

Increasing flexibility in legal education and training

Summary of responses to consultation on proposals for draft statutory guidance to be issued under section 162 of the Legal Services Act 2007 and LSB response

This Response Document may be of interest to:

Approved regulators

Providers of legal services

Legal representative bodies

Legal advisory organisations

Other third sector organisations

Consumer groups

Law schools/universities

Legal academics

Members of the legal profession

Legal training providers

Contents

Contents.....	3
Introduction	4
General comments	6
Next steps.	7
Summary of responses to the consultation	8
Annex 1: List of respondents.....	23

Introduction

1. This document summarises the responses received to the Legal Services Board (LSB)'s September 2013 consultation *Increasing flexibility in legal education and training – proposals for draft statutory guidance to be issued under section 162 of the Legal Services Act*. This document also provides the LSB's post-consultation decision and feedback to the responses received.
2. Our guidance has been built on the LSB's view that a liberalised legal services market can only function effectively for consumers if there is a more flexible labour market, and that this can – and must – be achieved without compromising professional standards. The LSB Chairman put forward this view in the 2010 Upjohn Lecture and laid down the challenge for regulators to reform their education and training regulations in the face of a changing legal market¹. Following this, three of the approved regulators – the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and Ilex Professional Standards (IPS) (the commissioning regulators) commissioned the Legal Education and Training Review (LETR) in 2011. The LETR's final report was published on 25 June 2013².
3. Legal education and training is directly linked to the regulatory objectives in the Legal Services Act 2007 (the Act) and, in particular, to the need to protect and promote the interests of consumers and to ensure an independent, strong, diverse and effective legal profession. There is also a clear link to securing the wider benefits of market liberalisation for consumers. The LETR indicates the potential risks to the regulatory objectives of an unreformed system of education and training. The LETR report makes clear recommendations for action by the sector as a whole, not just by the commissioning regulators.
4. In light of the LSB's duty to assist in the maintenance and development of standards in relation to education and training³, we considered how the regulatory objectives could best be secured in relation to the LETR report findings. It was our view that issuing statutory guidance under Section 162 of the Act was the best option. We perceive the benefits of this option to include:
 - maintaining the momentum generated by the publication of the LETR report and putting a clear focus on implementation for all regulators, especially those that did not commission the LETR⁴
 - setting out the LSB's expectations in a clear and transparent way, including those related to our schedule 4 duty to approve any changes to regulatory arrangements

¹ http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de_lord_upjohn Lec.pdf

² <http://letr.org.uk/>

³ Section 4 of the Act

⁴ Commissioning regulators were the Solicitors Regulation Authority (SRA), Bar Standards Board (BSB) and ILEX Professional Standards (IPS).

- providing the basis for reviewing ARs' progress or taking future action if required
 - ensuring that education and training reform is not delivered in isolation from the LSB's outcomes focused and risk based regulatory standards framework that applies to all ARs⁵
5. The guidance sets out five outcomes which we believe will deliver greater flexibility:
- education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation
 - providers of education and training have the flexibility to determine how to deliver training, education and experience that meets the outcomes required
 - standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency⁶ requirements
 - regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and ongoing
 - regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession
6. These outcomes stand independently. The guidance sets out our broad views on how they might best be achieved.

⁵ http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm

⁶ By competency we mean the minimum skills and knowledge and behaviours that are required to satisfactorily provide authorised legal services in a manner that is compliant with existing rules and regulations of practice.

General comments

7. We received 16 consultation responses⁷: six from ARs; six from representative bodies; three from bodies involved in the delivery of legal education and training or the representation of people that are; and one from the Legal Services Consumer Panel (LSCP). A full list of respondents can be found at annex 1.
8. Having reviewed all of the responses received, the LSB remains of the view the regulatory objectives can best be secured by issuing section 162 guidance. None of the issues raised by respondents has led us to change our previous analysis on this point. However, we are grateful for the practical suggestions provided about how the guidance could be improved. Several amendments have been made in light of these suggestions. A tracked changes version of our revised guidance can be found at annex 2.
9. We consider that issuing statutory guidance is a proportionate way to help ensure that the regulatory objectives are met in line with our section 4 duty to assist with the maintenance and development of standards in relation to education and training⁸. It is the responsibility of approved regulators to review and reform their regulatory arrangements as required in response to the LETR report and our regulatory standards framework. Some of the regulators have already started this. We are not trying to duplicate their work.
10. We are no longer requesting that regulators supply us with action plans. This does not mean that we believe that the need or urgency of action has declined. Indeed, we propose to seek early discussions with regulators to discuss their progress in taking forward reforms in line with our guidance. But, we do not believe that the formal bureaucracy of action plans matters as much as action and we are keen not to place unnecessary burdens on regulators who are already pursuing significant reform.
11. We are not imposing a particular timetable. However, given the time taken to get to this point we wish to ensure that momentum generated by the LETR is not lost. We expect regulators to progress as quickly as possible within the context of their wider priorities. Regulators that have clear plans in broad accord with the guidance which they are making progress against will be left to continue. However, statutory guidance provides a clear basis for the LSB to seek explanation and take necessary action if any approved regulators do not deliver.

⁷ CILEX and IPS issued a joint response – this has been counted as both a response from a regulatory arm and a representative body in the breakdown of respondents, but as only one response for the total.

⁸ Section 4 of LSA 2007.

