



Legal Services Institute

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CHALLENGES FOR THE LEGAL EDUCATION AND TRAINING REVIEW¹

Professor Stephen Mayson

Director of the Institute

1. Introduction

If we are to make the most of the opportunity presented by the Legal Education and Training Review, we need to be clear about the background against which it is conducting its work. We also need to acknowledge the nature of some of the fundamental issues which must be addressed if the review is to be effective and command respect for its conclusions and recommendations.

2. The changing world

Let me start with a few names: Cooperative Legal Services; DAS UK; Palamon Capital Partners; Smedvig Capital; Burford Capital; Admiral Insurance; Slater and Gordon; Duke Street Capital; Quindell Portfolio plc; BT Claims; and Riverview Law. These are all organisations from outside the traditional English legal environment who have expressed an interest in entering the legal services market or have taken action to do so. They are names that I suspect very few of us in the legal world would have recognised at the time Sir David Clementi completed his review of regulation in 2004, or even when the Legal Services Act received the Royal Assent in 2007.

What we are facing is a fundamental separation of the legal professions and the legal services market. We are moving from a world where these have been coterminous to one where they are co-existent and possibly concentric. We are also continuing to move from a world where technical expertise alone was once regarded as sufficient to be competitive, through a more recent one where there has been increasing recognition of the need also to deliver excellent client service, to a completely new world where now value creation (both for clients and our legal 'businesses') is a necessary component.

¹ This paper is a transcript of comments made by Professor Mayson in opening the first in a series of Legal Services Board seminars to debate legal education and training held at the Institute on 29 February 2012.

The requisite knowledge and skill-set, as well as the market, are now very different from those for which the current education and training regime was designed.

We also have some challenges at the heart of the regulatory framework within which we must operate. They have implications for the need for and scope of education and training, and include:

- (1) the distinction between reserved legal activities and non-reserved activities;
- (2) the difference between protected titles and authorisation to practise;
- (3) the need to regulate both individuals and entities;
- (4) the different roles of the practising lawyer and of those in positions of ownership or control; and
- (5) the regulatory gap between those within the jurisdiction of the Legal Ombudsman and 'the untouchables' (by which I mean those who do not deliver reserved activities and are not authorised to do so).

3. The propositions

Against this backdrop, let me offer some propositions (some might even say provocations!) for which I believe responses are required through the Legal Education and Training Review:

- (1) there is too much prescription in the qualifying law degree;
- (2) the Legal Practice Course is not preparing people adequately for practice, and the burdens of cost and expectation are not fairly placed;
- (3) the training contract is a barrier to entry and qualification;
- (4) clients are no longer willing to bear the cost of post-LPC training; and
- (5) CPD is discredited and ineffective in assuring continuing competence.

Let me be clear: the current system is not totally unfit for purpose. There are some examples of stunningly high-quality lawyers and law firms. My point is that it is not fit *enough* for its *new* purpose. This is a purpose that must apply not just to lawyers, but that needs to encompass support staff and multidisciplinary practice. It is not just about legal expertise, but must include client service, management and ownership. It is not just about practitioners, but needs to extend to managers, owners and investors. It is not just about England & Wales, but must address the global influence of English law and the English courts, as well as the needs of UK plc. And it is not just about individuals, because we must also think about regulating and training within entities.

We do need a review of education and training within and for the legal services market. The Institute is very much in favour of such a review. But it is very important that it is not carried out primarily in the pursuit of professional interests – nor even of consumer interests. It is vital that it is carried out in the *public* interest. We must maintain the rule of law, the effective administration of justice, and access to justice; we need to ensure access to independent legal advice and advisers; and we need to encourage an effective legal services market. These vital public interest objectives require that education and training is fit to deliver them across all aspects of the global legal services market, and not merely within pockets of reserved activities or protected titles.

It is my view that we are not facing a period of incremental change, but rather one that is radical. I therefore struggle to see that any review of education and training could proceed on the basis of incremental adjustment. I also strongly suspect that the quest to understand a possible legal world

of 2020 will prove fruitless. I could not have predicted on 1 January this year what has happened in the first two months of 2012: I think it is impossible to forecast what will have happened by 2020!

We are facing changes for which there is no evidence available. There *cannot* be any evidence. So how will evidence-based policy and regulation work in these circumstances? We are seeing the beginning of policy-based changes that will lead to further innovation. We should not look back; we can only look forward. Let us anticipate and assess the future risks, and have some policy-based regulation for education and training.

For those who fear that I might be advocating throwing the baby out with the bath-water, let me reassure them that this is not my intention. But surely it is time to acknowledge that the baby has grown up, the bath is too small, and the water needs changing!

Legal Services Institute

The Legal Services Institute (originally the Legal Services Policy Institute) was established by the College of Law in November 2006 as part of its charitable activities. Its principal objectives are to:

- (a) seek a more efficient and competitive marketplace for legal services, which properly balances the interests of clients, providers, and the public;
- (b) contribute to the process of policy formation, and to influence the important policy issues, in the legal services sector and, in doing so, to serve the market and public interest rather than any particular party or sectional interest;
- (c) alert government, regulators, professional bodies, practitioners and other providers, and the wider public, to the implications of these issues; and
- (d) encourage and enable better-informed planning in legal services by law firms and other providers, government, regulators and representative bodies.

The Institute seeks to form and convey independent views that it believes reflect, support and promote the public interest rather than the preferences or views of other interested parties. Where the College might have views as a provider of education, these are expressed separately.

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The College of Law
Gavrelle House
2 Bunhill Row
London EC1Y 8HQ

Tel: 01483 216393

E-mail: lsi@lawcol.co.uk

Web: www.legalservicesinstitute.org.uk