THE LORD CHANCELLOR'S
ADVISORY COMMITTEE
ON LEGAL EDUCATION AND CONDUCT

FIRST REPORT

ON

LEGAL EDUCATION AND TRAINING

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LORD CHANCELLOR'S ADVISORY COMMITTEE ON LEGAL EDUCATION AND CONDUCT

First Report on Legal Education and Training

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The first consultative panel comprised Professor Terence Daintith (Director of the Institute of Advanced Legal Studies, London), Ann Halpern (Norton Rose), Professor Bob Hepple (successively Professor of Law at University College, London, and Master of Clare College, Cambridge, who was appointed as a Committee member from April 1994), Professor Richard Painter (University of Staffordshire), Professor Martin Partington (Bristol University), and Professor William Twining (University College, London).

The second consultative panel comprised Fiona Boyle (Trainee Solicitors' Group), Dr Alexandrina le Clezio (Linklaters and Paines, and formerly of the College of Law), Vivienne Gay (Pupil Supervisor), Ann Halpern (Norton Rose), Roger Jones (Law Society Training Committee), Professor Martin Partington (University of Bristol), Professor William Twining (University College, London), and John Stanford (Council of Legal Education). In its later meetings the group was joined by Cathryn Morris (Pictons), Hilary Lewis Ruttley (Research Consultant), and Nicholas Saunders (Head of Legal Education, Law Society). Further discussions were held involving Roger Earis (College of Law) and Philip Jones (University of Sheffield).

The organisations and individuals who submitted written responses to our consultation papers are listed in Appendix B. Extensive oral and written evidence has also been received by the Committee during its normal business meetings and many then contributed to our Consultative Conferences. It is not possible to identify everybody concerned. The Committee offers its sincere thanks to them as well as the contributors identified above.

The Committee undertook a visiting programme to universities and colleges, firms and chambers, both in the United Kingdom and abroad. The Committee wishes to express its appreciation to everybody who assisted those visits, including the judiciary and staff of the European Court of Justice, the Dean, staff and students of the School of Law at Columbia University in the City of New York, Brooklyn Law School, New York University School of Law, Rutgers School of Law, Newark and all involved at the Law School of the University of Leiden.

During the study visit to New York, groups of members were able to visit a range of law firms, the New York Legal Aid Society, the office of the Manhattan District Attorney, and the Practising Law Institute (a major provider of continuing professional development across the United States). The Committee also met for discussion with Dean James P White, Consultant on Legal Education to the American Bar Association, and with Bob MacCrate, Norman Redlich and Professor Curtis Berger who were members of the Task Force which produced the MacCrate Report. The Committee extends its thanks to all who contributed to the study visit.

We refer in the Introduction to those who undertook commissioned research projects for us. We are grateful also for other research assistance we received - Hilary Lewis Ruttley (supported by Dr Martin Skirrow) undertook an analysis of responses to our consultations on the vocational stage and continuing professional development, and (supported by Frederique Dahan) prepared Appendix H. We also wish to acknowledge with appreciation the general assistance given by officials of the professional bodies in the provision of past reports and the checking of papers.

We wish to thank former members of the Advisory Committee whose earlier work assisted the review. They are identified in Appendix A which details membership of the Committee and its secretariat. On a similar basis, in thanking the Secretary of the Advisory Committee and his staff for their support and assistance we extend our thanks also to the former Secretary and staff.

INTRODUCTION

Towards a new partnership

1. The proposals in this Report are aimed at preparing the system of legal education and training for a new era. Whatever new forms of legal services may emerge in the next century, the core profession of barristers and solicitors will continue to have a central role to play, and will provide the benchmark against which the standards and values of the new service providers must be judged. That is why this, our first report on legal education and training, concentrates on those two branches of the profession, while at the same time looking forward to the emergence of new forms of legal practice and the need to maintain and extend the teaching of common professional values between all providers of legal services. We have tried to meet the need, identified by our Chairman in his foreword to the first Consultation Paper, for "a broad and intellectually demanding legal education, attuned to the context and needs of a modern European democracy." This, as he said, "is essential to the well-being of our nation. It is fundamental to our commitment to constitutionalism and the maintenance and extension of the rule of law." It is also crucial to our country's commercial success in the face of global competition. We expect that all those to whom this Report is addressed will approach our recommendations in a constructive and energetic fashion, in a new partnership, to attain those high ideals.

