THE ACADEMIC STAGE OF TRAINING FOR ENTRY TO THE LEGAL PROFESSION
STANDARDS, CONTENT AND RELATED ISSUES
A
CONSULTATION
BY
THE LAW SOCIETY OF ENGLAND AND WALES
AND
THE GENERAL COUNCIL OF THE BAR OF ENGLAND AND WALES
With law faculties offering Qualifying Law Degrees
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Response of the Association of Law Teachers

Introduction

Although not a specific consultee the Association is responding to the Second Consultation. It considers that a response from a representative group of law teachers, written from a pedagogic as opposed to a departmental standpoint, and reflecting primarily the position in the new universities, would be distinctive and helpful.

It considered responding to the First Consultation, but took the view that the issues had already been canvassed in an earlier phase of consultation and that, in broad terms, the proposals now being made were consistent with the Association's views and recommendations at that time.

Section A
Standards and Content

Should Schedule One of the Joint Statement be amended to bring it more in line with the QAA "benchmark" statement for law degrees in England, Wales and Northern Ireland?

The two documents were deliberately drafted so as to be compatible, and the Joint Statement was prepared substantially by representatives of the law subject associations and CHULS who also sat on the Benchmarking group, and then approved by the professional bodies who required in some cases more specific or targeted wording to identify those areas of specific professional relevance. We believe that the level of coherence between the two is already substantial (bearing in mind that the benchmark applies across the UK and to many programmes which are not QLDs). Any revision should be limited to replacing terminology which has proved inappropriate in practice and updating to reflect for instance the increasing importance and sophistication of electronic legal resources.

The "benchmark" statement is set at the minimum level of attainment. If Schedule One is amended to take it into account, should the amendment be drafted to describe the minimum level or the achievements of a typical student, ie at the 2.1/2.2 boundary?

In view of the proposals to move away from the classification of degrees to a detailed transcript this would appear to be an inappropriate activity. In reality, most students will need to achieve at or above the modal level to be attractive recruits for the profession. Transparency on this is perhaps better achieved by improved careers advice and recruitment policies.

The Joint Statement is primarily about the scope and nature of activities. Quality of achievement needs to be demonstrated in other ways and against other criteria.

Should we provide more detail of our requirements in relation to the knowledge content of the qualifying law degree? In respect of Schedule Two, is the present formulation of the Foundations of Legal Knowledge adequate? If not, how should it be modified?

In principle we would argue that there is no need for a larger core.

Such research as has been done in the area (e.g. Bermingham & Hodgson, *The Law Teacher* 2001) suggests that the profession has neither a strong desire for additional core subjects, nor any consensus over what those subjects should be. No doubt many members of the profession would like to see new entrants with an expert knowledge of their particular practice area, but at the academic stage students have not yet made firm (or any) choice of practice specialism, and in any event the content of a law degree cannot reflect all possible specialisms. There may in this connexion be a case for wider availability of practice oriented Master's level qualifications. Some of the options available in the London University LLM programme are routinely studied in this way, and several institutions have established LLM and similar programmes targeted at practitioners (e.g. Nottingham Law School). There is a quite separate further argument against incorporating current practice areas into the undergraduate degree, which is that these areas are volatile and that what is studied in a given year as a final year LLB option may have been wholly overtaken by legislative or economic developments by the time the student is ready to enter practice some three years later.

The question of how the core is defined and delivered is a different one. We accept that there has over the past couple of years been a steady current of largely anecdotal evidence to the effect that some firms and possibly chambers are dissatisfied with aspects of the educational preparedness of their trainees/pupils and new entrants.

- It should be noted that the historic practice of the firms which are identified as dissatisfied is to recruit primarily from the old established law schools, either because these are seen as providing the best legal education or because it is known that they attract the students with the highest educational attainments and therefore in principle intellectual qualities. The criticism made is therefore one addressed mainly at those institutions.
- The main themes of the complaint is that students do not arrive at firms with adequate communication skills, research skills or understanding of legal principle in a practice context, usually tied to contract law and remedies. It is probably the case that the first deficit is attributable to inadequacies at all levels from primary education onward, while the latter two are clearly attributable to a failure to offer (or on the part of the students to benefit from) appropriate learning opportunities during the three stages of preparation for practice. It is therefore necessary to see any alleged deficiencies of the academic stage in the context of the functions of the two ensuing stages.
- It may well be that the academic stage is firmly focussed on legal theory (including placing legal ideas in a philosophical, political and social context) and on the examination of legal rules in a forensic context. Emphasis on the judicial process inevitably concentrates on dispute resolution and in particular on those areas where legal rules are obscure, unjust or fail to regulate the affairs of individuals or society acceptably. This is not necessarily a bad thing. It equates to the basic physiology, anatomy and pathology which underpins medical education and training.
- The problem appears to be that this is achieved to an unacceptable extent at the expense of the transactional practice of law which is the basis of most of the work of the solicitors branch of the profession. More emphasis on proactive drafting of documents

and structuring of transactions within the law to achieve objectives and also a more detailed examination of the legislative process as such, rather than as the raw material for judicial interpretation will both be professionally relevant and intellectually stimulating and diverse. However the full development of transactional approaches is the function of the LPC and training contract, just as formal drafting of pleadings and the conduct of trials is that of the BVC.

