



Consultation on a new framework for work-based learning Analysis of responses

Education and Training – Policy
May 2007

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Why we consulted

The Solicitors Regulation Authority (SRA) consulted on proposals for a new framework for the assessment of trainee solicitors' performance in practice. If implemented, the new framework would replace the current training contract arrangements.

The SRA sought views on newly-drafted standards of competence, as well as proposals on monitoring, moderation, solicitors and organisations' involvement, supervision, support, and when work based learning should begin.

The consultation, in the form of an online questionnaire, ran for three months from Friday 9 February 2007. An email inviting responses was sent to around 1,000 people who subscribed to updates on training issues. The Law Society were also directly invited to make a response.

The current position

The work based learning project grew out of a review into the education and training of solicitors – the Training Framework Review.

An initial consultation in Autumn 2006 indicated broad support for the work based learning project in principle. Respondents felt that the SRA (in its previous form as the Law Society Regulation Board) should continue to prescribe the form and content of training agreements, but they also felt that it was possible for individuals to demonstrate competence and ultimately qualify without being in a formal agreement. There was also support for more a more robust validation and monitoring regime for authorised training establishments.

However, a significant proportion saw a risk of a two-tier profession developing if proposals for an alternative to the training contract were implemented. They also saw increased validation and monitoring fees as a possible deterrent to organisations seeking accreditation.

Summary

In the main, responses were supportive of the work based learning proposals, although there was concern from a significant proportion of respondents about the viability of portfolio assessment, reduction in the training period, confidentiality of portfolio evidence, and the possible creation of a two-tier qualification system.

The majority of respondents agreed that an objective of the proposals should be to help ensure that anyone who can demonstrate the necessary character, intellect, knowledge and skills should have an opportunity to qualify.

Respondents were broadly content with the draft standards as at least coming close to reflecting the level of competence to be achieved during work based learning, and the knowledge, skills and behaviours to be demonstrated at the end of the process.

All standards were deemed to be essential, and most people thought that the categories and headings were appropriate and that all essential areas had been included. However, there was a majority view that the standards were not capable of effective assessment; from the supporting comments it seems that respondents were concerned that some of the standards were not assessable through the portfolio approach.

There was little agreement over the best system for monitoring and moderating assessments under a new framework. It was seen as essential that trainees work closely with or for a solicitor throughout work based learning, and that portfolio evidence should be signed off by someone in a supervisory position within their firm.

A majority felt that the requirement to validate evidence would in some cases be a barrier to qualification. However, the majority also felt that non-accredited organisations would be willing to validate their employees' portfolio evidence.

The ability to begin work based learning during the academic stage was not seen as desirable.

Profile of respondents

60 people responded to the consultation. The majority were from firms or organisations. Of the law firms, most were large and London-based. This means the respondents were not proportionally representative of the firms who take trainee solicitors.

Just over a third of responses were made on an individual basis.

Purpose of the new framework

The majority (88%) agreed that an objective of the proposals should be to help ensure that anyone who can demonstrate the necessary character, intellect, knowledge and skills should have an opportunity to qualify as a solicitor. However, most within this majority had concerns with the effectiveness of the proposals in achieving it.

Only 10% thought that this objective was not appropriate.

Draft standards – qualities to be demonstrated at the end of work based learning

The majority (49%) thought that the draft standards nearly reflected the qualities to be demonstrated at the end of the work based learning period. A smaller proportion felt that the standards completely reflected the necessary qualities. Only 9% felt that the standards did not reflect the qualities at all.

Do the draft standards reflect competence during wbl?

A small majority (37%) felt that the draft standards nearly reflected the level of competence to be achieved during work based learning, although there was little consensus as to where the standards were lacking.

Which standards are not essential?

The majority (54%) felt that all standards were essential at the point of qualification. Slightly less than 17% named the heads or individual standards they viewed as non-essential.

Are any essential areas not in the standards?

The majority (71%) felt that the standards covered all essential areas.

Appropriate categories and headings?

The majority (74%) felt that the categorisation and headings in the draft standards were appropriate.

Are the standards assessable?

The majority (62%) felt that the standards were not capable of effective assessment. There was doubt over whether portfolios and/or a formal assessment method could effectively assess people against the standards.

It was also seen that trainees' effectiveness in some practice areas, such as advocacy, interviewing, dealing with clients etc. could only be assessed day-to-day by someone in direct contact with them, i.e. their supervisor.

Few suggestions were given as to how they could be assessed, other than having more detail, guidance and level descriptors within the standards.

Monitoring and moderating

A small majority selected more than one monitoring and moderation system from the choices of peer review of assessments by other assessors, sampling assessments by the SRA, and establishment and operation of a SRA moderation board. Assessment sampling was the most popular single choice.

How closely should learners work with/for solicitors?

The majority (77%) felt that it was essential for an individual to work closely with or for a solicitor throughout their work based learning period. It was seen as fundamental both in terms of the experience of and benefit to the learner, and to uphold confidence in professional standards.

Should supervisors validate portfolio evidence?

The majority (88%) felt that it was necessary for portfolio evidence to be validated by someone in a supervisory position in the individual's organisation. This was seen as helping to address the risk of plagiarism, identify potential problems, evaluate skills not up to the required standard, and would provide confidence in the system.

Will evidence validation be a barrier to qualification?

The majority felt that the requirement for supporting and validating portfolio evidence would act as a barrier to qualification in some cases. Time and cost was the most frequently suggested reason for a potential barrier, although people also thought that evidence validation would be necessary to maintain standards.

Will non-accredited firms support paralegals by validating experience?

The majority view (59%) was that non-accredited organisations would be willing to support work based learners by validating experience, although there was little consensus as to why or how widespread this would be. Some felt that the firms themselves would benefit from supporting staff through work based learning. A few firms, although seeing themselves as likely to become accredited, said they would support non-trainees seeking to qualify.

Should people be able to start wbl during the academic stage?

The majority (57%) felt that no provision should be made for work based learning to commence during the academic stage, mainly because practical experience should follow the knowledge and theoretical underpinning gained through formal academic study.

A small number of respondents accepted that an interplay or mixture of professional training and work based experience could work well, and that a degree of flexibility would be supported.

