

Nottingham Law School

Response to Legal Services Board's proposed business plan for 2019/20 by the NLS Centre for Legal Education

Questions

Q1 – Have we identified the most relevant developments in our external operating environment?

Insofar as the business plan relates to education (public legal education and the careers and diversity of lawyers), developments in the education and higher education sector should also be considered as relevant to the external operating environment.

Q2 – What are your views on our proposed five-year policy objectives?

Strategic objective 1 is a relevant objective: the tendency of regulators and educators is to focus on competence at the point of qualification or earlier and to overlook the maintenance of baseline competence. It is perhaps also worth commenting that the relationship of the benchmarks for the point of qualification to the actual point of qualification and licensure may be deceptive. For example, the SQE will assess the range and standard required at the point of qualification by reference to the Statement of Solicitor Competence, but can be taken before the two-year period of qualifying experience. The Statement of Solicitor Competence is, however, to be used to inform CPD. So it will be entirely possible that the one point at which a given solicitor is *not* assessed by reference to the Statement of Solicitor Competence is the temporal point of qualification.

We would also comment that a statement of the “scope and quality” of a lawyer’s work at the point of qualification is not necessarily suitable for the remainder of their career. Lawyers specialise. Lawyers do (and should) improve in their performance to a point beyond baseline competence. Lawyers take on other roles and tasks in, for example, marketing, management and networking that are not thought appropriate for those who have just qualified. We refer to LETR recommendation 9¹ suggesting that thought should be given to post-qualification competences or outcomes separately from the competences identified for the point of qualification.

This objective also includes a reference to revalidation or re-accreditation. The LETR investigation collected a range of data on this topic concluding that it was premature on structural and cost-benefit grounds to move to universal reaccreditation.² Time has moved on, but we suggest that any revisiting of this issue should begin with the LETR data and conclusions and involve not only comparative study but also a risk-based analysis. It would, for example, be possible to repeat some of the data collection and revisit the initial literature review. Further, we invite the LSB to consider formal recognition of the place of higher degrees (e.g. LLMs, MBAs, professional doctorates) as a means of assuring increased competence after qualification.

Strategic Objective 2 is a relevant objective. Public legal information generally; for litigants in person and in formats accessible – and palatable - to different groups (e.g. those with learning disabilities, young people or older people without internet access) is critical. With the effective disappearance of legal aid, and the certainty of advice deserts, the availability of good quality basic

¹ Julian Webb and others, ‘Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales’ (2013) <<http://letr.org.uk/the-report/index.html>> accessed 5 February 2019.

² Ibid, 5.107-5.119.

information cannot be assumed. We agree that information is available piecemeal and that it is therefore not easy to identify gaps in the provision. There is also the risk that such information as is available is influenced by market forces (i.e. that it is in some cases a marketing tactic on the part of the commercial organisation that supplies it). We would add that accurate and accessible public legal information should not only extend to information about law and procedure, but also about legal professions, for the purposes both of potential clients and potential lawyers.

Strategic objective 3 relates to technology, and its regulatory and ethical implications. This is critical but should not be allowed to obscure other critical priorities relating to the availability of access to justice. Nor should it be forgotten that some of the more vulnerable members of society are, to all intents and purposes, outside the reach of technology, both in their daily lives and in relation to seeking or obtaining legal advice.

Work on technology should ensure that all sectors of the community and of the legal sectors are represented. How technology is used and abused may be a very different picture in SMEs and small law firms than in large organisations and legal services providers.

Q3 – Do you have any comments on our proposed business plan and work for 2019/20? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

Please see comments above.

Q4 – Please identify any elements of our business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

We would be happy to work with you on issues relating to continuing competence/revalidation/re-accreditation in particular and on public legal education.

Q5: Please provide comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2019/20.

We have made some comments above about groups whose perspectives and needs should be taken into account.

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