2. The last full-scale review of legal education and training took place 25 years ago. The Report of the Committee on Legal Education, under the Chairmanship of Sir Roger Ormrod, was published in March 1971.[1] Since then there have been many significant changes to the system of legal education in England and Wales. (An outline of these developments will be found in Appendix C.) Most recently, the Council of Legal Education and the Law Society have agreed, under the framework of the Courts and Legal Services Act 1990, to alter their requirements regarding qualifying law degrees. (The text of the Joint Announcement, as approved by the Lord Chancellor and designated judges in December 1994, will be found in Appendix D.) The vocational training of barristers and of solicitors has been transformed by the incorporation of a much greater element of legal skills training. In the case of barristers this began in 1989 with the new Bar Vocational Course (BVC) at the Inns of Court School of Law. The new Legal Practice Course (LPC) for solicitors began at a number of institutions in 1993. The Law Society has taken the lead among all the professions in imposing requirements on its members for continuing professional development beyond the point of initial qualification, and the Bar is now following suit. Other important developments are pending. These include a review by the Law Society of the LPC, the transfer of the Council of Legal Education's regulatory functions to the General Council of the Bar (hereafter referred to as "the Bar Council"), the proposed validation by the Bar Council of a number of institutions, in addition to the Inns of Court School of Law (ICSL), to teach the BVC, proposals by the Bar Council to defer the call of barristers until the end of the first six months of pupillage, and proposals to improve implementation of training standards for pupil barristers.

3. In the universities, too, major changes are under way. The abolition of the binary line,

[1] Cmnd. 4595 (hereafter the "Ormrod Report").

which separated universities from polytechnics, has led to a broader and more diverse university system, encompassing some 75 universities and colleges of higher education offering law degrees, compared with 19 universities and seven polytechnics at the time of the Ormrod Report. The modern university law schools offer a bewildering variety of full-time, part-time, distance learning, sandwich, integrated, conversion and external courses, most of which have been affected by developments such as modularisation, semesterisation, and quality assessment. The whole shape, structure, size and funding of higher education is now being examined by the Committee of Inquiry into Higher Education, under the chairmanship of Sir Ron Dearing, set up in February 1996 by the Secretary of State for Education and Employment. The Committee is due to report by the Summer of 1997.

4. Given the pace of change, there may be an understandable desire to call a temporary halt to reform of legal education, and to allow a period for consolidation and evaluation. Unfortunately, not only does educational reform require extensive advance planning but, more significantly, the world in which the legal profession must operate will not stand still. It is probably true to say that at no point in the past half century has the legal profession faced so much uncertainty or been under such pressure to change. The pressure emanates both from external sources - from the "market", from government, and from the public who are increasingly aware of their legal rights - and from within the profession. Because the pressures for change are unlikely to diminish, educational reform must itself be an on-going process in order to help the legal professionals of tomorrow better to adapt to the radically different environment in which they hope to develop and prosper. Indeed, it is for this reason that the Committee intends this to be the first of a series of reports reviewing the arrangements for the education and training of the various individuals and organisations involved in the provision of legal services.

5. In the course of our Review, it has become apparent that there is much misunderstanding about the Committee's role. The Committee has the general statutory duty of "assisting in the maintenance and development of standards in the education, training and conduct of those offering legal services."[2] The Committee carries out the general duty by performing the functions conferred on it by Schedule 2 to the Courts and Legal Services Act 1990. These functions are purely *advisory*. It is for the Bar Council, the Law Society and other authorised bodies to prescribe their "qualification regulations", i.e. the regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to any rights of audience or any right to conduct litigation granted by it.[3] The authorised body must have regard to the Committee's recommendations and to the Committee's advice on all aspects of their qualification regulations, "to the extent that it applies in relation to matters connected with advocacy or the conduct of litigation."[4] It is for the Lord Chancellor and the designated judges, after receiving the Committee's advice, to decide whether or not to approve qualification regulations. The Committee itself has no regulatory powers. The statutory framework envisages that the authorised bodies will regulate education and training, subject only to approval by the Lord Chancellor and the designated judges under the Schedule 4 procedure. (An outline of this procedure will be found in Appendix A.) Our purpose is to advise and to assist in the process of reform, not to dictate.

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2 Courts and Legal Services Act 1990, s.20(1).