Overall views and other comments

Most respondents appeared to support work based learning in principle, as they provided constructive comments on the proposals. Similar, if smaller, proportions either clearly expressed support or disagreed with the proposals entirely.

Comments provided which fell outside the consultation questions indicated concerns over:

- the training period being reduced by market forces to a 16 month minimum
- confidentiality of the portfolio evidence
- creation of a two-tier route to qualification
- moving the LPC 'blockage' to the qualification stage
- an onerous, costly and bureaucratic assessment system
- failing candidates, and handling appeals.

Unless stated otherwise, all proportions are expressed as a percentage of substantive answers to each question, not of the total number of consultation respondents.

Profile of respondents

60 people or organisations responded to the consultation. One response was received too late for their opinions to be included in the proportional calculations later in this report. 29 people completed the online survey on the SRA website, 31 people responded by email.

There are (as at May 2007) 4,892 firms and organisations authorised to take trainees, of which 3,430 have trainees in post. Responses from training organisations (the firms and the Government Legal Service) represented 0.69% of firms currently employing trainees.

The majority of responses – 63% – were made on behalf of a firm or organisation. 37% of responses were made on an individual basis.

Of the firms, over 70% were large firms (i.e. with 80 partners or more) and nearly all were London-based. Several of these firms stated that they supported, and had fed into, the response made by the Legal Education and Training Group (and another representative group that wished to remain anonymous). The smallest firm that responded had 15 partners.

This means that the views of a substantial proportion of training providers are not reflected in this report. Although the largest percentage of trainees are placed in City firms,¹ the consultation results may be distorted by the disproportionate amount of firms whose main practice area involves large commercial clients.

The Law Society was one of the four representative groups that responded.

Most of the individual respondents were either paralegals or trainees.

fig 1 respondent's capacity

		no. in group	% of all responses
organisation	firm	23	39%
	local law society	4	7%
	representative group	4	7%
	academic	4	7%
	Government Legal Service	1	2%
	UKCLE	1	2%
individual	paralegal	7	12%
	trainee solicitor	6	10%
	LPC/QLD student	5	8%
	solicitor, private practice	3	5%
	Careers Adviser to LPC students	1	2%
total		59	

¹ Source – Law Society Annual Statistical Report 2006. 30% of trainees were placed in larger firms. Over 25% of trainees were placed with sole practitioner or firms with between 2 and 4 partners

Purpose of the new framework

Question 1

Do you agree that an objective of the proposed arrangements should be to help ensure that anyone who can demonstrate the necessary character, intellect, knowledge and skills should have an opportunity to qualify as a solicitor?

The majority agreed with this principle, but had some issue with the effectiveness of the proposals in achieving it. Only 6 people (10% out of 59, or 12% of the 52 people who answered the question) thought that this objective was not appropriate.

fig 2 *q1. should anyone who can demonstrate the necessary character, intellect, knowledge and skills have an opportunity to qualify?*

	no.	% of answers
yes	45	88%
no	6	12%
no answer	7	
total	59	

37 people gave supporting comments.

fig 3 *q1. should anyone who can demonstrate the necessary character, intellect, knowledge and skills have an opportunity to qualify?*

	no.	% of answers
agree	8	22%
we agree with the principle, but...		
... we do not agree with work based learning	9	24%
... standards are more/as important	7	19%
... the bottleneck will merely be moved to qualification	5	14%
... the current system is fine	3	8%
... you still need academic qualifications and experience	2	5%
... wbl will result in a two tiered system	2	5%
... current recruitment practices will continue	1	3%
total	37	

Half of the 8 respondents who agreed with the stated objective were paralegals or students – the other half were representative bodies (including the Law Society, Manchester Law Society and ILEX).

- “Since the legal field is so competitive and training contracts are extremely difficult to find this is an excellent idea for those that have the skill/knowledge but not the training contract!” – a paralegal
- “The current system of training contracts means that students who are very able may be reluctant to seek qualification due to the fierce competition” – anon

Six of the nine firms who agreed with the objective in principle but were opposed to the work based learning proposals were large law firms. Even the organisations who were not solicitors’ firms questioned the effectiveness of work based learning to address issues of diversity:

- “...we echo the SRA's concerns over recruitment practices in larger firms, but we feel that the objective in question, while admirable, will not necessarily address this issue” – UKCLE
- “... in practice we do not think that these proposals will achieve this outcome. In our view there is a real risk that people who take one of the proposed new routes to qualification will be at a significant disadvantage after qualification, as firms may not feel able to rely on the rigour of their education and training.” – anon, law firm

Draft standards – qualities to be demonstrated at the end of work based learning

Question 2 i)

How far do the draft standards broadly reflect the knowledge, skills and behaviours that individuals should be able to demonstrate at the end of the period of work based learning?

55 people answered this question. The majority, almost half of those who gave an answer, saw that the draft standards nearly reflected the qualities to be demonstrated at the end of the work based learning period.

A third of the people who gave an answer felt that the standards completely reflected the qualities to be demonstrated at the end of work based learning. Only 9% felt that they did not reflect the necessary qualities at all.

fig 4 q2 (i). do the draft standards reflect the knowledge, skills and behaviours to be demonstrated at the end of work based learning?

	no.	% of answers
nearly	27	49%
completely	18	33%
not at all	5	9%
broadly	2	4%
to some extent	2	4%
poorly	1	2%
total	55	

23 of the 'nearly' group gave supporting comments:

- "These are top level core objectives but clearly cannot represent all of the detail objectives required in such standards." – DLA Piper UK LLP
- "... the breadth of the standards at present is possibly a 'two-edged sword'. The standards need to be of general applicability to a wide range of practice settings... On the other hand, the development of the skills of being a professional can and should also be addressed on the LPC, and we note that generic objectives and learning outcomes in the initial draft of the LPC written standards do cover some of these areas. This overlap begs questions as to the nature of any progression in knowledge and skills from LPC to WBL and how that progression is to be signalled in the outcomes (and hence assessment) for the WBL stage." – UCKLE

Only four people who believed the standards completely reflected the qualities to be demonstrated gave comments. Two of them saw difficulties with assessment:

- “... However we do wonder how some of these will be assessed. And to what extent they will all be applicable to all candidates.” – Denton Wilde Sapte
- “Reflects the requirements well although it is not clear how these standards can be assessed from a portfolio.” – Wragge & Co
- “There will always be variations in how objectives are achieved. For example, the requirements of a firm for drafting may be different than what is taught on a LPC. This does not mean one is competent and the other is not.” – anon, LPC student

Most of the comments supporting the view that the standards were not completely accurate only addressed their concerns in general terms, usually that there was insufficient detail. Only a few specified the exact areas that should be included – legal research and effective legal drafting.