Next steps

12. The LSB has published the amended final section 162 guidance at the same time as this document⁹.
13. The LSB will adopt a flexible approach to monitoring regulators' progress. We intend to contact regulators over the coming months to discuss with them their approach to and timetable for the review of their regulatory arrangements. We will also discuss how we might monitor their progress going forward in a targeted and proportionate manner.

⁹ http://www.legalservicesboard.org.uk/what_we_do/regulation/reg_pol.htm

Summary of responses

14. The Legal Services Consumer Panel (LSCP) supported our general approach. The Council of the Inns of Court, the Council for Licensed Conveyancers (CLC) and the Birmingham Law Society (BLS) stated they would welcome a more flexible legal education and training regime, and viewed most of the LSB's proposals favourably. The Chartered Institute of Patent Attorneys (CIPA) also welcomed the proposed guidance.
15. However, several stakeholders including the Bar Council, the BSB, the SRA, the Law Society (TLS), the City of London Law Society (CLLS) and the Chartered Institute of Legal Executives and ILEX Professional Standards (CILEx/IPS) were unconvinced that it was proportionate and necessary for the LSB to issue statutory guidance now. They argued that the approved regulators should first be given the space to review and respond to the LETR findings themselves¹⁰.

Q1: Do you agree that these outcomes are the right ones?

16. Approximately half the respondents agreed that the proposed outcomes were the right ones. Several did not explicitly answer this question, and instead commented on individual outcomes in detail. Many respondents who agreed the outcomes were correct also raised specific concerns or suggested improvements.
17. The Council of the Inns of Court agreed that, on the whole, the outcomes were the right ones. The LSCP viewed the outcomes as appropriate but stated that confidence in regulators 'loosening controls' in education would need to be balanced with ensuring that other relevant parts of the regulatory framework, such as risk profiling and supervision functions, were sufficiently utilised to target risk.
18. The Bar Council agreed with the outcomes but not necessarily with all of the LSB's underlying reasoning. The SRA also agreed with the stated outcomes but felt they were too narrowly focused. The SRA stated that only a limited number of statutory objectives were addressed and as a result insufficient weight had been given to wider public interest issues such as solicitors' duties as officers of the court, as well as the importance of ethics and legal reasoning as features underpinning the profession. A similar view was shared by a number of other respondents including TLS.
19. TLS argued that insufficient focus had been placed on the role of professional principles. Several respondents were of the view that professional ethics should be a key component of legal education and training. Others thought that greater

¹⁰ The Legal Education and Training Review (LETR) was published on 25 June 2013. The LETR report makes recommendations for action for the sector as a whole. Underpinning the recommendations is the need for greater flexibility. <http://letr.org.uk/the-report/index.html>

emphasis should be put on regulatory requirements to ensure ongoing competence.

20. CILEx/IPS felt that the LSB's outcomes did not explain what was intended by each, and suggested a more detailed examination of the outcomes may lead to conflicting objectives. The BSB did not think the outcomes were well drafted or that they encapsulated the essence of legal education and training. The CLLS echoed this view.

LSB response

21. *We are pleased that many respondents thought that the proposed outcomes were appropriate. We remain of the view that the outcomes are the right ones. We are grateful for, and have listened to, feedback received about the outcomes and guidance; further details are set out under the relevant questions below. Several amendments have been made to the guidance in light of the suggestions made.*

22. *We welcome and agree with the LSCP's view that regulators should use the right mix of regulatory tools to protect against risks. We emphasise in the guidance that education and training is one of a number of tools available to regulators. In line with their duty to have regard to the better regulation principles¹¹, approved regulators should identify an outcome, then the associated risks that they wish to mitigate, and finally consider what mix of tools will achieve this in the most proportionate way. There should be no assumption that the historical focus on high barriers to entry at the expense of post-authorisation tools will always be the most effective, or the most proportionate, way of delivering the outcomes and managing risk.*

23. *The LSB's guidance around outcome one sets out our view that education and training requirements might be role or activity specific, with certain universal requirements being consistent regardless of regulator. These universal requirements are very likely to focus on areas such as professional principles and ethics.*

Q2: Do you think that all of the outcomes should have equal priority?

24. There were mixed views about whether the proposed outcomes should have equal priority. The Bar Council argued that it was unnecessary to rank the outcomes. The City Law School (CLS) submitted that none of the outcomes should be looked at in isolation, while the Birmingham Law Society (BLS) believed that outcomes one to three should have priority as they focus on entrants to the profession. The Costs Lawyer Standards Board (CLSB) made the

¹¹ Section 3 of LSA 2007

point that conferring equal priority on all of the outcomes would be too prescriptive and that individual regulators should be able to accord priority based on their individual workforce.

25. CILEx/IPS took the view that it would not be possible to achieve all of the outcomes at the same time, as some would need to be developed before others. They gave the example that the development of outcomes and standards would be necessary before providers were able to develop multiple routes to qualification.

LSB response

26. *The LSB's view is that all of the outcomes are important and should be taken into account as approved regulators review their education and training arrangements. We agree that none of the outcomes should be looked at in isolation – the guidance has been amended to emphasise this. It will be up to the regulators to demonstrate how, over time, their regulatory arrangements will deliver the five outcomes. They will determine the time and sequencing of their changes to achieve this end. It will be for the regulators to justify relative priorities between outcomes in individual circumstances.*

Q3: Do you agree with our guidance that a risk based approach to education and training should focus more on what an individual must know, understand and be able to do at the point of authorisation?