3 See the definitions of "qualification regulations" in ss. 27(9), 28(5) and 119.

4 Sched. 2, para. 5(4).

Implementation of our recommendations

6. The implementation of change in the field of legal education, even once the lines of reform have been agreed by the authorised bodies, the higher education institutions and other providers, will take a considerable time to achieve. As a result any new structure will not take effect before the year 2000, and it will be several years beyond that before it will begin to have an impact on legal practice and the delivery of legal services to the public. Nevertheless, it is important that target dates be set by which the various recommendations are to be implemented. Some will be easier and quicker to achieve than others. They will require a new partnership between the Bar Council, the Law Society, and other authorised bodies, with the Heads of University Law Schools and the organisations of law teachers. The Committee is anxious to facilitate the development of this partnership. In the first instance it will do so by convening a Conference in July 1996 at which the recommendations can be discussed by all these groups. Secondly, the Committee has a standing Liaison Sub-Committee which expects to arrange a series of direct contacts with the Bar Council, Law Society and any other authorised bodies,[5] to consider the details of implementation, including target dates. Thirdly, the Standing Conference on Legal Education, an independent body, which is chaired by the Committee's Chairman, provides a forum for wide-ranging discussion between teachers of law and the different branches of the profession. Finally, the Committee proposes to establish a small but representative Joint Legal Education and Training Standards Committee to review the processes by which minimum standards are set, and to devise ways and means of maintaining and improving standards (see Chapter 7).

Scope of the Report

7. The Lord Chancellor's Advisory Committee on Legal Education and Conduct was established in April 1991 under the Courts and Legal Services Act 1990. (The membership of the Committee is listed in Appendix A.) The Act[6] requires the Committee to:

    (a) keep under review the education and training of those who offer to provide legal services;

    (b) consider the need for continuing education and training for such persons and the form it should take; and

    (c) consider the steps which professional and other bodies should take to ensure that their members benefit from such continuing education and training.

    The Committee must "give such advice as it thinks appropriate with a view to ensuring that the education and training of those who offer to provide legal services is relevant to the needs of legal practice and to the efficient delivery of legal services to the public."[7] These duties extend "to all stages of legal education and training,"[8] and to all those who provide

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5 At present there are no other authorised bodies.

6 Sched. 2, para. 1(1).

7 Sched. 2, para. 1(2).

8 Sched. 2, para. 1(3). Throughout this Report we have used the word "education" in relation to all degree and non-degree courses, and confined the word "training" to describe the periods of work experience or in-service training such as pupillage and training contracts.

legal services, not only barristers and solicitors.

8. The Committee has been obliged to give priority to work related to its other main duty, namely to consider applications from professional and other bodies concerning rights of audience and rights to conduct litigation. Nevertheless, in October 1992, the Committee decided to start work on a thoroughgoing review of legal education and training, beginning with a three-year stage concentrating on barristers and solicitors. This was to be followed by a second stage considering other branches of the legal profession including legal executives, patent agents, notaries and others with audience and litigation rights. A third stage was to deal with the training of non-lawyers who provide legal services, including those employed by professional providers of legal services and those working in independent organisations. As the review developed it became clear that the scope of each of these stages needed to be modified. The first stage could not deal satisfactorily with the education and training of barristers and solicitors without considering the broader changes in the way that delivery of legal services is likely to develop in the next century. Any recommendations relating to barristers and solicitors would be of diminished utility if they did not take account of the challenge to legal education and training to provide an all-round preparation for a wide range of vocations. This has involved consideration not only of the general aims and methods of university education in law, but also of the case for common postgraduate professional legal studies as a preliminary to education and training which is specific to those who wish to become barristers or solicitors. We have also needed to look at general issues of access to and funding of higher education since these have a major impact on the education of lawyers.

9. Accordingly, this first report attempts to deal with the first degree in law, conversion courses for non-law graduates, common professional legal studies, and the specific education of intending barristers and solicitors up to the *point of initial qualification*. Although our second Consultation Paper asked some questions on *continuing professional development*, these were not adequate for the purpose of a full-scale review of this extremely important part of the educational continuum. Accordingly the present report refers only briefly to continuing professional development of barristers and solicitors. We propose to issue a further Consultation Paper on this subject in September 1996 and thereafter to hold a Consultative Conference, with a view to publishing a report on continuing professional development of barristers and solicitors by April 1997. At the same time we expect to issue a Consultation Paper on the education and training of paralegals. We have already given consideration to the education and training of Fellows of the Institute of Legal Executives in our advice on the application by the Institute to become an authorised body for the purpose of granting extended rights of audience to suitably qualified Fellows (February 1996). The Committee is currently considering an application from the Chartered Institute of Patent Agents, and expects to consider the education and training of patent agents in that connection.

