

# Increasing flexibility in legal education and training

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Consultation on proposals for draft statutory guidance to be issued under section 162 of the Legal Services Act 2007

This consultation will close on 11 December 2013

## **This Consultation Paper will be of interest to:**

Approved Regulators

Providers of legal services

Legal representative bodies

Legal advisory organisations

Third sector organisations (representing the interests of consumers or providers of legal services)

Consumer groups

Law schools/universities

Law students (and prospective students)

Legal and regulatory academics

Members of the legal profession

Accountancy bodies

Potential new entrants to the ABS market

Government departments

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## Chairman's Foreword

1. It is almost three years since I delivered the Upjohn lecture, in which I raised the paradox of ever greater specialisation within the legal profession but ever more fluid boundaries between the traditional branches of the profession. I asked then what that meant for how we train people – and for when and how we ask them to make major decisions about their future career and degree of specialisation.
2. The Legal Education and Training Review was launched.
3. In the lecture I posed the question of whether the existing system of education and training was fit for its purposes. I asked whether a system that had hardly changed over the last 40 years was really able to fulfil what is required of it.
4. The question was deliberately provocative. As I said then, I believe that it is precisely the role of the oversight regulator to challenge, to question and to provoke debate. In the three years since there has been considerable commitment on the part of the Bar Standards Board, the Solicitors Regulation Authority and ILEX Professional Standards to review the questions posed in the Upjohn lecture. The LETR has now made its recommendations. I believe that we now move on to immediate discussion on what needs to be done.
5. I also said three years ago that the essential characteristics of the Review would be that its proposals had to be capable of living up to the scale of the challenge on workforce development – we needed a blueprint for action to give society the legal workforce it needs for the future.
6. These are the success criteria I laid out for the review:
  - first, that joint consideration of the issues that span the entire workforce is necessary if we are to reach a set of conclusions that have cross-sector application;
  - second, it had to be genuinely ambitious and forward-looking in scope;
  - third, the joint review needed to complement existing initiatives rather than duplicate the detail of them. Collective endeavour must not lead to individual planning blight;
  - fourth, the Joint Review needed to engage the widest range of stakeholders – including students and firms – not just the usual regulatory and educational suspects;
  - And finally, the Review needed to generate concrete recommendations that could be agreed and implemented by all relevant parties.
7. I am not going to assess the LETR against these criteria. But they apply as much to the implementation phase and it is here where regulators must now focus.

8. We have seen already in the responses to the LETR a range of interpretations of its meaning. There is a real risk that regulators will not share the same interpretation and will proceed down different, potentially conflicting paths. There is perhaps an even bigger risk that debate about the meaning of the report will slow down momentum.
9. The LSB's role as the oversight regulator is to ensure that everyone is pulling in the same direction, even if the detail is different.
10. The LETR makes clear recommendations for action; not just for the commissioning regulators but for the sector as a whole. Underpinning all of the recommendations is the need for greater flexibility. Further, while the report is both full and thought provoking, it does not exist in a vacuum. The modern, risk based and outcomes focused approach to regulation that we are pursuing through our regulatory standards work, and which is set out in our recent response to the Ministry of Justice call for evidence on the legal services regulatory framework, demands a serious rethink of the current approach. What education and training requirements are needed to address regulatory risks?
11. We believe that we need a short and clear consultation on what is required. The LSB has therefore decided to set out our ideas for how education and training needs to change in the form of draft guidance. It is built upon our view that a liberalised legal services market can only function effectively for consumers if there is a significantly more flexible labour market.
12. We propose that regulators act quickly to review their current regulatory arrangements. We set an explicit expectation that regulators' approach to education and training should be risk based and outcome focused, in line with the core principles of our regulatory standards framework.
13. Some of the regulators already have work underway and more details will emerge during this consultation period. We are not trying to duplicate these plans or impose a particular timetable. But they should have one.
14. Those that have clear plans and continue to make progress in the broad direction of the guidance will be left to deliver. From those who do not – and my hope is that there will be none - we shall seek clear explanation.



David Edmonds, Chairman

## Executive Summary

15. 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 Legal Services Act 2007 (the Act). Historically regulators have relied upon high barriers to entry as the primary means to assure quality in the form of detailed education and training regulations, which prescribe the stages of training and qualifications an individual must complete before being permitted to practise. The principle of this approach remains largely unchanged from when the last review of legal education and training was completed in 1971<sup>1</sup>.
16. As the oversight regulator, the Legal Services Board (LSB) takes an active role in fulfilling its functions and facilitating delivery of the regulatory objectives and better regulation principles. It was with this in mind that in 2010 we called for a review of legal education and training. Our hypothesis at that time was that the current approach to education and training lacked sufficient flexibility, particularly in light of the changes taking place within the legal services market and the removal of restrictions on ownership of legal services firms. We suggested that regulators needed to shift towards defining outcomes for education and training rather than process and content, and that such a change would improve the interplay between legal practice and education.
17. Three years on and the Legal Education and Training Review (LETR), commissioned by the Solicitors Regulation Authority (SRA), Bar Standards Board (BSB) and ILEX Professional Standards (IPS), has made its final recommendations. The LETR underlines the need for greater variety and flexibility of approach to ensure that both new and existing lawyers attain and retain the necessary skills to serve the public effectively. It proposes incremental change while also raising questions about the relevance of some of the existing regulatory requirements.
18. The full implications of the LETR are yet to be drawn out and it is of course for the commissioning regulators to respond directly and decide what it means for their existing regulatory arrangements. We also expect those that were not directly involved in the review to be considering the findings carefully and there is some evidence of this already.
19. As the oversight regulator, we believe it is important for the LSB to be clear about its expectations for all approved regulators. During the course of the LETR we have stood back and listened to the debate, engaging publicly through our seminar series<sup>2</sup> and supporting paper in order to inform our view of the issues<sup>3</sup>.