One firm stated that the propriety of some standards may depend on the type of firm, for example “an ability to complete ‘transactions’ are inappropriate for trainees at firms acting on large transactions as we would not ask our associates to ‘complete’ transactions.”

The Law Society expressed concern at how the day one outcomes and draft work based learning standards would fit together.

UCKLE also made a point about the terminology used in the proposals: “Reference is made across the various documents to ‘outcomes’, ‘learning outcomes’, ‘levels of competence’, ‘objectives’ and ‘standards’, which of themselves mean different things, and may potentially be interpreted in different ways by academic providers and practitioners.”

Do the draft standards reflect competence during wbl?

Question 2 ii)

How far do the draft standards accurately reflect the level of competence which individuals should achieve during the period of work based learning?

54 people answered this question. A small majority (37%) felt that the draft standards nearly reflected the level of competence to be achieved during work based learning.

fig 5 q2 (ii). do the draft standards accurately reflect the level of competence to be achieved during work based learning?

	no.	% of answers
nearly	20	37%
not at all	18	33%
completely	13	24%
to some extent	2	4%
poorly	1	2%
total	54	

Three quarters of the 'nearly' group gave supporting comments. No common themes came out of these comments. Two suggested that substantive and fundamental knowledge of the law and procedure was crucial. Others suggested that more detail and work to remove ambiguity within the standards was needed.

A third of respondents said that the standards did not reflect the level of competence at all. This was a greater proportion than the previous question, where only 9% felt that the draft standards did not reflect the qualities to be demonstrated at the end of the work based learning period. Within these comments, many saw a lack of level descriptors as a weakness:

- "It would be desirable to see a clearly defined and measurable "level of achievement" specified under each standard." – anon, law firm
- "The standards as expressed are not themselves competence standards as commonly understood in educational practice. They are generic and they provide neither an indication of the minimum standard of performance expected, nor any clear indication of the range of evidence that will be required to show competence in an area of work." - UKCLE
- "Based on what is currently documented, we feel there is insufficient detail on the level of competence to be attained for a supervisor adequately to assess trainees and grade them. We suggest there should be some examples of behaviours that would constitute meeting a particular standard to provide further guidance ..." - Addleshaw Goddard

Only two people of the 13 who felt that they completely reflected the level of competence gave comments.

As with the previous question, one respondent pointed out that size of firm will have an impact on the level of experience a trainee will gain, as at larger firms where they work on extremely complex, high end deals and matters “the vast majority of the time juniors spend dealing with client issues will be doing so directly for their supervisors, rather than directly for the client.”

Which standards are not essential?

Question 3

Which, if any, of these standards, while they may be desirable, are not essential at the point of qualification?

39 people answered this question. The majority felt that all standards were essential at the point of qualification.

10 people, just less than 17%, thought that some heads or individual standards were non-essential, most commonly 'demonstrates sensitivity to social/cultural diversity and/or disability in communication with colleagues and clients.'

fig 6 q3. which standards are not essential at the point of qualification?

	no.	% of answers
all are essential	21	54%
demonstrate sensitivity to social/cultural diversity	4	10%
business awareness	3	8%
work-load management	2	5%
self awareness and development	1	3%
difficult to say	3	8%
they will be difficult to achieve and/or assess	2	5%
depends on firm/practice area	1	3%
other	2	5%
total	39	

Around half of the supporting comments of those who felt that all the standards were essential were substantive. They included:

- "at the point of qualification, the trainee should have demonstrated a knowledge, skill and understanding of each of the areas identified by the draft standards." – the Law Society
- "...to differentiate between essential and desirable would run counter to the underpinning philosophy of the proposals. The need for public confidence in the profession can only be met by a clear set of unequivocal standards..." – Irwin Mitchell
- "...provided the 'indicators' under each heading are properly defined, all are essential" – anon, law firm

Are any essential areas not in the standards?

Question 4

Are there any essential areas which are not reflected in the standards?

34 people gave an opinion. The majority (71%) felt that the standards covered all essential areas.

fig 7 q4. are there any essential areas not reflected in the standards?

	no.	% of answers
no	24	71%
yes (with suggestions)	10	29%
total	34	

10 people suggested additional areas – there was little repetition so they have been listed below without an indication of frequency:

- drafting*
- negotiating
- dispute resolution
- advocacy*
- interviewing and advising*
- research
- experience in different areas of the law**
- use of accurate English in written communication
- legal skills and knowledge (i.e. technical legal ability)
- giving properly analysed risk-based legal analysis
- demonstrating understanding of the Solicitor's Accounts Rules and dealing appropriately with client's money
- demonstrating understanding of methods of charging in contentious and non-contentious work and recoverability of costs
- requirement to demonstrate that the trainee is able to stand up to demanding clients and refuse to carry out anything illegal or otherwise improper or a breach of his/her duty to the Court.

* these areas were suggested even though they do appear in the draft standards that were annexed to the consultation.

** the requirement to work in at least three areas of law was retained in the work based learning proposals, although this did not appear in the draft standards.

Appropriate categories and headings?

Question 5

Are the categorisation and headings in the standards appropriate?

53 people answered this question. The majority (74%) felt that the categorisation and headings in the draft standards were appropriate.

fig 8 q5. are the categorisation and headings in the standards appropriate?

	no.	% of answers
yes	39	74%
no	14	26%
total	53	

All but one of the negative responses were elaborated on. As with the comments given to the previous question, there was little repetition.