The work of the Committee

10. In November 1992 the Committee invited written submissions on the most important current issues in legal education. Members then visited a variety of teaching institutions, with different approaches to legal scholarship and teaching. In July 1993 the first Consultative Conference was held to help clarify the emerging issues. Discussions with the

Standing Conference on Legal Education[9] and with many individuals and organisations followed. We also established a Consultative Panel of experts to test ideas relating to the initial stage of legal education. In June 1994 a Consultation Paper was issued on the initial stage, and in July 1994 the second Consultative Conference was held to consider the Paper. The Conference Proceedings and a summary of the responses to this Paper have been published. A second Consultative Panel was then set up to develop ideas on the vocational stage and continuing professional development. Members of the Committee visited providers of the Legal Practice Course (LPC) and the Bar Vocational Course (BVC), and carried out a programme of visits to solicitors' firms and barristers' chambers to observe in-service training. In June 1995, a Consultation Paper on these topics was issued. A third Consultative Conference was held in July 1995 to deal with this Paper. The proceedings, and also a summary of the responses to the Paper have been published. (The organisations and individuals who submitted responses to the Consultation Papers are listed in Appendix B.)

11. The Committee has commissioned research on specific matters relevant to our review, in particular a report on Access to and Participation in Undergraduate Legal Education, by Vera Bermingham, Claire Hall and Julian Webb (October 1995), and a report on Funding Legal Education, by Marlene Morrison, Robert G. Burgess and Susan Band (December 1995). Copies of these reports, referred to in Chapter 3, are available on request. The Committee has also supported other research which has been of assistance in the task of maintaining and developing standards in legal education, in particular, Dr Peter Clinch's research report on law libraries and legal education in the United Kingdom (1994), and a survey of law teaching by Phil Harris and Steve Bellerby with Patricia Leighton and John Hodgson (1993).

12. There is obviously much to learn from other jurisdictions. In the United Kingdom we have profited from our contacts with, and evidence from, practitioners and teachers in Scotland and Northern Ireland. The Committee, in carrying out its functions, is specifically required to have regard to the practices and procedures of other Member States of the European Union. Accordingly we have considered how lawyers are educated elsewhere in the EU, not least because such lawyers are, under the provisions of Council Directives 77/249/EEC and 89/48/EEC, entitled to use their training as the basis for providing legal services in England and Wales. Members of the Committee visited the European Court of Justice in March 1995 and the University of Leiden in May 1995, and we have had discussions with a number of lawyers and law teachers from Continental jurisdictions. We have also been able to compare provision for legal education in England and Wales with that in other common law jurisdictions. Members of the Committee visited several law schools, law firms and other organisations in New York in November - December 1995. We have received evidence from teachers and practitioners in other countries where there have been interesting recent developments in legal education, in particular Australia, Canada and Japan.

The structure of the Report

13. *Chapter 1* considers the changing needs of legal practice in the 21st century, starting with an account of changes in practice (Section A), and possible responses to the changing

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[9] See our Annual Report 1991-92, paras. 7.1 to 7.3, regarding the composition and functions of this body.

market for legal services (Section B). We then turn to some important aspects of knowledge and skills required by lawyers in the new millennium (Section C), and the ethical challenge (Section D).

14. *Chapter 2* assesses the extent to which the present educational arrangements are capable of meeting the changing nature of legal practice, and puts forward a new vision of legal education. It does so by highlighting general developments in higher education which are likely to have an impact on the education and training of lawyers (Section A). A statement of the requirements of a system of legal education capable of meeting the new challenges is put forward, as well as some general aims (Section B). It is against these requirements and general aims that we assess the main strengths and weaknesses of the present arrangements (Section C). This is followed by a description of some alternative models for a reformed system of legal education (Section D), and the reasons for our preferred model of integrated education and training, with multiple entry and exit points for those who will provide different types of legal services (Section E). The Chapter ends with a brief outline and flow chart of the proposed new structure (Section F). The details of the recommended changes are set out in Chapters 4 to 7.

15. Perhaps the single most important obstacle to change is the shrinkage of public resources available for higher education in general and legal education in particular. For this reason *Chapter 3* is devoted to access to and the funding of legal education. The starting point is the rapid expansion of the number of law graduates and those seeking to enter the profession, the problems experienced by those seeking training contracts and pupillages, the particular difficulties of those from black and ethnic minorities and of students from low income families (Section A). The present inadequacies of financial support for students, particularly at the vocational stage, and some possible new funding models are outlined (Section B). Finally, we refer to the resources required by law schools, in particular libraries, information technology, adequate staffing, and facilities to carry on legal scholarship (Section C).

16. *Chapter 4* deals with the qualifying law degree and conversion courses for non-law graduates. It begins with a discussion of the aims of initial university education in law (Section A), and then develops the arguments for institutional autonomy which were outlined in Chapter 2 (Section B). We then consider the question of the prescribed common element (or "core") (Section C), and that of teaching and methods of assessment (Section D). This is followed by a discussion of the length and structure of degrees in law (Section E). Finally, we turn to conversion degrees and diplomas for non-law graduates and "add-on" courses for those whose degrees do not satisfy the requirements for a qualifying law degree (Section F).