- There is certainly room for a more active dialogue between the professions and providers of QLDs to inform the content and methodology of the academic stage. If core subjects are to be made more relevant the academy needs assistance from practitioners in developing suitable case studies. These need to have a broad relevance and inform a study of legal principle. They need to be free of significant issues relating to procedural rules.
- Proactive use of law to resolve business, regulatory or social problems is a valuable exercise which many QLD providers will wish to incorporate into their programmes, but it is important that they have the flexibility to do so in ways which are coherent and manageable for students at the various levels of their legal education.
- Forms of development which could be more actively fostered include clinical legal education, other forms of *pro bono* activity and 'street law' programmes, all of which are educationally valuable and tend to encourage a practical problem-solving approach.

If we decide to provide more detail of our requirements in relation to the knowledge content of qualifying law degrees, what form should this take?

We do not regard this as desirable. It is not considered necessary in the USA, where reliance is placed on a robust consensus as to the 'essential' elements of the required subjects (which are defined by the respective Bar examinations) while leaving a degree of flexibility on peripheral areas. We consider that a similar consensus exists here and that it is not issues of definition and scope which are problematic, but the issues of relevance and style of coverage discussed above.

Should we amend the Joint Statement to include a fuller statement of the Foundations of Legal Knowledge or would the alternative of issuing guidance to those entering the vocational stage of training be sufficient reassurance to vocational course providers and others?
Is a dual approach preferred with some amendments to the Joint Statement and the publication of more detailed guidance?

As indicated above we do not support making the Joint Statement more detailed or prescriptive. There is a problem with students compartmentalizing knowledge. This occurs within degrees, where students have to be firmly encouraged to, for example, recognize that a course on commercial law builds on their prior study of contract and that they need to have an active knowledge of this material.

Guidance issued by LPC and BVC providers would be useful in reinforcing the message that these course in turn build on prior knowledge and ensuring that students prioritise those areas of revision/preparation where their knowledge is limited or stale.

Section B
Assessment

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Should we offer guidance and perhaps training to external examiners on qualifying law degrees?

No; such examiners are already drawn from experienced teachers on such programmes. There is a case for increased emphasis on the external examiner's role, and additional training may be part of this, but it is not specific to the QLD nature of the programme and is primarily a resources issue.

Should we lay down some basic requirements in respect of assessment on qualifying law degrees? If so, what form should they take?

Most institutions already have assessment policies and regulations. Devising a set of rules which will not cause significant conflicts with these would be difficult. Law teachers are well aware of the problems of assessment, and seek to provide a varied diet of assessment which is rigorous and seeks to eliminate the possibility of students achieving by cheating or other malpractice. Some outcomes (e.g. research, groupwork, oral communication and IT skills) cannot readily be assessed by examination. Equal opportunities requires that assessment be accessible to all students.

Section C
Resources

Assuming that we play a more active role in seeking to set minimum standards of learning resources for qualifying law degrees, what form should it take? If it were simply to offer guidance to institutions, would this assist law schools in bids for resources? Would some or all of it have to be prescriptive to make any difference?

There is no doubt that law has suffered disproportionately from the perennial underfunding of universities over the past decades. Numbers have increased more than in most subject areas and the banding of law does not reflect the cost of maintaining a satisfactory law library and information resource.

It may be that in some cases professional requirements could be used to secure better funding, however in other cases it may have the contrary result of causing the closure of provision, and our intelligence suggests that this is more likely to occur in those institutions which have put considerable efforts into widening participation.

The existing SLS guide for library holdings is generally accepted as a suitable indicator, and the increasing availability of subscription or free-use primary web-based information sources is assisting to resolve problems of access to such sources. Mandated provision of funding for particular programmes or aspects of programmes is likely to prove seriously divisive within institutions (there is already in some cases resentment of the higher level of resources provided for LPC and BVC courses and 'ringfenced' against use by other students and academics).

Section D
Alternative Approach

Would the introduction of some form of award scheme assist law schools raise their profiles both within their institutions and with potential students and recruiters?

We doubt this. The energy required to complete accreditation would be seen as unproductive. The scheme is unlikely to achieve anything that greater transparency on the part of providers, recruiters and careers services will not.

The Graduate Conversion Route (CPE)

How might the graduate conversion route (CPE) be developed in the future?

It could be expanded to a full academic year, with the final part being devoted to a research based dissertation, although this might create problems in relation to completion of assessment processes in time for enrolment.

Other more radical proposals would entail it stretching into a second year. There is no evidence that two full years are necessary and the extension has substantial funding implications and may well adversely affect recruitment.

We are not aware of any major criticism of the product of the existing CPE which would justify such major changes, although we accept that there needs to be more emphasis on research and principle rather than 'coverage' of detail, and that a problem solving approach may need to be incorporated as with the QLD.