- “some skills seem to have been glossed over, eg Legal Research” – anon, law firm
- “‘Business awareness’ does not justify a section to itself.” - Dechert LLP
- “Work-load management is too limiting - it should be a broader heading” - DLA Piper UK LLP
- “They are not sufficiently detailed and cannot be enforced” - solicitor, private practice
- “the standards should be more narrowly and clearly defined, so that there are some real and concrete standards which law firms can reflect in the work assigned to trainees.” – anon, law firm
- “we suggest that ‘Client Service’ is a more appropriate term than client handling.” – anon, academic institution
- “they are fairly vague and we query whether some can be tested effectively, and whether they should therefore form part of “standards” to be tested at all.” – anon, firm
- “further clarification and detail is needed of what is expected.” – anon, firm
- “The phrase “work-based increment” is less than clear (not plain language) but we assume it means the additional achievements during the work-based learning part of the training. If so, we wonder whether the division should be so clear-cut as to what can be achieved on the law degree/GDL and LPC and what is achieved as part of the work-based learning.” - Denton Wilde Sapte
- “the standards [should] be grouped in a different way and reflect more clearly the reformulated day one outcomes. [they] seem to fall within 3 categories: (i) Application of legal expertise, professional conduct and ethics (to include application of legal expertise and integrity); (ii) managing professional relationships (to include effective communication, client handling, and working with others); and (iii) personal/self development (to include work-load management and self-awareness and development.” – UKCLE
- “We assume that the standards will replace the current skills standards but it would be helpful if the SRA could clarify this.” – anon, firm

Are the standards assessable?

Question 6

Are the standards capable of effective assessment during the period of work based learning?

The majority (62%) felt that the standards were not capable of effective assessment. Very few suggestions were given as to how they could be assessed.

fig 9 q6. are the standards capable of effective assessment during the period of work based learning?

	no.	% of answers
yes	20	36%
no	34	62%
not sure	1	2%
total	55	

Almost everyone who answered 'no' or 'not sure' gave supporting comments. These were grouped into broad themes for analysis, as can be seen in *fig 10*. The most common view was doubt over whether portfolios and/or a formal assessment method could effectively assess people against the standards. It was seen that trainees' effectiveness in some practice areas, such as advocacy, interviewing, dealing with clients etc. could only be assessed day-to-day by someone in direct contact with them, i.e. their supervisor.

There was also a common theme running through several of *fig 10*'s response themes that the standards needed more detail, guidance and level descriptors.

fig 10 q6. the standards are not capable of assessment...

	no.	% of answers
not by portfolio or formal test	8	24%
can't see how they will be assessed	7	21%
some standards cannot be effectively assessed	6	18%
standards are too general/vague	4	12%
not in a 16-month period	3	9%
concerns with consistency between firms	3	9%
not unless assessors are given enough training and guidance	2	6%
wbl process needs to marry up with the LPC changes	1	3%
total	34	

Monitoring and moderating

Question 7

What system of monitoring and moderating assessments might be effective in ensuring standards and consistency of the assessments across all routes to qualification?

Peer review of assessments by other assessors

Sampling assessments by the SRA

Establishment and operation of a moderation board by the SRA

Other

Respondents were asked to select as many options as they saw fit. 15 people (29%) selected multiple values.

From first analysis of the multiple choice answers to this question, it appeared that a majority (35%) stated that a moderation system other than the suggested peer review, sampling of assessments, or a moderation board was appropriate. However, half of this proportion selected this option as they believed no system would work.

fig 11 q7. monitoring and moderating system?

	no.	% of answers
other	18	35%
sampling	11	21%
moderation board	5	10%
peer review	3	6%
peer review and sampling	3	6%
peer review, sampling and moderation	3	6%
moderation board and other	2	4%
peer review and moderation	2	4%
peer review, sampling, moderation and other	2	4%
sampling and moderation board	2	4%
peer review, sampling and other	1	2%
total	52	

14 people who selected the 'other' option offered alternative suggestions – these comments made it clear that half of the apparent 35% majority selected this option as they believed no system would work. Constructive suggestions included a system of external examiners, and accreditation for all organisations involved in training (including some form of accreditation for external firms). One respondent saw nothing wrong with the current system, and another wanted to see more detailed proposals before considering what moderation system would be appropriate.

fig 12 q7. suggestions for 'other' monitoring and moderating systems

	no.	% of answers
none of the above will work	7	50%
combination of approaches	3	21%
external examiners	1	7%
accreditation for all organisations involved in training	1	7%
need to see proposals before considering moderation	1	7%
nothing wrong with current system	1	7%
total	14	

Several comments to this question suggested dissatisfaction with work based learning proposals, either in general or with the component elements:

- “the current procedure is perfectly acceptable... Our concerns were set out in the earlier consultation” - Skadden, Arps, Slate, Meagher and Flom (UK) LLP
- “... we believe there should be some level of accreditation/authorisation for all organisations involved in training trainees, so that they are required to actively sign up to support their trainees through the qualification process.” – anon, law firm
- “... If one core element of the assessment is a portfolio, all of the SRA's proposed moderating options would encounter the same problem. i.e. How do you moderate a view of individual trainees in very different types of firms, especially when some of the standards are not capable of documentary/portfolio evidence?” – anon, law firm

How closely should learners work with/for solicitors?

Question 8

To what extent should individuals seeking to qualify as a solicitor have worked closely with and/or for a qualified solicitor throughout their period of work based learning?

The majority (77%) felt that it was essential for an individual to work closely with or for a solicitor throughout their work based learning period.

fig 13 q8. to what extent should learners work closely with/for a qualified solicitor throughout work based learning?

	no.	% of answers
essential	44	77%
desirable but not essential	10	18%
not important at all	3	5%
total	57	

Nearly three-quarters of those who thought close solicitor contact was essential gave supporting comments. It was viewed as fundamental both in terms of the experience of and benefit to the learner, and to uphold confidence in professional standards.

