

# Creating a more *flexible* approach to education and training

Alex Roy, Head of Development and Research

<http://www.legalservicesboard.org.uk/>

<https://research.legalservicesboard.org.uk/>

The Futures of Legal Education and the Legal Profession

CEPLER Conference, 18 October 2013

# This presentation



- 
- Role of the LSB
  - Regulation, not education
  - Goal of a more flexible labour market
  - What is the problem?
  - Where are we now?
  - What does the LSB expect?
  - Draft guidance to regulators
  - Some principles and summing up

# Introduction to the LSB



- 
- Oversight regulator created by Legal Services Act 2007
  - Up and running since 2009
  - Small organisation (circa 30 people)
  - Whole legal services market - 8 approved regulators

## Why education and training?



- 
- Important regulatory tool
  - Primary means by which regulators control who can provide reserved legal services
  - Historically this has meant high barriers to entry
  - A proxy for quality?
  - Educational inputs tend to be easier to measure
  - But they also impose costs
  - Those costs need to be justified in reference to their impact on the regulatory objectives

## Our statutory role



- 
- LSB duty to “assist” (Section 4 of LSA 2007)
  - Regulatory objectives – none are left untouched by education and training
  - Focus tends to be on *Independent, strong, diverse and effective legal profession*
  - But we must not forget about the rest, particularly:
    - Promoting competition
    - Interests of consumers

# It's about regulation – what do we mean?



- 
- Any requirements should be better targeted towards risks
  - What are the risks that education and training requirements are designed to address?
  - Barriers to entry only where needed
  - Aligned with better regulation principles: transparent, accountable, proportionate, consistent and targeted
  - LSB regulatory standards framework

## The goal?

### A more *flexible* labour market

---

- A more modern approach to regulation
- Less prescription from regulators
- Greater focus on the risks
- Outcome focused
- More freedom for legal businesses to develop and grow
- Better services for consumers
- Regulators better placed to respond to new and emerging risks

## So what is the problem we are trying to fix?



- 
- Significant numbers of consumers (individuals and small businesses) aren't getting access to the services they need
  - Price is the most common barrier
  - Access to justice means enabling providers of more accessible legal services to emerge and flourish
  - Liberalisation of ownership was the first step
  - Reducing unnecessary costs and restrictions in regulation is essential – this includes education and training

## But this does not mean declining standards



- 
- Regulators focus on competence
  - Clear outcomes for what is expected
  - Holding firms to account for their workforce decisions
  - Resource focused on assessing risks rather than 'box ticking'
  - Greater emphasis on post qualification where the risks require it, for example enhanced CPD or reaccreditation

## So where are we now?



- 
- Research phase of the LETR has concluded and produced a very thorough analysis
  - Fired the gun for action from the regulators
  - Significant milestone
  - But – has taken three years to get to this point
  - Nor does LETR exist in a vacuum

## What does the LSB expect?



- 
- Momentum to be maintained
  - Modernisation in line with regulatory standards framework
  - Early progress where possible
  - Remember consumers

# Draft guidance



- LSB consultation – closes 11 December 2013  
[http://www.legalservicesboard.org.uk/what we do/consultations/open/pdf/20130918 consultation paper on guidance for education and training FINAL for publication.pdf](http://www.legalservicesboard.org.uk/what-we-do/consultations/open/pdf/20130918-consultation-paper-on-guidance-for-education-and-training-FINAL-for-publication.pdf)
- Proposals for guidance to be issued under section 162 of LSA 2007
- Requires regulators to develop a more detailed and time-bound blueprint for change over the medium term
- Submit plans to us in April 2014

## Five principles - from our draft guidance



- 
- 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 best to deliver the outcomes required
  - Standards are set that find the right balance between what is required at entry and what can be fulfilled through ongoing competency requirements
  - Obligations in respect of education and training are balanced appropriately between the individual and entity, both at the point of entry and ongoing
  - Education and training regulations place no direct or indirect restrictions on the numbers entering the profession

## **Outcome 1:** *What an individual must know, understand and be able to do at the point of authorisation*

---

### **What it is?**

- Outcome focused requirements at the point of authorisation, for example a competency framework
- May differ depending on the activity with some universal requirements, for example professional principles or ethics
- Greater consistency across regulators and easier movement between professional titles

### **What it isn't?**

- 'Time served' models where regulators specify how long it takes to demonstrate the outcomes
- Extending regulation to students

**Outcome 2:** *Providers of education and training have the flexibility to determine how best to deliver the outcomes required*

---

### **What it is?**

- Providers of education have to demonstrate how their courses and curricula meet the outcomes that have been set by regulators
- Multiple routes to authorisation are able to emerge, with no one route becoming the “gold standard”
- Mix of ‘on the job’ and ‘off the job’ options, may depend on activity

### **What it isn’t?**

- Regulators prescribing particular routes
- Regulators duplicating existing sector specific quality assurance, such as the Quality Assurance Agency (QAA)

## **Outcome 3:** *Balance between entry and ongoing requirements*

---

### **What it is?**

- Entry requirements set at minimum level to assure competence, supported by ongoing competency requirements where appropriate
- Requirements beyond the minimum only where justified by the risks
- Reaccreditation where justified by the risks

### **What it isn't?**

- Broad based legal knowledge requirements for all types of authorisation
- Reaccreditation in all areas

## **Outcome 4:** *Balance between individual and the entity*



### **What it is?**

- Entities play a role in assuring competence where possible, for example in relation to CPD requirements where they may be relied on to ensure individuals complete appropriate CPD
- Regulators look at whether a firm has in place appropriate controls and supervision arrangements
- Requirements vary depending on the type of services being provided– many areas will still require demonstration of individual knowledge

### **What it isn't?**

- No individual knowledge requirements at all
- Reaccreditation in all areas

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

---

### **What it is?**

- Any qualification route that meets the outcomes is permitted

### **What it isn't?**

- Regulators setting a limit on the number of routes to qualification, places or training providers
- Regulators creating inadvertent restrictions, for example requiring that an individual must have obtained a training contract or pupillage before they can complete the preceding stages of training

## Summing up



- 
- This is about regulation and delivering the regulatory objectives
  - A modern regulatory framework demands a different approach
  - Liberalisation of ownership + significantly more flexible labour market = a legal services market which functions more effectively for consumers
  - Can be achieved without compromising professional standards