17. *Chapter 5* on common professional legal studies, considers the arguments for and against common education and training for intending lawyers (Section A). For comparative purposes, there is a description of the extent to which there is common education in Northern Ireland and Scotland (Section B). Since the notion of distinct qualifications for each stage of legal education, with multiple exit points leading to a variety of law-related occupations, is well-established in some other EU countries, we describe the system in France (Section C). We then consider the possible length and content of a common professional legal studies course, which would lead to certification as what we (provisionally) title a Licentiate (Section D). We explain how an integrated undergraduate degree or a postgraduate Master's degree in Professional Legal Studies, could earn

exemption from the Licentiate stage, and also from the BVC or from the LPC, as well as allowing the study of other academic subjects (Section E).

18. *Chapter* 6 deals with the specific education and training of intending barristers and solicitors. After the period of common professional legal studies, discussed in Chapter 5, Licentiates would undertake three further periods of education and training to reach the point of initial qualification as a barrister or solicitor. One of these would be the BVC or LPC (Section A). The others would be two modules of in-service training, the first in any context where legal services are provided, not limited to a solicitor's office or barristers' chambers (Section B), the second in a solicitor's office for an intending solicitor or in chambers for a pupil barrister (Section C). We envisage that this will always be followed by continuing professional development (Section D).

19. *Chapter 7* turns to the concept of "quality" in relation to legal education (Section A). We consider mechanisms for the assessment of quality at each of the stages of legal education (Section B), and finally we look at ways in which guidance can be given on minimum standards (Section C).

20. The Report concludes with a *Summary of the Main Recommendations.*

1.

THE CHANGING NEEDS OF LEGAL PRACTICE IN THE 21ST CENTURY

A. Changes in legal practice

1.1 Our review of legal education must begin by looking forward to the requirements of legal practice and the challenges and opportunities that will face the legal profession in the 21st century.

1.2 For most of the past 40 years, the legal profession has enjoyed virtually uninterrupted expansion. The number of practising solicitors has increased almost fourfold in this period - from 18,143 in 1955 to 66,123 in 1995 - while the number of barristers in independent practice grew from 2,008 to 8,498 over the same period. Although this expansion has been underpinned by protected domestic markets, such as that for conveyancing for solicitors and for higher court advocacy for the Bar, it has also been a product of a much wider movement in the legalisation of society as a whole. More and more aspects of people's daily lives and of their economic, social and political relationships have become the subject the specific legislation and have otherwise been brought within the purview of the law and lawyers. Thus, the extension of legal services to previously excluded sectors of the population, in particular through legal aid, has been an important contributory factor in the growth of both branches of the profession. Ironically, even the more recent movement in favour of deregulation has resulted in a significant new body of legislation, which has required interpretation and implementation through lawyers and the machinery of justice. More broadly, de-regulation has also created significant new markets for legal services, not least in the commercial sector. There has been a burgeoning international market for legal services, both in Europe and on a wider global basis.

1.3 In this period the nature both of the profession and of its services to the public have been transformed beyond recognition. All types of legal practice are today much more complex than ever before. Both the mega commercial firm and the large legal aid practice have emerged, while barristers' chambers have also greatly increased in size and the range of their work. These developments have brought new organisational demands for both branches of the profession and highlighted the need for wider management training and skills among practitioners. During its period of expansion, the legal profession has been a source of social mobility for new recruits drawn from a broader spectrum of the population, and in particular the gender balance of the profession has shifted dramatically toward women (even if problems remain in achieving full gender equality, especially at higher levels of the legal system). As noted, the benefits of law and legal services have been extended to previously disadvantaged sectors of society, and despite some earlier resistance, the profession has grasped the challenge of the "legal services revolution" and has often been at the forefront of innovations in service delivery.

1.4 Some of these developments over the past half century have challenged traditional notions of professional autonomy and brought their own demands for greater accountability and institutional reform within the profession itself. But these have been the challenges of an expansionist era, and perhaps more readily accommodated because of that. Some might claim that the legal profession now faces a much different prospect in the face of the many

new pressures which it confronts at the turn of the century. Certainly, it is necessary to take a hard and realistic look at the problems currently facing solicitors and barristers, but we should not underestimate their capacity, both as individuals and as a professional body as a whole, to adapt creatively to the new environment. The Committee sees its role not as dictating, let alone imposing reform on the profession, but as working in partnership with the professional bodies in order to develop the system of legal education and training the better to equip lawyers to respond vigorously to the challenging opportunities that the new century will throw open to them.