- “We think it a good idea that experience can be gained in unaccredited organisations... We do consider it essential that the experience is gained by working for a solicitor, even if in an [unaccredited] organisation... Standards must be at exactly the same level and for that the experience must be with a solicitor.” - Denton Wilde Sapte
- “In our view ‘legal environment’ should mean an environment where qualified people are providing professional services... there must be day to day supervision by a qualified person (as now) on appropriate legal work” - Government Legal Service
- “It should not suffice for WBL to have been obtained working for or under those who are not subject to the ethical and professional standards and obligations which apply to solicitors.” – the Law Society
- “It would be truly absurd if an individual could qualify as a solicitor without working closely with experienced solicitors. Would it be appropriate for a person to qualify as a doctor if he had only ever worked with gym instructors?” – anon, solicitor

Six of those who felt it was desirable but not essential expanded on their view. Two of them were large firms, another two were academic institutions. There was also a representative body and a paralegal. They were of the view that working with legal executives, lawyers qualified in other jurisdictions, barristers, licensed conveyancers, or experienced CAB workers for part of the period of work based learning could provide the same, or at least relevant, quality of experience. This was seen as reflecting the wider legal profession in terms of supervision.

The respondents who felt it was not important at all were two LPC students and a paralegal.

Should supervisors validate portfolio evidence?

Question 9

Is it necessary for the evidence presented in the portfolio to be supported and validated (as accurately reflecting the work undertaken by the individual seeking qualification) by someone in a supervisory position in the applicant’s organisation?

57 people answered this question. The majority felt that it was necessary for portfolio evidence to be validated by someone in a supervisory position in the individual’s organisation.

fig 14 q9. should someone in a supervisory position in the applicant’s organisation support and validate evidence in the portfolio?

	no.	% of answers
yes	50	88%
no	7	12%
total	57	

Two-thirds of those who thought that evidence should be supported by an internal supervisor gave supporting comments. A variety of benefits for this approach were put forward, including addressing the risk of plagiarism, early identification of potential problems, evaluating where skills were not up to the required standard, and providing confidence in the system.

However, there was also an amount of concern within these comments. Client confidentiality, doubts over the reliability of continuous assessment, difficulty in validating someone’s work if it was gained in several firms, imposing a supervisory and bureaucratic burden on non-accredited firms, and the independence of the supervisor were put forward as potential problems. Some saw this requirement as being too similar to the current arrangements.

- “... an external supervisor has no day to day connection with the applicant and in most cases would be unable to comment on what the applicant has done. There is a risk that the veracity of these portfolios will be doubted.” - Addleshaw Goddard
- “But even with such a safeguard, it will be impossible for this system of assessment to be fair or valid.” - Dechert LLP
- “There would clearly still be a selection process which would naturally tend to select the best pieces of work. It would be difficult for any assessor to tell how much input supervisors had had into portfolio examples. The portfolio model would not give a full overview of the trainee’s work. And how would it evidence that work has been produced in sufficient quantity?” - Government Legal Service

Six respondents expanded on their view that supervisors should not support and validate applicants' portfolios.

- “this is unnecessarily paper-driven. The training supervisor does not need to review written records. He/she needs to spend time with the people with whom the trainee is working to assess what they are doing and how well.” - Skadden, Arps, Slate, Meagher and Flom (UK) LLP
- “Whilst any firm would try to ensure that the portfolio of work represents an individual's own work, it is another matter to require supervisors formally to validate the portfolio to the SRA as the genuine work of the individual concerned. It puts supervisors in an invidious position of policing portfolios in a way that risks attacking the integrity of the individual and jeopardising the trust that is necessary between individuals working for the same organisation.” – anon, law firm
- “The [proposal] is fine but it still restricts the hope of qualification by relying on someone already in the profession. It does nothing to allow other organisations to develop an approved training package as it still requires a solicitor authorised to undertake supervision. “ - LPC/QLD student

Will evidence validation be a barrier to qualification?

Question 10

Will the requirement for evidence to be supported and validated by someone in the organisation, even if the organisation is not accredited, act as a barrier to qualification in some cases?

If you have answered yes, how might this risk be mitigated?

53 people answered this question. The majority felt that the requirement for supporting and validating portfolio evidence would act as a barrier to qualification in some cases.

fig 15 q10. will the requirement for portfolio evidence to be supported/validated act as a barrier to qualification?

	no.	% of answers
yes	35	66%
no	19	36%
total	53	

Most people who thought that it would prove to be a barrier gave supporting comments. Time and cost was the most frequently suggested reason. However, a similar proportion of people thought that although a barrier may be created, the requirement would be necessary to maintain standards.

- “It may act as a barrier; however we believe it is essential that validation within an organisation takes place in order for an applicant to be properly assessed.” – Addleshaw Goddard
- “it is a necessary requirement to maintain standards. If an organisation does not support a person through his/her work-based learning period by actively agreeing to give him/her suitable work with a qualified solicitor and then being prepared to validate his/her portfolio, that person is very unlikely to be able to qualify.” – anon, law firm

Seven people who thought that it would not act as a barrier gave comments. It was seen as a necessary, essential, even desirable, requirement. It was also suggested that firms seeking to encourage the development of their people would support their ambitions, otherwise they might lose good staff to firms that would support and encourage them.

One criticism was that “an eager candidate will always be able to find some colleague to sign their portfolio. Whether that colleague will bother to read it is another matter.”

Mitigation

24 people commented on how the risk of a barrier to qualification could be mitigated. Most either did not know how it should be mitigated, or thought that it either could not or should not be mitigated. The few practical suggestions on mitigating a potential barrier were:

- simplifying the process to reduce time and costs
- introducing different levels of SRA accreditation for training firms (internal and external)
- fully external portfolio assessment
- the individual seeking better employment
- an additional assessment.

Will non-accredited firms support paralegals by validating experience?

Question 11

Will organisations that do not wish to seek accredited status or provide structured training programmes for their staff be willing to support their staff through qualification by validating their experience?

46 people answered this question. The majority felt that non-accredited organisations would be willing to support work based learners by validating experience.

fig 16 q11. will non-accredited organisations support their staff by validating experience?

	no.	% of answers
yes	27	59%
no	12	26%
depends	3	7%
don't know	2	4%
difficult to say	1	2%
maybe	1	2%
total	46	

Most people of the view that non-accredited firms would support their employees gave comments, although there was little consensus. A view expressed several times was that the firms themselves would benefit from supporting staff through work based learning.