27. Most respondents broadly agreed with this. Several caveats and additional comments were raised by respondents. The SRA, for example, stated that a risk based approach must focus on both authorisation and continuing competence. The CLSB argued that qualifications and training need to be current, relevant, and that all the required knowledge and skills should be covered at the point of authorisation.

28. The Council of the Inns of Court agreed, but noted that an individual should be taught the right attitudes and ethical grounding. Both the CLS and the Bar Council agreed that a risk based approach to education and training was appropriate, while the BSB felt this approach would be a useful starting point in assessing whether regulatory measures are appropriate.

LSB response

29. *We are pleased that most respondents agreed a risk based approach to education and training should focus on what an individual must know, understand and be able to do at the point of authorisation, as opposed to a focus on the stages of training or specific qualifications required.*

30. *Regulators should develop education and training requirements in the context of the activities being provided rather than the role of the person providing them. This should help proportionately target risks to the delivery of competent advice.*
31. *The guidance for outcome 1 highlights that regulators should consider their focus on areas such as the professional principles and ethics. It should be noted that other regulatory tools such as codes of conduct may also address issues surrounding ethics and the professional principles. Unnecessary duplication should be avoided. We also emphasise that regulators should aim to complement, not duplicate, the significant role played by professional bodies and employers in promoting and monitoring ethics and professional principles among their membership community and workforce.*

Q4: What are the specific obstacles that need to be removed to facilitate movement across different branches of the profession?

32. Respondents identified numerous obstacles they felt required removal. The LSCP suggested that the current focus on authorisation of the individual rather than the activity or entity represented the key problem. They also pointed to the presence of multiple regulators as causing difficulties. The BSB and the Council for the Inns of Court regarded the need for greater alignment between regulators and consistency of competency descriptors and definitions as being the chief obstacle.
33. The Chancery Bar Association took the view that there were no obstacles to movement to the Bar, as there is already a sensible system in place requiring training in the skills necessary to competently undertake the role. The Bar Council noted that solicitors may become barristers if the requisite skills are obtained through a specific advocacy skills course. However, they argued that there are bureaucratic and unfair barriers to movement in the opposite direction.
34. CILEx/IPS argued that the need for (and cost of) a degree to join the profession is a significant obstacle to transferability between its branches. The issue of cost for training as a barrier was also highlighted by the BLS. The Faculty Office did not accept that movement from another branch of the profession to that of notary was possible without additional training in view of the specialist nature of notarial activities. The CLLS doubted that there were obstacles and asked the LSB to provide evidence of their existence.
35. TLS made the point that restrictions on movement were necessary to ensure an individual can demonstrate the knowledge and skills required at the point of entry to the profession. They also welcomed the prospect of further debate on a shared vocational stage as outlined in the LETR.

LSB response

36. *We are grateful that respondents identified a number of the barriers that they think need to be removed. The LSB has been clear in our view that increasing flexibility in legal education and training is vital to the delivery of the regulatory objectives in a liberalised legal services market. The guidance sets the clear expectation that regulators will review their education and training regulatory arrangements and remove any disproportionate and/or unnecessary restrictions and barriers. This should facilitate greater flexibility and movement of individuals across different branches of the profession. We have recently highlighted the importance of such flexibility both within and between professions in our evidence to Sir Bill Jeffrey's review of criminal advocacy². We are therefore considering the Bar Council's points about obstacles to such movement carefully and will raise them formally with the SRA.*
37. *The LSB welcomes regulators working together to develop competence descriptions. However, it may be that for some higher risk activities regulators will develop their own competence descriptions based on the unique set of risks in the legal activities they authorise practitioners to undertake.*

Q5: Do you agree that regulators should move away from 'time served' models?

38. This question elicited a variety of responses. According to CILEx/IPS there remain good practical reasons for the retention of a fixed time served element. It provides employers with a framework for assessing the acquisition of key competencies. Similarly, the Council of the Inns of Court regarded time served, if done deliberately and productively, as a rigorous way to train advocates. They qualified this view by saying that such models may not be appropriate for the acquisition of certain forms of knowledge and skills. The CLS argued that, while there was little value in time served elements of existing requirements, it is difficult to achieve the required standards without undergoing time consuming learning activities.
39. Some responses suggested that, while the length of time in training was no guarantee of quality, there was little alternative but to have some sort of specified period of academic training alongside vocational training. Both the Bar Council and CLLS agreed with this general view. For the CLLS an important qualification was that some legal tasks require experience. They argued this required flexibility when assessing suitability of competence. The BSB took the view that an unqualified time served model failed to address questions of quality of learning

¹²

http://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/20140114_LSB_Criminal_Advocacy_Review_Submission.pdf

and the achievement of competence. The SRA thought that solely using time served as a proxy for quality was ineffective.

40. CLSB argued that a move away from time served models would be detrimental to the consumer because it is an important part of ensuring competence. Similarly, the Chancery Bar Association rejected the suggestion of moving away from a time served model by stating that there is a danger in trying to fix something that was not broken.

LSB response

41. *The LSB welcomes respondents' feedback, highlighting a range of opinions on this issue. The LSB does not support the view that moving away from time served models would be detrimental to the consumer. Traditional, time served models may be justifiable in certain circumstances but it cannot be assumed that they will always present the best and most proportionate way of assuring competence in line with the outcomes that a regulator wishes to secure. Therefore, regulators are encouraged to consider a diversity of options, not only traditional models. The guidance has been amended to reflect that time served may be appropriate in certain circumstances.*

Q6: Do you agree that the regulation of students in particular needs to be reviewed in light of best practice in other sectors?