1.5 The Committee sees this as essential not only to secure the future prosperity of the legal profession but also in maintaining the high professional and ethical standards on which our legal system and, indeed, our democracy depend. Nor should it be forgotten that there is a close relationship between many aspects of legal practice and the preservation of the wider values of the rule of law and equality before the law in our society, and that these values are now acknowledged as essential elements in the creation of good government throughout the world. In this connection, special mention may be made of the legal profession's role in the provision of legally-aided and *pro bono* services to disadvantaged sectors of the population; its work in defending accused persons and protecting human rights both in this country and internationally; and the growing significance of law in relationships between government and the governed at various levels. The democratic values enshrined in the law must be carefully nurtured, not just by defending these less popular (and often less profitable) areas of legal practice. Forms of education and training are required that will ensure that the lawyers of tomorrow fully appreciate the essential link between law and legal practice and the preservation of fundamental democratic values.

B. Responding to the changing market for legal services

1.6 Of these challenges, that of increased competition in all sectors of the market for legal services is surely the most pervasive and also the most complex and diverse in terms of its likely impact on legal practice. The opening up of the domestic legal market for greater competition was one of the main aims behind the Courts and Legal Services Act, with its objective of fostering the development of "new or better ways" and a "wider choice of persons" providing legal services. The Act itself may have had only a limited impact since the relevant sections came into force some five years ago, but it must be anticipated that as time goes on a greater diversity of groups, drawn from both the established and the "emerging" professions, will seek to enter into the traditional market for lawyers' services. But there are also likely to be new markets offering fresh opportunities for barristers and solicitors in private practice, as well as for employed lawyers in a variety of practice settings.

1.7 The drive toward greater competition extends beyond private and commercial practice. The recent Green Paper, *Legal Aid - Targeting Need*, has heralded a major shift in thinking about how publicly-funded legal services should be organised and provided, and the Woolf review of civil justice has proposed far-reaching reforms in the traditional ways in which litigation is managed and conducted. New developments likely to emerge from these reforms include a greater reliance on "non-solicitor agencies" to provide some forms of legal advice and assistance, a shift of resources toward non-court based solutions to traditional legal problems, and greater demands on both solicitors and barristers to provide quality assured and competitively priced legal aid services. Similar demands are now also being made by other purchasers of publicly funded legal services, such as government

departments, the Crown Prosecution Service, and local authorities.

1.8 Increased competition in the market for legal services is by no means confined to this country. In recent years, other parts of the developed world have attempted to liberalise and reform their legal systems and legal profession the better to compete in regional and global markets. Indeed, in certain sectors of the legal services market, the challenge of competition from abroad is far more significant than that coming from domestic legislation or other professions within the United Kingdom. In the major commercial centres of Europe, firms from the United Kingdom are now in direct competition with lawyers from our EU-partner countries and from further afield in the growing European legal market, and they face similar international competition in the wider world markets for commercial legal services.

1.9 As indicated, this global movement toward greater competition in legal services is likely to have far-reaching effects on virtually every aspect of legal practice, and it underpins many of the other challenges facing the legal profession at the present time in terms of improving the quality and management of legal services, re-engineering the services that the profession provides to the public, and fulfilling the profession's ethical role within society. In terms of the future development of legal education, its most immediate impact is likely to be in reinforcing the movement toward increased specialisation in the provision of legal services. The development of specialisation among both solicitors and barristers is by no means a new phenomenon, but it is likely that if the profession is to compete successfully in the numerous different sectors of the market for legal services, it will need to show that it can offer a higher quality, more customised service to its various consumers. The profession's relative autonomy to determine both the scope and quality of its services is rapidly disappearing and being supplanted by greater consumer choice and pressure on the profession. This is evident not just in the market for individual legal services but even more so among the institutional purchasers, be they large commercial organisations or public bodies such as the Legal Aid Board or the Crown Prosecution Service. All of them are exerting their power as consumers and requiring legal services of a type and quality specifically geared to their particular needs.

