I am conscious that I am following a line-up of speakers today who have touched on aspects of legal education and training, including details of new initiatives in the sector. I am especially pleased to hear from regulators that are progressing the recommendations of the LETR and have started to use our guidance to shape future education and training arrangements.

Today I want to touch on the high level rationale for the regulation of legal education and training and to briefly talk about our thoughts for the future.

The legal services market, as a professional services market, will always be one in which it is challenging for many consumers to assess quality before making a purchasing decision. This is an important point because in the majority of cases it's consumers with no direct involvement, no purchasing power or control over any contractual relationship, that suffer

when quality is insufficient. The consumer may only become aware of quality problems when he or she has already paid – or the consumer may never know about quality problems, although the harm will be done nevertheless. Education and training is therefore one key element of regulating for quality. There are of course other elements, and I will talk a bit more about those later on.

## **Importance of reforming education and training**

I'd like to turn now to the importance of reforming education and training and give some background.

The legal services market in England and Wales has undergone great change since the former LSB chairman David Edmond's Upjohn Lecture in 2010 challenged the ARs to ask themselves whether their then-current systems of education and training were the right ones for the future.

There appeared to be a growing disconnect between education on one hand and practice on the other, as the channels of service delivery and consumer demands in the sector were changing, but the training requirements remained broadly the same.

Since then we have seen further evolution in the structure of the market such as the introduction of Alternative Business Structures (ABS). We have also seen the adoption of outcomes focused regulation by regulators. Outcomes focused regulation is about focusing on what regulation is trying to achieve rather than on writing rules to second guess how people should achieve objectives. It also allows greater scope for firms and educators to design training and education methods that best suit their business needs and to achieve those outcomes set and supervised by regulators.

To date, much has been achieved, although admittedly it has been a rather slow start. In 2013 the LETR reported back confirming that greater flexibility was needed in education and training to meet the needs of the changing market and also that a surety in standards was needed. In March this year we at the LSB issued guidance so that regulators had a reference point when implementing LETR recommendations. This built on the reported need for education and training arrangements to be more flexible.

Our guidance sets out five outcomes which regulators' education and training rules should try to achieve. The outcomes largely focus on what an individual must know, understand, and be able to do at the point of authorisation and on greater flexibility around delivering education and training. They also relate to finding a balance between what is required at the

point of authorisation and ongoing competency requirements and also between the obligations for individuals and for entities.

Prior to the publication of the guidance some regulators had dedicated workstreams to take forward the findings of the LETR. For example the SRA's Training for Tomorrow strategy and the BSB's Review of Bar Training Regulations. In the wake of LSB's guidance, regulators are continuing to make changes and revise their rules. We hope that this continues to be the case. Greater flexibility will be needed as the pace of market change increases, meaning traditional prescriptive approaches risk being out of date.

## **A changing market**

In the face of a changing market flexibility in education and training is an important tool in ensuring that the law best serves the public and consumers of legal services through having a legal workforce with the right set of skills and knowledge. Flexibility is key here because it means greater freedom for firms and educators to achieve the outcomes set by regulators when delivering education and training. But it does not mean that either the level of competence required, or the outcomes themselves, are flexible. In this way the actual delivery of education and training can change and adapt as the market changes over time. To cope with the type of changes that are occurring in the market – and which will undoubtedly continue apace in the future – regulators require an approach that can be fine-tuned when necessary and can respond to risks when and where they arise.

The types of change we are seeing include the growing plurality of providers and the growing diversity of consumer demand. This plurality of providers is increasingly international as foreign law firms open branches and provide legal services here, while new technology means that the old ways of seeking and receiving legal services are rapidly changing, with phone apps and online advice services playing a growing role. The collapsing boundaries between different types of lawyers such as we have seen in the extension of higher court rights of audience to solicitors and barristers providing services directly to clients, means that a shift toward more flexible education and training requirements and delivery makes very good sense indeed. Sticking with the old model of having a prescriptive approach would mean that we – and more importantly, practitioners - would be much less likely to be able to respond to the changing market.

But with these changes in the market and greater flexibility there are also risks. In trying to make education and training arrangements more flexible we need to be sure that we don't inadvertently put in place new barriers which may have the effect of increasing costs to consumers. There are risks to regulators around achieving the right balance between

ensuring competence and quality on one hand and at the same time not raising barriers to entry too high on the other.

This is why the LSB issued its guidance on education and training in March. We want regulators to use our guidance to check that the changes they are making take account of the evidence and requirements contained in the LETR. Our guidance sets out the principles that we expect regulators to take into account when reviewing their arrangements. This will ensure that education and training regulations are outcomes focused and appropriate for the types of risks identified.

I have already noted that the market – indeed the whole landscape in legal services – is changing and evolving quickly. This in part is due to pressures coming from increased competition and innovation. This is why an outcomes focused approach is the best option. Such an approach can be nimble in responding to change while keeping us focused on what really matters – that lawyers have the right set of skills and competence to do their job from day one, and retain the right skills and competence throughout their career. This will ensure that we can have confidence that the legal services used by consumers are of the right quality.