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<sup>1</sup> <http://letr.org.uk/the-report/chapter-2/the-current-let-systems/index.html>

<sup>2</sup> Presentations from LSB seminar series are available on LSB website [http://www.legalservicesboard.org.uk/news\\_publications/events/education\\_and\\_training\\_seminar\\_series.htm](http://www.legalservicesboard.org.uk/news_publications/events/education_and_training_seminar_series.htm)

<sup>3</sup> LSB paper on legal education and training, February 2012

We have also had the opportunity to consider carefully the evidence and recommendations contained within the discussion papers and, more recently, the final report.

20. While LETR is a significant milestone, it is only one piece of evidence and the report itself acknowledges the relative lack of consumer input as compared to the views of the profession. In its response to the report, the Legal Services Consumer Panel remarked on the “missed opportunity to redesign legal education and training around the needs of consumers”. We are therefore seeking to draw not only from the LETR itself but from wider developments in regulatory practice, including our regulatory standards framework where we set a clear expectation that regulation should be outcome focused and risk based. We see no reason why this should not be the case for regulatory arrangements in respect of education and training.
21. In this consultation we put forward our view that a liberalised legal services market can only function effectively for consumers if there is a significantly more flexible labour market. We consider that greater flexibility can be achieved through more effective targeting of regulation according to the risks posed. We suspect that there are areas where existing regulation may not be proportionate and is having an impact on access, cost and flexibility.
22. In our view it is therefore a priority for regulators to review their approach to education and training in this regard and to develop a more detailed blueprint for change in the medium to long term. We would expect such a process to lead to simplification of the existing frameworks and better targeting of regulation in this area that will encourage innovation while ensuring appropriate consumer protection.
23. We propose issuing statutory guidance to all approved regulators under section 162 of the Act to this effect. In our view statutory guidance provides a clear and transparent way to set out the LSB’s views in this area. It also provides a solid basis from which we can review progress or take action in the future if we find there is evidence of detriment to the regulatory objectives or better regulation principles. Regulators are given a degree of flexibility in how they respond to the guidance in order to meet their own needs.
24. The guidance sets out five outcomes which we believe will deliver greater flexibility:
  - i. Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation

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

25. While these outcomes stand independently, our proposed guidance also sets out our views on how they might best be achieved. Our powers to issue guidance are broad and the Act provides for us to have regard to the extent to which an approved regulator has complied with any guidance when we are exercising our functions (section 162 (5)). Where regulators decide to depart from our guidance it provides a framework by which they are required to justify those decisions.

26. We expect regulators to make progress in delivering the outcomes in the guidance in the medium to long term. We do not seek to prescribe what their timetables should be but in order to maintain momentum we would like to see proposals from regulators in April 2014, after we have issued the final guidance.



## Introduction

27. Historically, regulators have relied upon high barriers to entry as the primary means to assure quality in the legal profession. Initial education and training requirements are generally supported by ongoing Continuing Professional Development (CPD) and duties for individuals to act within their competence. The principle of this approach remains largely unchanged from when the last review of legal education and training was completed in 1971<sup>4</sup>.
28. The introduction of alternative business structures (ABS) in 2011 brought about the removal of restrictions on ownership of legal services providers. We have already seen a range of ABS models emerge in different parts of the market as well as incumbent providers responding to increasing competition. It is our view that greater competition can improve things for consumers by making services more accessible and affordable.
29. We have also seen changes to regulation brought about by the Act and the emergence of best practice in other sectors of the economy such as professional healthcare regulation. 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. We consider this has particular relevance to two of the regulatory objectives - protecting and promoting the interests of consumers; and encouraging an independent, strong, diverse and effective legal profession. Regulators must also act in accordance with the better regulation principles in that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
30. The final report of the LETR acknowledges the changing nature of the legal market and the need for greater flexibility, and makes a number of recommendations. It is the changing context of the legal workforce and wider developments to improve regulation on which we wish to focus in this consultation and our draft guidance.
31. In our regulatory standards framework<sup>5</sup> the LSB has set out clear criteria for how we believe regulation needs to change in order for approved regulators to deliver the regulatory objectives and better regulation principles as envisaged by the Act<sup>6</sup>. 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. We believe such an approach is supported by the recommendations in the LETR.