- “having the benefit of the would-be solicitor working for them and the opportunity and the chance to retain that solicitor on qualification, without the effort and cost of being a training institution accredited under the new system. “ anon, law firm

A small number of respondents, although seeing themselves as likely to become accredited organisations, said they would support non-trainees seeking to qualify:

- “Assuming we become an accredited organisation, our trainees will benefit from our structured training and development programme as part of their period of work-based learning. Paralegals will not; they will be hired on separate terms without the equivalent commitment to training and development we offer trainees. They would however be able to count their experience with us towards compiling their portfolio of experience, and we would wish to encourage that.” – Herbert Smith

The Law Society suggested that “organisations should be able to become ‘qualifying organisations’ for the purposes of offering WBL opportunities... to offer positions which would provide individuals with ‘appropriate experience at the correct level required for qualification.’”

Most of the respondents who answered ‘no’ to the question qualified this in their comments by saying that some firms would support individuals, and some would not.

Should people be able to start wbl during the academic stage?

Question 12

Do you agree that provision should be made for the possibility of the work based learning period commencing during the academic stage of training?

The majority felt that no provision should be made for work based learning to commence during the academic stage.

fig 17 q12. should it be possible to start work based learning during the academic stage?

	no.	% of answers
no	32	57%
yes	24	43%
total	56	

Work based learning should not start during academic stage

Reasons given for not allowing work based learning to start during the academic stage were given by most respondents. It was frequently suggested that for practical experience to be beneficial, it needed to come after the knowledge gained and theoretical underpinning given by a formal academic course. Also, it was put forward that firms would not support a framework where a learner could claim to have met one of the standards at a point too long before admission.

There was an acceptance from a small number of respondents that an interplay or mixture of professional training and work based experience could (and does) work well, and that a degree of flexibility would be supported.

- “To shorten the qualification period will only lower standards. The student should be studying during the academic period, rather than working.” - solicitor, private practice
- “A good rule of thumb would be to ask whether a client would be willing to pay for the work undertaken. It is most unlikely that a client would be willing to pay professional rates for work undertaken by students in the very early stages of their legal education.” - Freshfields Bruckhaus Deringer
- “The Day One Outcomes and Work Based Learning Standards specify knowledge, understanding and application of the law, not to mention acting in accordance with professional ethics and client handling skills. We do not believe individuals: (i) have the foundation legal knowledge, nor (ii) opportunities to demonstrate legal and/or client skills at the appropriate level during the academic stage of training.” - Watson, Farley & Williams LLP
- “Work based learning is about applying the law, difficult to do if this has not been learnt in the first place.” – anon, firm

Some respondents wondered who would validate this experience and decide whether they met standards, whether there would be a 'shelf life', and whether retrospective consideration would be allowed. One of the larger firms stated that they would want most of the work based learning "to take place with us. "

A good knowledge of substantive and procedural law being attained before a training period was seen to avoid the risk of the training period "becoming almost executory, where the trainee is undertaking functions, the purpose of which may not necessarily be understood by him/her." – Hampshire Incorporated Law Society

The student/paralegal view was also put forward, which addressed the issue from a different perspective:

- "Whilst I was at uni I wouldn't have had the time or the maturity to handle legal work in such a demanding environment as a law firm. It would negatively impact learning as far as I'm concerned."
- "Whilst studying the main focus should be just that: studying. This provision should apply after the studying has been completed once the person is in employment."

Work based learning could start during academic stage

Notes of caution were sounded within the 14 supporting comments. Respondents wanted clear guidelines and timeframes, clarification of supervision arrangements and assurances over appropriate level. They pointed out that it would come with a price tag in terms of record keeping and monitoring progress, and there was some concern that the amount should be limited (although the proposals catered for only one review session being undertaken during academic study).

UKCLE supported this view – "Considering the wealth of clinical programmes, and the availability of pro bono work and placements throughout UK law schools, and the fact that students are often working while studying for their degree, then this should definitely be possible. However, again the SRA must ensure consistency in the processes for accrediting and/or monitoring any period of WBL at whatever stage taken." An academic institution saw it as logical; they also thought that the time needed to develop and meet all the outcomes across a range of areas would mean there would be little impact on the overall qualification period.

- "We are particularly pleased to see this provision as part of the proposals. The concept of "Learning whilst earning" is of critical importance as student debt increases. In addition, best practice training and development will always advocate the need to transfer learning back into the workplace as soon as possible. This proposal would be very attractive to our firm." - Irwin Mitchell
- "... genuine opportunities at this level may be very limited in the case of undergraduates." - Bristol Institute of Legal Practice, UWE

A trainee and an LPC student gave indication of the benefits from the learner's perspective:

- "I worked part time as a legal secretary whilst completing the Post Graduate Diploma part time over two years and also whilst completing the full time LPC. The knowledge I gained from work really helped support my studies and put my academic knowledge into a practical context."
- "It would be invaluable to be able to work in parallel to academic training. Hands-on experience accelerates the learning process and maturing of any professional."

Overall views, and other comments

A discrete question on whether work based learning was supported by respondents was not asked – the previous consultation in 2006 indicated broad support for the project. However, enough people appeared to have serious concerns with the proposals to warrant analysis of the overall tenor of responses.

The majority of respondents did not express a clear view. As they did provide constructive comments on the proposed framework without stating lack of support it can be extrapolated that they broadly agreed with work based learning. Equal proportions clearly expressed support or disagreed with the proposals entirely.

fig 18 *is work based learning supported?*

	no.	% of answers
not clear	24	41%
do not support proposals	15	25%
supports proposals	14	24%
support principles, concern over detail	6	10%
total	59	

A number of respondents supplied views on the proposals that fell outside the scope of the consultation questions. This section aims to capture and summarise these views.

Although there was concern with and criticism of the proposals from most respondents giving extra comments, only a small number went so far as to say they fundamentally disagreed with the work based learning proposals.

Legal Education & Training Group (LETG). The LETG were concerned at the 16 month minimum period, confidentiality, assessment and supervision. They were also concerned about the costs of assessment, development of a two tier system, sufficient numbers of supervisors and assessors, and the positive impact of the proposals on diversity of entrants. It was suggested that the current time to count provisions were made more flexible.