42. Several respondents took the view that the regulation of students should remain with the regulator concerned, to determine how far regulation of students was proportionate to the risk identified. Both TLS and CLSB adopted this view. The SRA reported that it is consulting on a proposal to remove compulsory student registration as it does not appear to address a regulatory risk. However, they also said that in cases where the character and suitability of students in work-based practice is called into question, they should be subject to regulatory checks.
43. The LSCP argued that it was disproportionate and not in line with better regulation to require students to register, but that there may be merit in regulators engaging with students during their studies around matters of professional ethics and behaviour.

LSB response

44. *The LSB welcomes the responses to this question. We remain of the view that regulators should review their approach to the regulation of students in light of best practice in other sectors. It is difficult to see how the regulatory burdens and costs on both individuals and entities involved with requiring students to register can be justified when students are acting under the supervision of a qualified person and, in many cases, within a regulated entity. Regulators should be mindful to take a proportionate approach, with regulation targeted at identified*

regulatory risk. It is up to regulators to determine any circumstances in which it would be proportionate for students to be subject to regulatory checks, but these should, in the LSB's view, be the exception rather than the rule.

Q7: Do you agree that regulators should allow more flexibility in the way that education and training requirements are delivered by no longer prescribing routes?

45. The majority of respondents agreed that regulators should allow more flexibility. Respondents such as BLS also made the point that innovation in training is welcomed provided that quality standards are designed to enable students to achieve or go further than the outcomes set. The BSB and Bar Council supported the principle of flexibility but felt that the availability for students was in itself a reason for altering the education and training requirement for barristers.

46. The LSCP agreed that greater flexibility was desirable and noted that it was important regulators focus on ensuring competence rather than on prescribing the specific routes to achieving that competence. However, the Chancery Bar Association disagreed with the proposition and its appropriateness in relation to the Bar, and it did not see any real scope or need for an alternative entry route to the Bar beyond what is already in place.

LSB response

47. *We welcome the fact that most respondents agreed more flexibility was desirable. It remains our view that regulators should allow providers of education flexibility to determine how to deliver training that best meets the outcomes they have set. This will most likely result in the "mixed economy" of routes envisaged by the LETR. In turn, this should help deliver the flexible labour market we have assessed as being vital to the delivery of the regulatory objectives in a liberalised market place.*

Q8: Do you think that such a change will impact positively on equality and diversity?

48. TLS pointed out that the more flexible the requirements, the more opportunities there will be for those wishing to enter the profession. However, they cautioned that there needed to be equality of standards between the different routes in order to optimise the positive impact on equality and diversity. This was because evidence suggests that those solicitors who qualify through the CILEx route go on to earn, on average, less than those who qualify through more traditional routes. CILEx/IPS took a similar view and argued that, without the removal of the perception of a gold-standard route, any changes would be unlikely to result in significant change in practice.

49. The LSCP regarded such a change as positive for equality and diversity. They argued that a more flexible regime would open up new routes to the profession and, at the same time, a more diverse workforce. The BSB stated that they saw the potential for benefit but that the greater challenge was not regarding diversity at entry, but throughout the course of an individual's career.

50. The Chancery Bar Association took the view that the changes would not have a positive impact in relation to the Bar and may well have an opposite effect.

LSB response

51. *The LSB's view is that greater flexibility in terms of routes into the profession will be most likely to impact positively on equality and diversity. We consider that the underpinning outcomes set by regulators for authorisation to undertake particular activities should be of a similar standard. Emphasising that there is no one best method of demonstrating that the outcomes have been met seems the most likely way to dispel the perception of a gold standard route. Inevitably it will be up to the market to decide which routes are perceived as the highest quality or most suitable to need.*

Q9: Do you agree that regulators should review their approach to quality assurance in light of developments in sector specific regulation of education providers?

52. The majority of respondents agreed with this proposal. The Faculty Office disagreed and argued that regulators should not be directly involved in the quality assurance of education and training providers. They felt that regulators should become involved only if outcome targets are not met.

53. CILEx/IPS took the view it would be wrong to take too narrow a view of competence. They felt that there were a range of issues related to the introduction of activity-based education and training that required consideration. Similarly, they suggested that the balance between initial and ongoing requirements for education and training also raised issues. In particular that trying to balance initial authorisation requirements with added requirements for more difficult work would be complex and may confuse consumers.

LSB response

54. *We are pleased that the majority of respondents agree that regulators should review their approach to quality assurance.*

55. *We do not think that this means that regulators should draft complex frameworks that take a narrow view of competence. It remains our view that when reviewing their approach to quality assurance, regulators may wish to establish standards*

for training establishments to meet and that these standards should be risk based and proportionate. However, we would expect that regulators complement rather than duplicate existing quality assurance processes so as to avoid adding any unnecessary complexity or burdens. We expect all regulators to undertake a review of their existing quality assurance processes to identify where changes can be made.

Q10: Do you agree that entry requirements set by regulators should focus on competence?

56. Most respondents agreed with this proposal, though several raised related issues around the scope and meaning of competence. CILEx/IPS agreed with the question, but pointed out that competence requirements should not be drawn too narrowly. The Association of Law Teachers also agreed with the question but highlighted that the word competence should be viewed broadly as relating to legal method, skills and ethics. The Council of the Inns of Court voiced concern that testing to a minimum level of competence could be seen as a recipe for promoting mediocrity rather than excellence.

57. CSLB made the point that employers are the main judge of competence and they will not continue to employ individuals if they are not competent, regardless of academic success. TLS took the view that it was sensible but insufficient for regulators to focus on competence.