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<sup>4</sup> <http://letr.org.uk/the-report/chapter-2/the-current-let-systems/index.html>

<sup>5</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/20111214\\_regulatory\\_standard\\_v11.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf)

<sup>6</sup> See section 28 of the Legal Services Act 2007

32. As the market continues to change, regulators need to be able to keep pace with the changing nature of practice and of business models seeking authorisation. These are likely to look very different to the historic models upon which the current education and training requirements are built. Changing the approach to education and training is therefore as much about enabling regulators to mitigate new risks as it is about removing unnecessary barriers and restrictions that have the potential to inhibit innovation. The LETR report recognises this and starts to consider how the current arrangements need to change. It is now for regulators to take forward the implementation phase.

33. In this consultation we set out our views for the future of legal education and training in the form of draft guidance to be issued under section 162 of the Act. It is not intended to be an assessment of the current arrangements or the emerging proposals post LETR, and should not therefore delay any action from the commissioning regulators in response to the review's findings. Rather it is intended to set out a vision for a more flexible approach to education and training to which regulators must have regard. Further, while the guidance can only apply to approved regulators, this document is intended for a far wider audience whose participation is required in order for a more flexible approach to education and training to emerge. We therefore welcome the views of education providers, current and prospective students, employers and individual members of the legal profession, and those representing consumers of legal services.

## Background

### Our role

34. Under the Act, the LSB has two important oversight responsibilities. Under section 3 of the Act, the LSB has a 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 them 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 – for example relating to education and training.
35. As the oversight regulator, we take an active role in facilitating delivery of the regulatory objectives and better regulation principles. As we have set out in our recent paper on *Overseeing Regulation*<sup>7</sup>, we consider there to be a clear hierarchy in the regulatory framework and we must therefore be proactive if we are to be in a position to discharge our responsibilities properly and proportionately.
36. It was with this in mind that we called for a review of legal education and training<sup>8</sup> and are now putting forward our views. These have been informed by the evidence and recommendations within the LETR report and also by changes in legal services regulation more widely.

### LETR

37. The research phase of the LETR concluded in June 2013 with publication of the final report. The report proposes incremental change, backed up by the necessary infrastructure to enable more significant change over time. The report points to a number of weaknesses in the current system of education and training, notably:

- A lack of flexibility in routes to entry and ability to transfer across professions, characterised by the dominance of models based upon time served since joining the profession
- The implications of vocational training requirements for solicitors and barristers (Legal Practice Course and Bar Professional Training Course) in terms of their cost, accessibility and impact on the numbers entering the profession

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<sup>7</sup> [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20130610\\_overseeing\\_regulation\\_final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20130610_overseeing_regulation_final.pdf)

<sup>8</sup> The LSB's expectations for the LETR were set out in the Chairman's Lord Upjohn lecture [http://www.legalservicesboard.org.uk/news\\_publications/speeches\\_presentations/2010/de lord\\_upjohn Lec.pdf](http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de lord_upjohn Lec.pdf), November 2010

- Perceived knowledge and skills gaps among newly qualified lawyers, notably professional ethics, commercial awareness and legal research/writing skills
- A lack of consistency in standards across regulators
- The extent to which existing CPD schemes (which are predominantly focused on input measures, i.e. hours completed) adequately assure competence
- Complexity of the current system and lack of coordination between regulators
- Lack of consumer focus in the design of education and training requirements

38. We believe that these weaknesses need to be addressed by regulators and that any action should be taken in reference to the core principles of risk based and outcome focused regulation set out in our regulatory standards framework. In our view this is the best way for regulators to fulfil their duties under section 28 of the Act to promote the regulatory objectives and have regard to the better regulation principles.

39. We agree with the view put forward in the LETR report that structural change can be incremental but in our view, this does not have to mean that change is slow. Our proposed guidance therefore sets out an approach to education and training and series of outcomes that we expect regulators to take account of in reviewing their own arrangements. Individually they may point to specific areas of immediate activity and collectively they build upon the evidence in the LETR to define a strategy for education and training over the medium term.

40. We acknowledge that some of the regulators are already developing plans for reforming their approach to education and training. We welcome these developments and consider our proposal to issue statutory guidance to be complementary to this process. The guidance is intended to set out our views on the outcomes to be delivered in order to secure the regulatory objectives, while allowing regulators discretion to determine how best to deliver them and the timescales for doing so. It should not therefore delay any specific action that is being planned in response to the LETR.

### **Statutory guidance**

41. In its oversight role, the LSB has at its disposal a range of tools, one of which is to issue guidance under section 162 of the Act<sup>9</sup>. Our powers to issue guidance

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<sup>9</sup> 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

are broad and given the significant role of education and training in the regulatory framework, we believe this is an appropriate area for us to do so.

42. It is suggested that statutory guidance provides a clear and transparent way to set out the LSB's views in this area and the principles we expect all of the regulators to take account of when reviewing their education and training regulations. It also provides a solid basis from which we can review progress in the future, and take action if we find there is evidence of detriment to the regulatory objectives or better regulation principles.
43. As specified under section 162(5) of the Act<sup>10</sup>, when carrying out our functions (such as the assessment of rule change and designation applications), we will consider the extent to which regulators have complied with the outcomes in the guidance where they are relevant. Where a regulator takes an approach that is different to that suggested in our guidance, they should be able to justify such an approach. To do so, we would expect an approved regulator to establish the extent that the different approach is the most appropriate way of acting in accordance with the regulatory objectives, better regulation principles and regulatory best practice.
44. This guidance will also provide the basis for any future review of regulatory arrangements in relation to education and training. We will therefore ensure that the guidance is periodically reviewed and updated.