- *16 month period* - "...the widely held view was that it would very quickly become the norm. Members believe that, notwithstanding assurances from the SRA regarding guidelines recommending a 2 year period, these will generally be ignored... It is not clear what evidence exists to validate the assumption that this should be the accepted minimum... anyone wishing to qualify in less than 2 years should demonstrate exceptional reasons why the period of WBL should be reduced and could find no compelling reasons why the current system should be changed."
- *Confidentiality* – "concerns about how confidentiality might be protected when assembling a portfolio... there will always be long running cases in which a trainee is involved which should properly be included but where the client refuses to give permission for it to be used as an example simply because the matter has not been completed or it may be very easy to identify both the client and the case from the details given."

- *Assessing* some of the standards using the medium of the portfolio, eg, ‘treating others with respect; offering others support when necessary,’ ‘works continuously to improve oneself as a professional’ ... External assessing a portfolio where the firm has niche practice... difference in the standard of internal and external assessment... expiry of previous legal experience... how long a firm must retain a trainee who persistently fails to make the grade... resource planning - “firms are able to say with certainty that at the end of a fixed period there will be a finite number of trainees qualifying who they will retain in their business. If varying dates of qualification are introduced this business planning will become problematic.”

(The LETG response was received after the closing date, so their opinions only appear in this section of the report.)

Freshfields Bruckhaus Deringer - “We take issue with the suggestion in paragraph 38 that there would be a system of appeals for individuals who wish to challenge the findings of their assessors. The new proposals are already going to impose extensive additional burdens on organisations, whether they wish to be accredited or not. To allow a series of appeals is quite unacceptable. Grounds for appeal should be based only on the most pressing matters - for example where there is evidence of discrimination or where the decision not to accredit is so unreasonable that no reasonable assessor would have reached it.”

Dechert LLP – “This consultation is deeply frustrating. You have ignored the clear views expressed by the profession and others to the last consultation on this subject, and just gone ahead with your original plans. The plan to replace training contracts with this work based learning regime is ill judged. It seems to be based on the belief that the big issue you should be addressing is diversity, and that these plans will enable disadvantaged applicants to qualify. Both these beliefs are wrong. Of course diversity is important, but according to your own figures, entrants to the profession are already amazingly diverse. You have produced no worthwhile evidence that there is a diversity problem. You should be focusing on protecting clients by raising standards. There is nothing in these proposals that will do that. Instead these plans will merely create greater cost, greater bureaucracy and a lowering of standards, and may actually make it harder for people to qualify from disadvantaged backgrounds, if they lack advisors to guide them through the portfolio game.”

Denton Wilde Sapte

- concerned about creating a two-tier route to qualification, with employment problems for those coming through the less preferable route
- concerned that the flexible period will in practice become the minimum period i.e. 16 months
- candidates may have to do the Professional Skills Course, possibly some LPC electives and have to complete portfolios, further cutting in to training time during the 16 month period.

“**The Law Society** and the profession are in favour of the move away from time served to a regime based on individuals acquiring and being assessed on their skills and behaviours in a practical work environment.

It is our view that WBL is the most important advance in training solicitors since the LPC. It is an opportunity to establish a common entry threshold of skills and attitudes, to raise the standard of entry to the profession and to introduce objective and robust assessment of an

individual's readiness to practice. We believe that if it is successful in improving standards, it is likely that fewer people will qualify as solicitors... Consistent and objective assessment against clear and transparent standards is essential... “

Assessment

- all assessors should be solicitors
- assessment should not be carried out by the supervisor, nor someone who has had day-to-day responsibility for or supervision of the candidate
- Primary evidence should be required (i.e. GP's in training tape record sample consultations with patients). Secondary evidence would merely require the student to report something which has happened
- confidentiality of portfolios needs to be addressed
- need to decide between final and ongoing assessment
- acquisition of knowledge during WBL cannot be assessed. However, how is the assessor (and the SRA) to deal with a situation where a candidate whilst demonstrating a necessary skill also demonstrates a lack of understanding or knowledge of an aspect of law?
- need reliable information on WBL opportunities and guidance on satisfactory work, for learners and employers
- appeals process needed.

QLTT

“We note that work to harmonise the Qualified Lawyer Transfer Test with the proposals will take place as a separate piece of work. We would point out the importance of this given the number of people who qualify in this way and the importance of our qualification regime to the Law Society's relations with similar bodies. “

Macfarlanes - “... very interested in the proposals relating to work based learning.”

- stated that the same standards should apply to all would-be entrants to the profession, welcomed initiatives to widen access to the profession, provided the standards bar is kept appropriately high
- concerned that the proposals will shift the current log jam of students seeking a training contract to the point of qualification... observes that the Bar Council is currently looking to restrict access to the BVC where students have not secured a pupillage whilst the SRA is proposing the opposite
- getting the balance between a bureaucratic system and ensuring proper development is key
- an interplay or mixture of professional training and work based experience could work well, although not if the work based learning period comes during the academic stage of learning and too much before the time at which the skills learnt must be put into practice
- authorisation and monitoring for the accredited route. Process needs to be robust in order to ensure standards, but not over bureaucratic.

Herbert Smith LLP - broadly welcomed the concept, but had some concerns:

- concern that a 16 month period will become the norm
- introduces substantially greater bureaucracy and therefore cost
- the arrangements for re-assessment and guidance on remedial action in the event of failure
- appropriate guidance for assessors needed
- lawyers from other jurisdictions - their experience should be assessed against the same standards as LPC graduates when seeking admission An English assessor will need to be involved to ensure confidence that the overseas lawyer's experience is being

assessed and measured in the same way and to the same standards as for English law trainees.

Addleshaw Goddard

- did not think it would be possible for a trainee to achieve the appropriate level of technical skill and expertise without being regularly supervised
- could not comment fully on the standards, implementation and assessment as the assessment framework has not been published
- presumed that assessment must be real, rigorous with the likelihood that some or many trainees would fail. "They will have invested considerable time and money in the qualification process and are entitled to expect that they would be warned of potential failure at a much earlier stage. It is imperative that there should be no compromise in standards of assessment because of the individual hardship that may be caused."
- "The Paper is not clear on the costs of developing the proposed new structure or who will bear them... it is a fair assumption that it will be the applicants who bear [assessment and supervision] costs if the individuals are working in a non-accredited organisation. That can only add to the cost of qualification and may prove to be a barrier..."
- thought that economics, business pressures, and the ambitions of the trainees will dictate that the training period in a structured environment will normalise to the minimum 16 months. "[this] is too short a time for the relevant skills and knowledge to have been properly attained and practised."