LSB response

58. *The LSB notes that the majority of respondents agreed with this proposal and we accept that regulators should be aware of the risks of drawing competence requirements too narrowly.*

59. *Regulators will be expected to identify the risks posed by legal activities in the sectors they regulate and ensure that competence requirements fit those risks. It is up to providers to differentiate themselves by providing service levels above the minimum levels required by regulation.*

Q11: Do you agree with our proposal that there may be areas where broad based knowledge is not essential for authorisation? Can you provide any further examples of where this happens already?

60. Several respondents disagreed that there may be areas where broad based knowledge is not essential for authorisation. The Council of the Inns of Court highlighted that a civil advocate needs to have a broad based understanding of the whole of the civil procedure rules to be effective.

61. TLS doubted the wisdom of the approach that because some transactions are simple and do not themselves need broad based knowledge, those authorised to undertake that work also do not need to have a broad based knowledge. They argued that authorised persons should have knowledge of other areas of law and of the legal system, so that they can deal with a wide range of transactions. TLS also pointed out that consumers expect holders of titles such as solicitor to have a broad knowledge of the law.
62. CILEx/IPS pointed out that broad knowledge is needed for practitioners to be able to understand the limits of their competence. Similarly, the Chancery Bar Association stated that the proposal would not be appropriate for the Bar and they would be concerned to see applicants for a chancery pupillage who had not studied criminal law or human rights.
63. The LSCP argued that different activities in the legal market meant different levels of risk for consumers, and that for some responsibilities and roles either less or no legal training would be acceptable. The LSCP also raised the issue of the cost of legal education is rising, and explained that every individual wishing to provide legal advice should not be required to obtain knowledge they are unlikely to use.

LSB response

64. *The LSB notes some disagreement with this proposal. Particular legal activities may involve risks that lead regulators to determine it is necessary for individuals to have broad based knowledge. However, it is up to regulators to assess the level of risk and make this determination based on evidence.*
65. *For activities defined as low risk costly and disproportionate competence requirements involving broad based knowledge may actually work to unnecessarily restrict access. In the context of entity regulation, regulators may choose to consider the mix of skills available within entities, together with technology used and outsourcing arrangements. In all circumstances regulators should set outcomes and requirements at a level that is appropriate, allowing where possible educators to set the educational approach best suited to achieve the desired outcomes.*

Q12: Do you agree that reaccreditation requirements should be introduced in areas where the risks are highest?

66. Several respondents argued that reaccreditation was not needed. The Bar Council suggested that reaccreditation has caused problems in the medical profession for years. They also raised concerns around the mechanics and expense of reaccreditation. BLS did not think that reaccreditation would assist in

areas of high risk. Instead they suggested that improved continuing professional development (CPD) could enhance ongoing standards. TLS put forward the view that reaccreditation creates burdens for practitioners and should only be imposed where appropriate. They also argued that it would instead be sensible to enhance CPD requirements to further mitigate risks before considering reaccreditation. Other respondents such as the Chancery Bar Association argued that current risks are satisfactorily being met by compliance with the CPD requirements.

67. The LSCP agreed that reaccreditation requirements should be introduced in areas where the risks are the highest. In their view, competence upon entry did not automatically mean competence throughout a career. However, they cautioned that lessons should be learned from the medical sector where reaccreditation has provoked tensions between regulators and the regulated.

LSB response

68. *The LSB appreciates the responses to this question and the highlighting of reaccreditation schemes in operation in other sectors. The LSB takes the view that entry requirements should be balanced against ongoing competency requirements and that in some areas reaccreditation requirements may be a proportionate way to target the risks involved. This may particularly be the case in high risk areas and where the law changes regularly. It is our view that it is up to regulators to determine the level of risk posed by various legal activities and those situations where reaccreditation could best assure ongoing competence. It remains our view that where regulators impose significant before the event education and training requirements, the perceived risks are more likely to also require some form of reaccreditation.*

69. *This does not mean that wherever there is an initial requirement to ensure competency this should be repeated or duplicated later on. Regulators need to be clear about the types of risk they are trying to protect against with authorisation requirements, and to make an assessment about whether those risks are high enough to warrant some form of reaccreditation.*

Q13: Do you agree that in most circumstances an entity is better placed than the regulator to take responsibility for education and training?

70. There were a range of responses to this question, with some respondents arguing that responsibility should lie with the entity in partnership with the regulator. Some questioned the practicality of entities taking greater responsibility.

71. According to TLS, the entity should take responsibility for ensuring its staff are adequately trained and meeting the requirements set by the regulator. The

regulator must retain a responsibility for overseeing the general standards and ensuring that there is a consistency of approach. The regulator may play a fuller role when the risks demand this. The BLS agreed that in most circumstances an entity is better placed than the regulator to take responsibility for training their workforce if quality standards are clear and consistently applied. The Association of Law Teachers suggested that entities vary enormously in size and resources and while a large entity can organise much of its education and training requirements, a small entity cannot. In their view, CPD should be a partnership between the entity and the individual, and the entity has a role in monitoring its effectiveness. The issue of entity size and capacity was also raised by the Council of the Inns of Court who suggested that the majority of law firms and chambers were not large enough to take on such responsibility alone. The CLLS disagreed with the question and pointed out that few employers would have the skill to properly devise and assess training programs, despite being better placed to deliver continuing legal education.