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- About the content of licensing rules
- About any other matters about which it appears to the LSB to be desirable to give guidance

<sup>10</sup> When exercising its functions, section 162 of the Act allows the LSB to have regard to the extent to which an approved regulator has complied with any guidance issued under section 162 which is applicable to the approved regulator

## Proposed Approach

45. The LETR report underlines the need for greater variety and flexibility of approach to ensure that both new and existing lawyers attain and retain the necessary skills to serve the public effectively. It also raises questions about the relevance of some of the existing regulatory requirements. While the causes may be part of wider issues with the structure of legal services regulation, we believe there are areas where early progress can be made.
46. 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. 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
47. This framework does not explicitly cover education and training requirements but, as a core regulatory tool, we consider the emphasis on an outcomes focused approach and the need to target regulation according to risk should apply as it does in other areas of regulation.
48. As a first step towards a more flexible approach to education and training we propose that all regulators need to act quickly to review their current arrangements to ensure they are aligned with the principles of better regulation. In particular, regulators should look to where they can remove unnecessary or duplicative regulation or if regulation is in place where there is no identified risk. We would expect such a process to lead to simplification of the existing frameworks and better targeting of regulation in this area that will encourage innovation while ensuring appropriate consumer protection.
49. It is acknowledged in the LETR report that the review lacked any significant consumer input, other than contributions from the Legal Services Consumer Panel and from in-house lawyers as buyers of legal services. The LSB also provided the research team with data on the consumer experience of legal services but we believe that the balance in focus between the consumer and professional perspective should be taken into account when considering the

report's conclusions and determining next steps. Further, the LETR report is only one source of evidence and it is important that regulators look for other sources to inform their own approach. For instance, a review of current requirements may reveal where there may be too much regulation (particularly where it may have been carried over from the pre-LSA framework). Examples may include the number of waiver requests received or feedback from the regulated community that it does not have the freedom to make the necessary decisions in relation to its workforce. A recent report for the LSB on the proportionality of regulation also highlighted a number of potential pieces of evidence in relation to the proportionality of existing education and training requirements focusing on the SRA and BSB<sup>11</sup>.

50. In the future, we believe that regulators should consider the introduction of any new education and training regulations very carefully, balancing the potential costs and benefits. We also expect regulators to routinely assess all education and training regulations in order to determine whether they achieve what they are designed to do.

### **Proposed Outcomes**

51. Over time we expect regulators to have in place regulatory arrangements for education and training that deliver the following outcomes:

- i. Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation
- ii. Providers of education and training have the flexibility to determine how best to deliver the outcomes required
- iii. Standards are set that find the right balance between what is required at entry and what can be fulfilled through ongoing competency requirements
- iv. Obligations in respect of education and training are balanced appropriately between the individual and entity, both at the point of entry and ongoing
- v. Education and training regulations place no direct or indirect restrictions on the numbers entering the profession

While we believe the outcomes stand independently, our proposed guidance sets out our views on how they might best be achieved.

### **Questions:**

#### **1) Do you agree that these outcomes are the right ones?**

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<sup>11</sup> The proportionality of legal services regulation: A report for the Legal Services Board by Kyla Malcolm, Economics, Policy and Regulation (June 2013), pages9-14  
Report <https://research.legalservicesboard.org.uk/wp-content/media/2013-06-14-LSB-final-report-STC.pdf>

## 2) Do you think that all of the outcomes should have equal priority?

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

52. It is our view that education and training requirements for individuals should be used not as a barrier to entry but where there is a genuine risk that is best mitigated by an individual having certain knowledge or skills. This is the case both for entry requirements (such as particular qualifications) as well as ongoing requirements (such as CPD or mandatory accreditation schemes).
53. An outcome focused approach to education and training might therefore focus more on what an individual must know, understand and be able to do when they are authorised to practise certain activities rather than the stages of training or specific qualifications required. For example, we might see less prescription as to the length of time of a particular training course. This is an approach commonly found in other areas of regulation such as health, where regulators generally set out the learning outcomes or standards from which education providers must design qualifications to deliver. It is also the approach recommended by the LETR which proposes that regulators set learning outcomes for the knowledge, skills or attributes expected of a competent member of each of the regulated professions (supported by additional standards or guidance as necessary)<sup>12</sup>.
54. We consider that one of the best ways to be risk based is for regulators to develop education and training requirements in the context of the activities being provided rather than the role of the person providing them. This would allow closer ties with the risks to consumers posed by particular activities and create a stronger link to ongoing regulatory duties contained within codes of conduct or other regulatory arrangements. There may be certain activities where the risks can better be addressed by an entity having in place appropriate systems and processes or where the risks are so low that a regulator may be in a position to delegate responsibility to the entity to ensure it has in place people with appropriate knowledge and skills. Other areas, such as some of the reserved legal activities, may present such a high risk that the regulator needs to be confident that individuals providing those activities have certain knowledge.
55. Tailoring regulation to activities is already happening in many sections of the legal services market. Notaries, costs lawyers, patent and trade mark attorneys and licensed conveyancers are all regulated on the basis of the activities they provide, including requirements for education and training. More recently, the BSB has made changes to its Code of Conduct allow barristers to provide public access services to clients once they have completed the requisite training course and are registered with the BSB. Further, from January 2014 barristers will be

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<sup>12</sup> Setting Standards: The future of legal services education and training regulation in England and Wales, Recommendation 1



able to apply to the BSB for permission to conduct litigation subject to certain requirements<sup>13</sup>. It is noteworthy that the BSB has not decided to change its pre-qualification requirements in order to grant all barristers litigation rights. It has chosen to take a more targeted approach in accordance with the risks posed.