Respondents wishing not to be named

An academic institution provided a detailed analysis of the standards.

A representative body viewed the proposals on the whole as disproportionate, complex and likely to be expensive, as well as potentially breaching discrimination legislation (as they were "designed for young people"). They believed that many aspiring solicitors will have achieved many, if not all, of the relevant standards before completing or perhaps even starting the academic stages of qualification. "It is an artificial barrier to qualification... to enforce a period of developmental practice upon such people. [we are] troubled by the tension... between establishing day one competency, yet at the same time proposing that the period of work based learning should be a period for development."

Anon, law firm

- have significant doubts that the proposals will achieve the stated objectives
- found it odd that the consultations and reviews of different parts of the training system were being carried out on a piecemeal basis rather than on one comprehensive set of proposals. "The profession must be given the opportunity to comment on the full picture before the new framework is implemented. "
- standards applicable across the entire profession would be either too generic to be of real value or would include standards that would-be entrants in certain market sectors could not comply with. Suggested tailoring them to the broad market segments (private client-contentious; private client-non contentious; commercial-contentious; commercial-non contentious) with common core standards
- the portfolio regime for "trainees" working in non-accredited organisations must meet these criteria:
 - the "trainee" must work in a "legal environment" and be primarily supervised by a solicitor
 - the portfolio must be reviewed and "signed-off" by that in-house supervisor

- the external reviewer must have contact with the internal supervisor, not just with the "trainee" and
- the external reviewer must have experience of the technical areas in which the "trainee" is working
- echoed the Training Committee of the City of London Law Society's alternative approach (detailed above)
- "a combination of recognising the different market sectors in the profession and introducing a two-stage (not two-tier) qualification process through more creative use of examinations will help address the perceived problems facing would-be entrants to the profession."

Anon, law firm

- concerns that the proposals in their current form will lead to a two-tier system
- considerable amount of work to be done on the draft work-based learning standards
- if the minimum work-based learning period is set at less than two years, market forces in various sectors will force all firms in those sectors to push their trainees to qualification within that shorter period
- accreditation should not pose an excessive burden on firms
- concerns over the Day One Outcomes – they do not specify the level of ability to be demonstrated, it could be difficult for people to show 'understanding' if they have only studied an area and never practised in it, e.g. criminal law, property law.

Anon, law firm

- concerned that the training contract period could be reduced to sixteen months as standard, with the danger that some trainees will receive narrower training, earlier specialisation and significant difference in standards on qualification. The proposed minimum of four reviews with four months between each seems inconsistent with concerns to move from a time based training requirement. A standard two years makes it easier to manage resources
- a central part of the training process is interacting with and learning from other trainees. Making the training period potentially variable in length may add an element of competitiveness that is not helpful at a stage in a lawyer's career where the focus should be on learning
- trainees should continue to experience a wide range of practice areas. It is difficult for some firms to offer contentious experience and [they] do not believe that this should be required
- confidentiality of portfolios is a key concern. They are likely to contain a significant amount of confidential information which clients will not want disclosed to third parties
- concerns about the reliability of portfolio evidence (particularly for the non-accredited route). Regulated firms with internal assessors may be able to deal with the issue of confidentiality
- internal assessment is likely to be an onerous and expensive option (and raises conflict issues)
- helping trainees to prepare portfolios may impose a heavy burden on firms
- there may be a dispute raising employment issues if the trainee believes they are ready to qualify and the firm does not
- there should be a long stop on the date for qualification and a limit on the number of submissions of the portfolio, as well as clarity on the responsibilities of the firm and the trainee for deciding when the portfolio should be submitted.

Anon, local law society's training committee

- “we have real doubts that the proposals ... will necessarily improve the position for disadvantaged or underprivileged would-be entrants to the profession
- “we would not support any plan to reduce the overall length of the "formal" academic training for a "fully qualified" solicitor ... however that training was structured
- “the wording of some of the [standards] listed does not reflect how many of the member firms of the CLLS are managed. For example, while it is entirely appropriate for newly qualified solicitors to have the ability to *recognise* ethical dilemmas, how many firms (whether members of the CLLS or not) would be prepared to allow a newly qualified solicitor to *resolve* an ethical dilemma?
- “An alternative approach might be to retain the accredited/non-accredited routes but require individuals ... to complete only the compulsory elements of the LPC. If they were to do nothing other than complete a satisfactory work based learning period, they could be designated "non-specialist solicitors" (akin to the non-practising barristers) while opening a broad range of career options. This could be coupled with a requirement that such solicitors wishing to practise in the main market sectors into which the profession is, in reality, divided (for example, private client-contentious, private client-non contentious, commercial-contentious and commercial-non contentious) would be required to complete further, specialist qualifications (which could be the LPC electives) before being regarded as "fully qualified". If those specialist qualifications carried with them the obligation to work in a suitable legal practice under appropriate supervision, any concerns about creating a two-tier profession would fall away. “

List of respondents

Organisations

Addleshaw Goddard
Altior Consulting & Training
Blakemores
Bristol Institute of Legal Practice, UWE
Dechert LLP
Denton Wilde Sapte
DLA Piper UK LLP
Freshfields Bruckhaus Deringer
Government Legal Service
Hampshire Incorporated Law Society
Herbert Smith LLP
Irwin Mitchell
The Law Society
The Legal Education and Training Group (LETG)
Macfarlanes
The Manchester Law Society
Norton Rose
Skadden, Arps, Slate, Meagher and Flom (UK) LLP
Solicitor Sole Practitioners Group
UK Centre for Legal Education (UKCLE)
Watson, Farley & Williams LLP
Wragge & Co

Individuals

Rukhsana Kausar Bashir
Louise Commons
Katie Engel
David Lingard
Deborah Aline Manoovaloo-Jessamine
Brian Read
Abdul Swaleh
Peter Causton

Thirty respondents wanted their responses to remain confidential.