72. The SRA agreed with this question, noting that entities are well placed to identify the training needs of their workforce within an appropriate regulatory framework. However, the CLSB disagreed, suggesting that employers (entities) should form one aspect of the overall approach and should maintain practical standards, with regulators setting and overseeing the maintenance of standards.
73. The Faculty Office noted that it is rare for an individual to be within an entity that is capable of providing support and training on the specific activities of a notary. Any notarial training should only occur within entities aware of the outcomes formulated by the Faculty Office. The BSB argued that the emphasis on entities was not appropriate when referring to self-employed barristers.

LSB response

74. *We appreciate the differing opinions on this question. In our view entities are likely to play an important part in delivering outcomes for ongoing education and training requirements. Entities are well placed to identify the actual training needs of their workforce and to make decisions about their specific training needs as they are responsible for day to day management of the work of individuals employed within the entity. This also means that we support a greater regulatory focus on ensuring that proportionate controls and supervision are in place to reduce the risk of employers falling short of duties regarding CPD.*
75. *We are not proposing that regulators delegate the award of qualifications/ authorisation to entities. Regulators should instead hold regulated entities accountable for their workforce being competent. We expect that responsibility for low risk issues eg trainee secondments, could be passed on to entities.*

76. *Regulators should be mindful that this approach may not be appropriate in all circumstances and will likely depend on the type, size and capability of the entity concerned. There is an important role for professional bodies to identify the capacity of their members and to tailor and target training and CPD to best suit their needs.*

Q14: Can you think of any circumstances in which this may not be possible?

77. TLS made reference to the fact that there are small firms where staff are provided with little or no support to complete their CPD. A similar point was made by BLS who saw this issue creating possible financial difficulties for entities.

78. The Association of Law Teachers made the point that not every professional has an entity which takes responsibility for their development. The SRA argued that regulators have a role in establishing the standards and the regulatory framework within which firms develop their systems for education and training. This framework should ensure that the entity's systems reflect not just their own interests but the broader public interest as well.

LSB response

79. *We note views put forward that in some circumstances, such as with some small firms, staff are provided with little or no support to complete their CPD. Professional bodies are best placed to support such firms in ensuring that their workforce remains appropriately trained in line with regulatory requirements. It is our view that proportionate controls and supervision must also be in place to reduce the risk of employers falling short of duties regarding CPD.*

Q15: Do you agree that it is not the role of the regulator to place restrictions on the number of people entering the profession?

80. The Association of Law Teachers noted that, while it is not the function of the regulation of education and training to act as a restriction, the existence of professional standards will nonetheless exclude those unable to achieve such standards for whatever reason. The CLLS also noted that any authorisation and entry requirements are a restriction on the number of people entering the profession. They viewed this assertion as part of a wider proposition that the market, not the regulator, should determine the size of the profession.

81. TLS made the point that there may be a problem with the number of individuals wanting to enter the profession compared to the number of training contracts available. However, they contended that even if prequalification supervised practice limited the flow of entrants, it is justifiable on the grounds of the public interest in ensuring lawyers are properly trained.

82. The LSCP argued that restrictions on entrants to the profession would negatively impact on choice for consumers. They made the secondary point that restrictions would increase the cost of legal services; what is needed are cheaper entry routes that lower costs but which still maintain quality standards.

LSB response

83. *We agree that the market should be responsible for determining how many practitioners there are. It is our view that regulators should restrict themselves to ensuring that each route delivers individuals with the skills required for the roles they will be authorised to do.*

84. *Regulators should not try and cap the numbers allowed to enter the system through introducing higher entry barriers. This may be designed to guarantee entry to the profession for those undertaking training, plus also offering greater reassurance of a job for life, but would dampen innovation both in the sector and in the market for legal education. UK teaching institutions and qualifications attract students with no intent of ever practicing law in England and Wales. It is our view that the solution is fewer constraints on the way people are able to qualify and the range of options open to individuals wishing to pursue a career in legal services. Similarly regulators should not reduce standards below a level that the regulator assesses as necessary for the roles it is authorising people to undertake.*

Q16: Can you provide any examples for review where the current arrangements impose such restrictions and may be unnecessary?

85. The LSCP argued that certain restrictions, such as aptitude tests, may favour people from particular ethnic and class background and have unintended consequences for diversity.

86. The Association of Law Teachers stated that arrangements such as the intensive delivery of skills through the Legal Practice Course (LPC) and Bar Professional Training Course (BPTC) entail high cost and therefore may act as a barrier for students. They also highlighted the importance of regulators and providers of education and training to ensure that students have access to accurate information about career prospects.

87. The BSB took the view that the high cost and strictly sequential approach to training prescribed by the Bar may have a restrictive impact. The Bar Council also pointed to the high cost of entry for would-be barristers. They argued that the delivery of the BPTC should be reviewed and that different regulatory principles should apply with regard to knowledge, skills, ethics and real time skills. Some features such as acquisition of knowledge could be deregulated with a focus on

outcome assessment. However, they suggested that the acquisition of 'real time' skills (eg advocacy) should still be tightly regulated.

88. The Faculty Office noted that there are no direct or indirect restrictions imposed on numbers of notaries by their current arrangements.