56. It is envisaged that in developing outcomes for individuals, regulators will aim to complement what exists elsewhere; for example, the requirements put in place by a professional body or employer. It may be that there are some universal requirements that exist across the professions, such as the notions of professional principles or ethics, and then those that are specific to certain activities or roles. The standards of proficiency set out by the Health Professions Council provide a possible model<sup>14</sup> and would allow greater consistency across the different legal professions as envisaged by the LETR. In our view, greater consistency and a more flexible approach would also facilitate easier movement across professions.

57. We consider that such an approach would enable regulators to remove unnecessary prescription from their regulatory arrangements and ensure better targeting of regulation. An example of this is registration requirements for students, where it may be difficult to justify the regulatory burdens and costs in relation to the risks posed given that students will almost certainly be acting under the supervision of a qualified person and in many cases within a regulated entity. We note the developments in professional healthcare where the General Optical Council is the only statutory regulator with a student registration regime and they are currently consulting on proposals to remove this requirement<sup>15</sup>. We therefore encourage regulators to review their requirements in this area in relation to the better regulation principles and specific risks to the regulatory objectives.

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<sup>13</sup> See paragraph 1.65 of BSB application to LSB for approval of the BSB Handbook [http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/bsb\\_new\\_handbook\\_application.pdf](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/bsb_new_handbook_application.pdf)

Self-employed barristers who apply for a litigation extension will be required to complete a self-assessment questionnaire, confirming a number of mandatory and discretionary factors, which include:

- Their knowledge, skills and experience of civil and/or criminal litigation procedure, including related drafting skills;
- That they have done the Public Access course or obtained a waiver from it
- That they have appropriate administrative systems in their place of practice and have the skills to use these effectively in order to manage litigation, including appropriate client-facing skills;
- That they have appropriate insurance

<sup>14</sup> <http://www.hpc-uk.org/aboutregistration/standards/standardsofproficiency/>

<sup>15</sup> [http://www.optical.org/goc/filemanager/root/site\\_assets/stakeholder\\_engagement/consultation\\_documents/student\\_regulation\\_consultation\\_-\\_final\\_for\\_website.pdf](http://www.optical.org/goc/filemanager/root/site_assets/stakeholder_engagement/consultation_documents/student_regulation_consultation_-_final_for_website.pdf), consultation closes 3 October 2013

## **Proposed guidance**

**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
- 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 where 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

### **Questions:**

- 3) **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?**
- 4) **What are the specific obstacles that need to be removed to facilitate movement across different branches of the profession?**
- 5) **Do you agree that regulators should move away from 'time served' models?**
- 6) **Do you agree that the regulation of students in particular needs to be reviewed in light of best practice in other sectors?**

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

58. With regulators setting the outcomes expected as opposed to the route for achieving them, educators and employers would be free to develop appropriate curricula and training to deliver what is required. This is likely to result in the more flexible "mixed economy" of routes envisaged by the LETR, including non-

graduate routes<sup>16</sup>. It is likely that many of these routes would go beyond the requirements set by regulators.

59. We envisage the role of regulators would therefore shift from setting precisely how entry criteria are met, to assessing whether the routes proposed are likely to achieve the desired outcomes. This is likely to be a significant change in approach from existing practices where variation is largely achieved on an individual basis through applications for waivers (for example, seeking approval to combine vocational courses with 'on the job' training or developing work based learning schemes).

60. Arguably it is not practical for regulators to make a bespoke decision on a case by case basis. We would therefore expect regulators to develop clear criteria by which they can judge whether the outcomes are met by providers of education and training. For example, these may include:

- How well the route delivers the learning outcomes or standards
- Internal quality assurance mechanisms
- Balance between 'on the job' and 'off the job' training
- Level of information provided to students or prospective students
- Impacts on diversity and publication of diversity information

61. Regulators may also wish to establish standards of education and training that training establishments must meet in order to be approved by them, although any standards must also be risk based and proportionate to avoid unnecessary costs or burdens on providers. In doing so we would expect regulators to complement rather than duplicate existing quality assurance processes such as those undertaken by educational institutions or employers 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.