1.10 So far, the response of the professional bodies and providers of legal education and training to the demand for greater specialisation has been largely unplanned and uncoordinated. The drive toward specialisation can have damaging effects both for individuals, who may be pressured into inappropriate career choice at very early stages in their education, and for the content of legal education and training in general. In this latter respect, the Committee is concerned that what may be termed generic legal education and the teaching of core legal values are being eroded by the demands for the teaching of specialised subjects and skills both in the initial law degree and as part of the vocational stage of qualification as a solicitor or barrister. The Committee would wish to see the emphasis in the education and training of all lawyers up to the point of initial qualification placed on providing a greater depth of learning in areas of basic legal knowledge and generic skills and on the development of what has been termed common professional values. Obviously, the pre-qualification stage must also provide sufficient education and training in the particular service areas reserved for the two branches of the profession in order to provide protection for the public, but otherwise the development of particular specialisations should be regarded as a function of post-qualification training, very often to be carried out within the employing firms or organisations or sets of chambers who will themselves be better attuned to the particular needs of the legal services market at any given point in time. This

realignment in the objectives of pre- and post-qualification education and training may also have other benefits in terms of reducing the overall time and expense involved for those seeking initial qualification to enter the profession.

1.11 Indeed, although increased competition does imply a move toward even more specialisation within the profession, it is also likely to lead toward greater instability within the market for legal services and insecurity for legal practitioners. If the profession is to survive and prosper, there will be a need for greater flexibility among the providers of legal services in order to respond both to new developments in the law and legislation and to shifts in consumer demand. In a world of rapid economic and social changes and diminishing job security, the education and training of lawyers must enable them to take any opportunity that comes their way, and to develop transferable skills that can contribute to their lives inside and outside of legal practice. Moreover, students must not be pushed into premature career choices or early specialisation. One consequence of this is that, education and training leading up to the point of initial qualification can no longer be considered as providing a sufficient base of knowledge and skill for the whole of one's career as a solicitor or barrister. This point has already been recognised by the Law Society and the Bar in their development of continuing professional education and training, although much of the effort in this field is currently geared toward keeping practitioners up-to-date in their existing areas of specialisation. We envisage that in future solicitors and barristers may have to make one or more changes in their fields of specialisation during the course of their professional lives and that continuing professional development courses and other forms of training will need to be extended and reoriented for these purposes. At the same time, the function of the pre-qualification stages of legal education and training (with which this report is concerned) must be to lay the broad foundations in legal knowledge and skill which practitioners will be able to use throughout their careers as the building blocks toward multiple specialisations.

C. New knowledge and skills

1.12 The Committee's emphasis on the need to return to basics in the pre-qualification education and training of lawyers has also been influenced by what we regard as certain deficiencies in current provision of initial law degrees and conversion courses and in vocational education and training. Although the precise nature of the changes that will occur in the market for legal services may be unpredictable, the trend which we have already noted of a growing legalisation of society is likely to continue and to be driven increasingly by the use of legislation. In this respect, our system of legal education can be said to have failed to keep pace with developments in law and society over the past half century. This is reflected in the relative neglect of the study of legislation. While students generally receive extensive education in case handling, there is much less emphasis on legislative rule handling. Most first-year law students attend courses which introduce them to statute law, but these courses are rarely sustained in later parts of the curriculum. Specialist options on legislation are rare in England and Wales. This is partly due to pressures on the curriculum to cover the prescribed "foundations of legal knowledge" (see Chapter 4). But the problem is deeper than this. Despite the provision of larger numbers of specialised options and courses, many of them dealing with new areas of statute-based law, the basic skills of statutory interpretation and handling of legislation still tend to receive insufficient attention. In our view, all lawyers - and not just those who might go on to service in government or the public service - need to have a better understanding of the administrative and political processes through which new legislation emerges and is interpreted and implemented.

1.13 A second deficiency is the relative lack of attention to an understanding of the civil law systems. This goes beyond the need for English lawyers to have a sound grasp of the law of the European Union, which is already recognised in the professional bodies' requirements for the qualifying law degree. Community law should lead to a wider study of civil law systems, not least as a means of gaining a greater understanding of the distinctive characteristics of our own system. Many of the ideas and assumptions behind Community law spring from legal traditions different from our own. The Codes present a model of law as a unity comprising a series of interlocking principles. This approach to law, as a comprehensive framework for society based on scientific study by legal scholars, stands in contrast to the common law tradition. Exposure not only to Community law, but also to the civilian systems, based on Roman law, is essential if English lawyers are to respond to the profound changes which EU law is making to our legal system. Legal transactions are increasingly international in character. An understanding of the different ways that civilian lawyers approach common problems can no longer be regarded as the preserve of a few specialists. Legal education in England and Wales must be both more European and more international.[10] Although a number of universities now offer degrees in English law with a foreign legal system, including in some cases one or two years of study in another European country, only a relatively small minority of students benefit from these courses. In our view, there needs to be much wider provision for the study of civil law systems.