When we talk about lawyers having the right skills we also mean that education and training requirements need to be appropriate and targeted for the activity. Outcomes in our guidance emphasise the point that education and training requirements should be set at an appropriate level where an individual is deemed competent for the activity which they are authorised to do from day one, and on an on-going basis. Having an outcomes focused approach allows regulators to take a view on the actual outcomes being achieved and whether any risks associated with certain activities are such that education and training requirements that go beyond the basic requirements are justified or not. This means that there cannot be comprehensive requirements because there exist differences in need and scale within the profession. We cannot assume that there are many core skills linking an international law firm in the City and, say, a small conveyancer firm in a rural area. This is why lawyers must have the right skills targeted for the activities which they undertake.

We hope to see a future legal services market where education and training regulations are more clearly linked to the type of legal services which lawyers provide. In this market firms and educators have more scope to tailor the education and training needs of their workforce after taking a view on what is the right level of competence needed, and removing unjustifiable regulations that just create additional barriers and don't address the real risks. The post-qualification period is of course equally important - legal professionals must be able to tackle exceptional and unforeseen risks that may emerge throughout their careers and, if

necessary, seek reaccreditation in those circumstances when it is required to ensure ongoing professional competence.

From what has been said today, and from our discussions with regulators throughout the year, we are pleased that efforts are already underway to focus on outcomes rather than prescriptive rules in education and training regulations. But we recognise that guidance has only been in place since March and this sort of change takes time to have an impact. You've heard today about the SRA, BSB and IPS' initiatives on education and training. There are also developments being made by other regulators, including:

- The Council for Licensed Conveyancers' 2013-4 Business Plan which moves away from being the standard setter for qualifications, and instead moves toward more flexible delivery and minimal barriers for licensed conveyancers; and
- Recently the Cost Lawyers Standards Board has issued a revised costs lawyer qualification which includes online interactive training and a phone app.

We welcome this activity and this degree of responsiveness to the recommendations of the LETR and our guidance: we say, well done.

Alongside this encouraging progress being made by the frontline regulators, other parts of the sector are however causing us some concern in this area. For example, we occasionally hear calls to restrict the number of people seeking to qualify. Such calls for protection, largely offered up as a benevolent solution, can have an unintended impact on the market by limiting supply. But these calls also miss the more pressing and important point: namely that a significant gap exists between the number of citizens who need legal advice and those who can afford it. How can anyone argue for limits on the number of people trying to become lawyers in these circumstances? It is important that regulators place no inappropriate restrictions on the numbers entering the profession. To do so would risk increased prices for consumers and restricted choice and innovation in the sector as a whole, therefore having a deeply chilling effect on access to legal services.

Nobody can predict accurately how the legal market will change in the future, including how many lawyers will be needed and what services they should provide. Properly functioning markets are – and should be – dynamic, responding to consumer demand as it emerges. In our view, therefore, the solution lies in fewer constraints on the way people are able to qualify and the range of career paths open to them. The more training options that are available, the lower the cost of training is likely to be, and more likely that the high level of unmet legal need will be better addressed. We may also submit that multiple routes into the

profession can help build a more diverse profession which, ultimately, is better placed to service the growing diversity among consumers and their legal needs. The focus on diversity here is not an isolated one but forms an important plank in the LSB's approach to improving diversity and access more widely in the legal services sector.

## Future steps

As I mentioned earlier, we should keep firmly in mind that there are different elements that contribute to ensuring the required quality in legal services. These include (but are not limited to) tools such as: evidence gathering from regulatory supervision that identifies risk, and having the right systems and processes in place to ensure that firms reduce risks to consumers – to name but two.

Having the right tools in place that are appropriate for the type of risks identified, and ensuring that providers have the right level of competence for their area of work, help ensure that consumers are adequately protected. It also ensures that regulation is proportionate and does not create new barriers to entry with resulting higher prices and reduced choice.

As we set out in our 2014-15 Business Plan the way in which legal businesses recruit and train their workforces is fundamental to the delivery of the regulatory objectives in the Legal Services Act. Looking to the future, it is our view that a liberalised legal services market can only function effectively for consumers if there is a more responsive labour market. We believe that this can happen without compromising professional standards and keeping the interests of consumers central to the outcomes we wish to achieve.

What we need is a workforce that is organised differently with a much more diverse set of skills. We may also need different and new ways of becoming a lawyer. And alongside all of these changes, we need truly competitive legal businesses operating at lower cost and providing better value for money if we are to be able to help more people with their legal problems.

We will continue to work with regulators this year and next to ensure that outcomes and approaches are being applied as consistently as possible across the profession, and that steps are being made to identify and remove unnecessary regulation.

Just to recap – the pace of change in the market for legal services that we have witnessed over the last few years will not decline. Rather, as the market is liberalised and we see greater levels of competition and innovation, we are also likely to find that flexible ways of delivering education and training throughout the career of a lawyer are both more responsive to change and help to mitigate new risks.

The momentum that has built since the publication of the LETR last year must be maintained. Our guidance can help point the way to outcomes that we all seek, while freeing up resources to focus on assessing risks and determining the right levels of competence for lawyers in all their diverse areas of practice.

There are a range of challenges ahead in how we respond to the rapidly changing legal market. We look forward to working with you over the coming year on this crucial area of work both for consumers of legal services and for the sector as a whole.

To close, I would like to leave you with another quotation, this time from the poet Robert Frost, who said that “Education is the ability to listen to almost anything without losing your temper or your self-confidence”. I hope we have all achieved that today!