### ***Proposed guidance***

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

- a. Approval of education and training routes is dependent on providers ability to demonstrate how their approach will achieve the required outcomes
- b. Regulators take care not to predetermine approval by prescribing particular routes

<sup>16</sup> Paragraph 5.51, Chapter 5 of LETR

[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/bsb\\_new\\_handbook\\_application.pdf](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/bsb_new_handbook_application.pdf)

- c. Multiple routes to authorisation are able to emerge, with no one route becoming the 'gold standard'
- 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

**Questions:**

- 7) Do you agree that regulators should allow more flexibility in the way that education and training requirements are delivered by no longer prescribing particular routes?**
- 8) Do you think such a change will impact positively on equality and diversity?**
- 9) Do you agree that regulators should review their approach to quality assurance in light of developments in sector specific regulation of education providers?**

**Balancing entry and ongoing requirements**

62. Under the current arrangements, regulators seek to assure quality by setting high standards for individuals to meet in order to obtain a professional title which allows them to carry out certain legal activities. The LETR found there to be less focus on ongoing competency requirements, with most regulators favouring a CPD system based upon the completion of a certain number of hours. Few requirements exist for entities as they are generally treated as a collection of individuals.
63. As set out in the previous section on risk and outcomes, we support the recommendations put forward in the LETR report that education and training requirements are expressed in terms of the outcomes and standards expected at the point of authorisation. In our view these should be set at a threshold level, i.e. the minimum level at which an individual is deemed competent for the activity or activities they are going to carry out.
64. In setting requirements for individuals, regulators need to consider the balance in requirements for broad based knowledge versus narrow based specialism and whether knowledge needs to be "frontloaded" or whether it can be obtained as

effectively, if not more effectively, through a process of ongoing 'on the job' learning. We do not accept that all legal roles or activities require broad based knowledge to be obtained before authorisation as is particularly the case for solicitors under the current regulatory requirements and model for qualification. There may be types of activity where such an approach does not successfully mitigate all of the risks. One example of such an activity is will writing, where research showed issues with the quality of wills being provided by solicitors as well as this provided by unregulated will writing companies<sup>17</sup>. It may be therefore that some risks can be more effectively mitigated by systems and processes rather than individual knowledge requirements and that initial training requirements place unnecessary barriers to entry.

65. We would only expect regulators to put in place additional requirements beyond the minimum where it can be justified by the risks, for example in relation to the types of consumers likely to receive that service. Regulators should also be creating strong links with the supervision functions to determine whether such risks materialise, creating an ongoing review cycle to ensure that regulation is not maintained unnecessarily or new risks are missed. This must include diversity and social mobility where unnecessary barriers to entry and mobility at later stages of a career can have an enduring impact on delivery of the regulatory objectives.

66. Entry requirements should also be balanced against ongoing competency requirements. We note that the LETR recommends the systematic assurance of competency through reinforced CPD that requires participants to plan, implement, evaluate and reflect. We support this recommendation; however, we do not share the views expressed in the report in relation to reaccreditation. While we agree that the case for *universal* reaccreditation has not been made (and to our knowledge has not been suggested), we do not agree that there is no evidence of the need for reaccreditation at all. It is our view that where regulators impose significant 'before the event' requirements the risks must be high enough to require some form of reaccreditation. This is likely to involve any activities where additional endorsements to a practising certificate are required, for example barristers that wish to conduct litigation or criminal advocates with QASA accreditations. As with entry requirements, regulators need to adopt a risk based approach to ongoing professional training. Further, we consider the case applies to non-regulatory regimes such as QC appointments just as much as this does for regulation.

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<sup>17</sup> [http://www.legalservicesboard.org.uk/Projects/pdf/20130211\\_final\\_reports.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/20130211_final_reports.pdf)

## *Proposed guidance*

**Outcome 3:** *Standards are set that find the right balance between what is required at entry 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 going to carry on
- 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
- 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 therefore a broad base of knowledge is not the most effective way to address the risks.
- e. 'On the job' training is utilised where knowledge can be obtained as effectively in this way rather than by requiring all knowledge to be obtained before authorisation
- f. 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 with significant requirements at the point of authorisation indicating high enough risks to require some form of reaccreditation. For example, this is likely to be the case in any activities where additional endorsements to a practising certificate are required in order to practise

### **Questions:**

**10) Do you agree that entry requirements set by regulators should focus on competence?**

**11) 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?**

**12) Do you agree that reaccreditation requirements should be introduced in areas where the risks are highest?**

## Balance between entities and individuals

67. In authorising entities, regulators need to focus on assuring the competence of all those employed to provide legal services and not only those with professional titles. This is likely to vary depending on the particular business model or on the nature of the consumer or of the services provided, but will mean placing a far greater weight on entity obligations in the medium term than exists now. For example, the risks associated with a will writing business or litigation firm might require regulators to look closely at the systems and processes that are in place. Such an approach is likely to require reconsideration of the current arrangements and, in particular, whether the balance between the regulator and employer is necessarily the right one. It might also lead to less prescriptive requirements for individuals.
68. We expect that in reviewing their regulatory arrangements for education and training, regulators will look at whether there are areas where entities might be able to take on more responsibility for development of an appropriate workforce training strategy or provide assurance to regulators that competency requirements are met.
69. We do not agree with the recommendation in the LETR that an individual licensing regime for paralegals is needed. Available evidence suggests that the vast majority of paralegals (i.e. those who are not “authorised persons”) operating in relation to the reserved legal activities are employed in regulated entities, where they are supervised by authorised persons. The Act does not give us a remit to extend regulation to non-reserved legal activities undertaken outside of a regulated entity. The LETR acknowledges that such a scheme need not be provided by regulators but nonetheless, we would have concerns about any form of regulation that added potentially unnecessary cost or reduced flexibility of the labour market given the lack of evidence of an identified issue.
70. We agree with the conclusion in the LETR that entities are likely to play a key role in delivering outcomes for ongoing education and training requirements by playing a greater role in management of effective CPD. We also support the notion that greater freedom for employers to make decisions about their workforce should be backed up by increased regulatory focus on ensuring that appropriate controls and supervision arrangements are in place. We therefore expect regulators to consider any changes of this kind in the context of their supervisory approach and ensure that they are prepared to take swift and effective action where employers fall short of their duties.