LSB response

89. *The LSB appreciates the responses and examples given to this question. The LSB notes that some responses pointed to the high cost of training as being a barrier.*

90. *We would expect regulators to consider whether there are different training and education options that will achieve their desired outcomes while being more cost effective and flexible than current arrangements.*

Annex 1: List of respondents

Association of Law Teachers

Bar Standards Board (BSB)

Birmingham Law Society (BLS)

Chancery Bar Association

Chartered Institute of Legal Executives and ILEX Professional Standards (CILEx/IPS)

City Law School (CLS)

Costs Lawyer Standards Board (CLSB)

Council for Licensed Conveyancers (CLC)

Faculty Office

Legal Services Consumer Panel (LSCP)

Solicitors Regulation Authority (SRA)

The Bar Council

The City of London Law Society (CLLS)

The Chartered Institute of Patent Attorneys (CIPA)

The Council for the Inns of Court

The Law Society (TLS)

Annex 2: Tracked changes version of final guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007

The guidance (minus the changes explanation) can be found [here](#).

The provision of guidance

1. Section 162 of the Legal Services Act 2007 (the Act) allows the Legal Services Board (the LSB) to give guidance:
 - About the operation of the Act and any order made under it
 - About the operation of any rules made by the Board under the Act
 - About any matter relating to the functions of the LSB
 - For the purpose of meeting the regulatory objectives
 - About the content of licensing rules
 - About any other matters about which it appears to the LSB to be desirable to give guidance
2. Guidance under section 162 may consist of such information and advice as the LSB considers is appropriate. The LSB will have regard to the extent to which an approved regulator has taken into account guidance when exercising its functions.

Purpose of this document

3. This document sets out the LSB's guidance to approved regulators on their regulatory arrangements for education and training. It is aimed at existing approved regulators and those applying to the LSB for designation as an approved regulator or licensing authority.
4. We expect all regulators to be considering the evidence and recommendations contained within the Legal Education and Training Review and to complete a review of their regulatory arrangements for education and training. This guidance sets out the principles that we expect approved regulators to take account of in that review. Any approved regulator that departs from our guidance must justify doing so with explicit reference to the regulatory objectives and better regulation principles supporting such departure.
5. The LSB considers that the information provided here gives sufficient clarity as to the outcomes to be delivered, while allowing an appropriate degree of discretion for approved regulators to decide how best they can be secured, their relative priorities and an appropriate timeframe.

Our approach

6. Under the Act the LSB has two important oversight responsibilities. Under section 3 of the Act it is the LSB's duty to promote the regulatory objectives and to have regard to the better regulation principles. Under Section 4 the LSB must 'assist in

the maintenance and development of standards in relation to the regulation by approved regulators of persons authorised by the approved regulator to carry on activities which are reserved legal activities’ and ‘the education and training of persons so authorised’. This provision allows (and indeed imposes a positive duty on) the LSB to take action to help in the development of regulatory standards and specifically education and training.

7. Education and training is one of a number of tools available to regulators to manage risk and support the delivery of the regulatory objectives set out in the Act. This has particular relevance to the need to protect and promote the interests of consumers and to encourage an independent, strong, diverse and effective legal profession. Regulators must also act in accordance with the better regulation principles.
8. In our regulatory standards framework the LSB has set out clear criteria for how regulation needs to change:
 - An outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly plural and diverse market
 - A robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk
 - Supervision of the regulated community at entity and individual level according to the risk presented
 - A compliance and enforcement approach that deters and punishes appropriately
9. This framework does not explicitly cover education and training requirements but, as with all regulatory tools, we see a need for regulators to take a risk based and outcomes approach in this area. This is supported by the recommendations within the LETR and is reflected within this guidance.

Outcomes

10. Over time we expect regulators to have in place regulatory arrangements for education and training that deliver the following outcomes:
 - Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation
 - Providers of education and training have the flexibility to determine how¹³ to deliver training, education and experience that meets the outcomes required¹⁴

¹³ We have removed the word ‘best’ from here to reflect the concern held by the CLC that the word may infer that the guidance is the only guidance that regulators may take account of.

¹⁴ The changes here reflect the SRA’s comment that it is the role of the provider to deliver training which enables candidates to meet the set outcomes without implying relative values of the different routes available.

- Standards are set that find the right balance between what is required at the point of authorisation¹⁵ and what can be fulfilled through ongoing competency¹⁶ requirements
- Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and on an ongoing basis
- Regulators place no inappropriate¹⁷ direct or indirect restrictions on the numbers entering the profession

11. While we believe the outcomes stand independently, our guidance sets out our views on how they might best be achieved. In order to ensure coherence across the objectives, regulators should consider all of the objectives together and not in isolation from each other.¹⁸

Outcome 1: *Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation*

- a. Requirements might be role or activity specific, with certain universal requirements being consistent regardless of regulator. These universal requirements may focus on areas such as professional principles and ethics
- b. Regulators move away from ‘time served’ models that focus predominantly on inputs rather than outcomes as a default position¹⁹
- c. Requirements exist only where needed to mitigate risks posed by the provision of a legal activity. We would therefore expect regulators to review their approach to the regulation of students. It is difficult to see how the regulatory burdens and costs involved can be justified when students are acting under the supervision of a qualified person and in many cases within a regulated entity
- d. Regulators act to facilitate easier movement between the professions, both at the point of qualification and beyond
- e. Regulators review requirements regularly to ensure that education and training stays current and relevant to modern practice

¹⁵ This word change reflects the comment from CLSB who regard ‘authorisation’ as more appropriate than ‘entry’.

¹⁶ By competency we mean the minimum skills, knowledge and behaviours that are required to satisfactorily provide authorised legal services in a manner that is compliant with existing rules and regulations of practice.

¹⁷ This change reflects the City of London Law Society’s view that any form of regulation is a restriction of some sort. What we mean here, however, relates to those types of restrictions that are inappropriate.