## Proposed guidance

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

- a. There is a positive shift towards assurance from entities that competency requirements are met and a move away from those decisions being made by regulators
- 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 they are provided. For example, we would expect regulators to take account of the proportion of reserved/unreserved services being provided

#### Questions:

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

**14) Can you think of any circumstances in which this may not be possible?**

#### Restrictions on numbers

71. We note the increasing concern among members and representatives of the profession as to the number of individuals that fail to obtain pupillage or training contracts and are therefore left unable to qualify despite incurring the costs of the academic and vocational stages of training. This is sometimes positioned as an issue of “over supply” in the legal services market where there seems to be too many lawyers coming through the system. The solution often suggested is to somehow cap the numbers of those allowed into the system by introducing higher entry barriers such as restricting access to the vocational stage (BPTC, LPC) to those that have been successful in securing a training contract or pupillage.

72. It is very difficult to accept the argument that there are too many lawyers given the levels of unmet need identified in research looking at both individual and small business consumers<sup>18</sup>. Combined with the perceived cost barriers for consumers it is perhaps more likely that the market cannot sustain the number of

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<sup>18</sup> <https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf> and <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>



lawyers at the current cost. Further, given the regulatory objective to promote competition and protect and promote the interests of consumers it would be very difficult to accept any attempt by a regulator to use its regulatory arrangements to restrict numbers.

73. We therefore propose that the solution to the issues lies not in further restrictions but in fewer restrictions to the way that people are able to qualify and the range of options open to individuals wishing to pursue a career in the legal services market. As Susskind suggests, as the market develops it is likely that new and different roles will emerge that require even greater flexibility from regulators<sup>19</sup>. We also suggest that the more options that are available, the lower the costs of training are likely to be. It is then the role of regulators to satisfy themselves that each route delivers the outcomes required.

### ***Proposed guidance***

***Outcome 5: Regulators place no 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 the 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

### **Questions:**

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

**16) Can you provide any examples for review where the current arrangements impose such restrictions and may be unnecessary?**

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<sup>19</sup> Susskind, R., *Tomorrow's Lawyers, An Introduction to Your Future*, Oxford University Press, 2013

## Next steps

74. This consultation paper sets out our thinking on education and training in the context of the LETR and our wider work on improving regulation. It forms the basis of draft guidance to the approved regulators to be issued using our powers under section 162 of the Act.
75. We are aware that each of the commissioning regulators for the LETR (SRA, BSB and IPS) is considering their own response to the report and proposals for next steps. Those regulators that were not involved directly in the review are also likely to be looking at the report and considering the implications for their own area.
76. This guidance is intended to set out the principles that we expect approved regulators to take account of in determining what changes to their regulatory arrangements for education and training are needed. It is intended to run parallel to their own work and to inform the conclusions reached.
77. 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 the momentum generated by the LETR is not lost. We therefore expect regulators to submit a timetable to us by April 2014 that sets out clearly the approach they will take and any particular priorities. We see no reason why our consultation would delay any specific action being taken forward in response to the LETR.
78. In reviewing these plans, the LSB will consider its approach to assessing regulators' progress in delivering the outcomes contained within the guidance. It will be for regulators to justify where they have departed from our guidance, with explicit reference to the regulatory objectives and better regulation principles.

## How to respond

79. Views on our proposals are welcome by 5pm on 11 December 2013 – this provides 12 weeks for interested parties to respond. We would prefer to receive responses and representations electronically (in Microsoft Word or pdf format), but hard copy responses by post, courier or fax are also welcome.

80. Responses should be sent to:

Email: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

Post: Michael Mackay  
Legal Services Board  
7th Floor, Victoria House  
Southampton Row  
London WC1B 4AD

Fax: 020 7271 0051

81. We propose to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We may record and publish the identity of the respondent and the fact that they have submitted a confidential response.

82. We are also happy to engage in other ways and would welcome contact with stakeholders during the consultation period. Please contact Tom Peplow by e-mail: [tom.peplow@legalservicesboard.org.uk](mailto:tom.peplow@legalservicesboard.org.uk) or telephone: 020 7271 0072.

## Complaints

83. Complaints or queries about the LSB's consultation process should be directed to Michelle Jacobs, Consultation Co-ordinator, at the following address:

Michelle Jacobs  
Legal Services Board  
7<sup>th</sup> Floor  
Victoria House  
Southampton Row  
London WC1B 4AD

Or by e-mail to: [michelle.jacobs@legalservicesboard.org.uk](mailto:michelle.jacobs@legalservicesboard.org.uk)

## Glossary of Terms

<b>ABS</b>	Alternative Business Structures. Since October 2011, non-legal firms have been able to offer legal services to their customers in a way that is integrated with their existing services. Equally, law firms are now able to develop their portfolios to compete across wider areas compared with their existing experience.
<b>AR or approved regulator</b>	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR
<b>Authorised Person</b>	A person authorised to carry out a reserved legal activity
<b>BSB</b>	Bar Standards Board – the independent Regulatory Arm of the Bar Council
<b>Consultation</b>	The process of collecting feedback and opinion on a policy proposal
<b>Consumer Panel</b>	The panel of persons established and maintained by the Board in accordance with Section 8 of the LSA to provide independent advice to the LSB about the interests of users of legal services
<b>ILEX Professional Standards Board</b>	Institute of Legal Executives Professional Standards – the independent regulatory arm of the Chartered Institute of Legal Executives
<b>Chartered Institute of Legal Executives</b>	Representative body for Legal Executives
<b>LA or Licensing Authority</b>	An AR which is designated as a licensing authority to license firms as ABS
<b>LSB or the Board</b>	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales
<b>LSA or the Act</b>	Legal Services Act 2007
<b>Regulatory Objectives</b>	There are eight regulatory objectives set out in the Legal Services Act 2007: <ul style="list-style-type: none"> <li>• protecting and promoting the public interest</li> <li>• supporting the constitutional principle of the rule of law</li> <li>• improving access to justice</li> <li>• protecting and promoting the interests of consumers</li> <li>• promoting competition in the provision of services in the legal sector</li> <li>• encouraging an independent, strong, diverse and effective legal profession</li> <li>• increasing public understanding of a citizen’s legal rights and duties</li> <li>• promoting and maintaining adherence to the</li> </ul>

	professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.
<b>SRA</b>	Solicitors Regulation Authority - Independent regulatory body of the Law Society

## **Annex A: draft guidance to be issued under section 162 of the Legal Services Act 2007**

### **Guidance on regulatory arrangements for education and training**

#### **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.
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, relative priorities and in what 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 punished appropriately
9. This framework has not explicitly covered education and training requirements so far but as a core regulatory tool, it is our view that regulators should take an outcomes focused approach and target regulation according to risk. This is supported by the recommendations within the LETR and 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:
  - i. Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation
  - ii. Providers of education and training have the flexibility to determine how best to deliver the outcomes required

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

While we believe the outcomes stand independently, our proposed guidance sets out our views on how they might best be achieved.

**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
- 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 where 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

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

- a. Approval of education and training routes is dependent on providers' ability to demonstrate how their approach will 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 becoming the 'gold standard'
- 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 entry 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 going to carry on
- 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
- 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 therefore a broad base of knowledge is not the most effective way to address the risks.
- e. 'On the job' training is utilised where knowledge can be obtained as effectively in this way rather than by 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 with significant requirements at the point of authorisation indicating high enough risks to require some form of reaccreditation. For example, this is likely to be the case in any activities where additional endorsements to a practising certificate are required in order to practise

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

- a. There is a positive shift towards assurance from entities that competency requirements are met and a move away from those decisions being made by regulators
- 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 they are provided. For example, we would expect regulators to take account of the proportion of reserved/unreserved services being provided

**Outcome 5:** *Regulators place no 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 the 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**

11. 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 the momentum generated by the LETR is not lost. We therefore expect regulators to submit a timetable to us by April 2014 which sets out clearly the approach they will take and any particular priorities.
12. In reviewing these plans, the LSB will consider its approach to assessing regulators' progress in delivering the outcomes contained within the guidance. It

will be for regulators to justify where they have departed from our guidance, with explicit reference to the regulatory objectives and better regulation principles.

## Annex B: List of questions

- 1) Do you agree that these outcomes are the right ones?
- 2) Do you think that all of the outcomes should have equal priority?
- 3) 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?
- 4) What are the specific obstacles that need to be removed to facilitate movement across different branches of the profession?
- 5) Do you agree that regulators should move away from 'time served' models?
- 6) Do you agree that the regulation of students in particular needs to be reviewed in light of best practice in other sectors?
- 7) Do you agree that regulators should allow more flexibility in the way that education and training requirements are delivered by no longer prescribing particular routes?
- 8) Do you think such a change will impact positively on equality and diversity?
- 9) Do you agree that regulators should review their approach to quality assurance in light of developments in sector specific regulation of education providers?
- 10) Do you agree that entry requirements set by regulators should focus on competence?
- 11) 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?
- 12) Do you agree that reaccreditation requirements should be introduced in areas where the risks are highest?
- 13) Do you agree that in most circumstances an entity is better placed than the regulator to take responsibility for education and training?
- 14) Can you think of any circumstances in which this may not be possible?
- 15) Do you agree that it is not the role of the regulator to place restrictions on the number of people entering the profession?
- 16) Can you provide any examples for review where the current arrangements impose such restrictions and may be unnecessary?