¹⁸ This point picks up on several respondents’ concern that some of the objectives are inter-related. In particular, the City Law School and the Association of Law Teachers noted that the objectives should not be seen in isolation from one another.

¹⁹ The addition of the words ‘as a default position’ reflects the Council of Inns of Court concern that we are not seeking to do away with time served model necessarily, but they should not be the only model that regulators consider and use.

Outcome 2: *Providers of education and training have the flexibility to determine how²⁰ to deliver training, education and experience which meets the outcomes required²¹*

- a. Approval of education and training routes is dependent on providers' ability to demonstrate how their approach enables candidates to achieve the required outcomes
- b. Regulators take care not to predetermine approval by prescribing particular routes
- c. Multiple routes to authorisation are able to emerge, with no one route being the 'gold standard'²²
- d. Approval processes for new routes to authorisation support providers in their delivery of the required education and training outcomes and do not put in place unnecessary obstacles (for example, not requiring repeated waivers or exemptions from regulators)
- e. Regulators complement rather than duplicate existing quality assurance processes such as those undertaken by higher education institutions themselves and those carried out by the Quality Assurance Agency (QAA). We would expect all regulators to undertake a review of their existing quality assurance processes to identify where changes can be made

Outcome 3: *Standards are set that find the right balance between what is required at the point of authorisation²³ and what can be fulfilled through ongoing competency requirements*

- a. Education and training requirements should be set at the minimum level at which an individual is deemed competent for the activity or activities they are authorised to do²⁴
- b. Requirements beyond the minimum are only in place where they can be justified by the risks. We would expect regulators to review all available evidence to determine the likelihood of the risk occurring and to monitor the impact of any requirements over time. This may lead to an ongoing review cycle with strong links to regulatory supervision functions

²⁰ We have removed the word 'best' from here to reflect the concern held by the CLC that the word may infer that the guidance is the only guidance that regulators may take account of.

²¹ The changes here reflect the SRA's comment that it is the role of the provider to deliver training which enables candidates to meet the set outcomes without implying relative values of the different routes available.

²² 'Gold standard' refers to any route that meets the prescribed outcome and is considered preferable to the other available routes

²³ This word change reflects the comment from CLSB who regard 'authorisation' as more appropriate than 'entry'.

²⁴ We have changed the wording to reflect the CLSB's concern that our use of the term authorisation is consistent with its use in outcome 1.

- c. The balance between initial and ongoing requirements for education and training should be determined in accordance with the risks posed by that activity
- d. Regulators should consider whether broad based knowledge of all areas of law needs to be a prerequisite for authorisation in all areas. For example, there may be areas where the risks allow for authorisation in a specific activity and a broad base of knowledge is not necessary
- e. On the job training is utilised where knowledge can be obtained effectively in this way rather than requiring all knowledge to be obtained before authorisation
- f. Continuing Professional Development (CPD) participants are required to plan, implement, evaluate and reflect annually on their training needs. A robust approach to monitoring is developed and aligned or integrated with existing supervision functions
- g. Regulators are risk based in relation to reaccreditation and make a clear assessment about its use. Significant risk based requirements at the point of authorisation are likely to indicate sufficient risk to require some form of reaccreditation. However, this does not mean that wherever there is an initial requirement this must be duplicated at a later date.²⁵

Outcome 4: *Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and on an ongoing basis*

- a. Regulators move towards obtaining assurance from entities that day-to-day competency requirements are being met. This means a shift away from low risk decisions (e.g. about staff secondments) being made by regulators themselves
- b. When authorising an entity to provide reserved legal activities, regulators focus on ensuring the appropriate controls and supervision arrangements are in place to ensure the competence of all those employed to provide legal services and not only those with professional titles. For the avoidance of doubt, we do not see that a licensing regime for individual paralegals is needed in the context of entity regulation
- c. The systems and processes required of entities vary depending on the business model or nature of the services provided, and to whom services are provided. For example, we would expect regulators to take account of the proportion of reserved and unreserved services being provided

²⁵ The wording in this paragraph had been changed in order to clarify that we are not saying that wherever there is an initial requirement that this must be duplicated at a later date.

Outcome 5: *Regulators place no inappropriate²⁶ direct or indirect restrictions on the numbers entering the profession*

- a. Regulatory arrangements promote competition and the interests of consumers through the availability of a range of qualification options
- b. Regulators should not impose limits on numbers entering the profession either directly or indirectly (for example by restricting places on vocational training courses to those that have successfully obtained a pupillage or training contract)
- c. Any education and training requirements are sufficiently flexible to meet the needs of a developing market, enabling businesses to make decisions about who they employ

Timetable

12. Given the complexity and importance of education and training, and the need to balance other priorities, it is not for the LSB to set the timetable for this process. However, given the time taken to get to this point we wish to ensure that momentum generated by the LETR is not lost.
13. The LSB will adopt a flexible approach to monitoring regulators' progress. We intend to contact regulators over the coming months to discuss with them their approach to and timetable for the review of their regulatory arrangements. We will also discuss how we might monitor their progress going forward.
14. Regulators that have clear plans in broad accord with the guidance which they are making progress against will be left to continue. However, statutory guidance provides a clear basis for the LSB to seek explanation and take necessary action if any approved regulators do not deliver.

²⁶ This change reflects the City of London Law Society's view that any form of regulation is a restriction of some sort. What we mean here, however, relates to those types of restrictions that are inappropriate.