1.14 Increasing focus on legislation and comparative law involves placing law within its social, historical, political, economic and cultural contexts. Since the 1960s social science perspectives and methodologies have become increasingly common in legal scholarship and this, in turn, has influenced legal education. The social sciences, in particular sociology and economics, have been the basis for in-depth critical studies of law and its operation in society. We welcome these developments, and would stress that the philosophical, ethical and humanitarian dimensions of law should also feature strongly in the study of legislation and comparative law (see further paras. 1.18 and 1.19 below).

1.15 A third area of deficiency in the current system of legal education is in relation to legal research skills. This entails more than a simple ability to "find the law", whether it is statute or case-based. It requires that all intending lawyers be trained to take a problem, often presented in non-legal terms, and through a process of investigation to provide a range of potential legal solutions, each accompanied by an analysis of its benefits and risks to the particular client. Such skills should lie at the heart of what it means to be a lawyer, yet the Committee has been struck by the evidence we have received from many quarters that newly-qualified solicitors and barristers have often only developed them to a rudimentary level.

1.16 The range of solutions in which the lawyers of the future will need to be skilled extend beyond the traditional areas of negotiation, litigation, and court-based advocacy. There is now a widespread demand from a range of consumers of legal services that their problems be addressed in new ways, including through mediation and other forms of alternative or appropriate dispute resolution, which are perceived as being more economical and more

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[10] See more generally, G. Wilson, chap. 15 in *Frontiers of Legal Scholarship* (ed. Wilson), London, 1995, esp. at p.230; B. S. Markesinis, chap.1 in *The Gradual Convergence* (ed. Markesinis), Oxford, 1994, esp. at p.21; K. Lipstein, in *The Common Law of Europe and the Future of Legal Education* (eds. B de Witte and C. Tucker), Deventer, 1992, pp.255-63.

effective. Basic skills training for lawyers needs to be expanded to cover such approaches. At the same time, the Committee recognises that public expectations of lawyers will remain focused on their expertise in advising on the enforcement of legal rights and obligations through the courts and tribunals and by other means, and it is essential that solicitors and barristers emerging from pre-qualification training should have a solid grounding in such areas as procedure and evidence to enable them to meet their professional obligations to clients.

1.17 Our review of legal education is aimed at improving both the quality and the efficiency of the provision of legal services to the public. As noted, legal practice is becoming increasingly complex and it seems more than likely that in future the majority of legal services will be delivered, outside the traditional forms of legal practice, by large organisations, with the client being served not by a single professional but by a variety of personnel with differing levels and types of legal knowledge and abilities. Certainly, the present structures of legal practice are already placing new demands on legal professionals to exercise greater managerial and organisational skills. Yet, even in those degree courses that contain significant elements of clinical legal education and in the recently devised "skills-based" vocational courses, the emphasis is placed on a limited range of interpersonal skills (e.g. interviewing, negotiation, advocacy) tied to traditional notions of legal practice. The lawyers of tomorrow not only need to have much greater direct education in management but also to be given the opportunity to experience a wider range of organisational settings in which law is practiced in modern society as part of their practical training. The Committee would therefore wish to see greater flexibility introduced into the requirements for in-service training for both intending barristers and solicitors in order to enable trainees to obtain some practical experience outside the limited confines of barristers' chambers and solicitors' offices.

1.18 Increased complexity both in the market for legal services and the organisational forms through which those services are delivered will also demand a greater command of modern technology among the legal professionals of the future. Of course, there have already been significant advances in the incorporation of new technology into legal practice and the wider legal system, and most legal education courses now entail at least a basic introduction to computers and computer-based legal databases. Arguably, however, the new technology has yet to make the type of fundamental inroads into legal practice that have been seen in other sectors of the commercial world, such as insurance and banking, where it has led to a major re-engineering of the products offered to consumers. Indeed, if the legal profession is to meet the threat to its traditional markets posed by these other sectors, it must itself be educated and trained in the wider applications of technology for the purposes of knowledge-manipulation, practice management and quality control of services, and product analysis and development.

D. The ethical challenge

1.19 All of the developments we have discussed above place at risk the high ethical standards of the profession, which have very much been grounded in the close-knit professional communities represented by such institutions as the Inns of Court and local law societies. As the organisations in which law is practised become larger and more complex, as competition and instability in the market for legal services increases, and as many legal practitioners experience a growing sense of insecurity, there are real dangers that professional standards will be threatened unless counter-balancing steps are taken to

reinforce ethical values. External oversight of legal professional conduct has increased under the Courts and Legal Services Act, and the Committee will continue to offer advice to the Bar and the Law Society in this connection. However, no amount of external regulation of professional practice will serve as an adequate substitute for the personal and professional values and standards that lawyers should internalise from the earliest stages of their education and training. Teaching in ethical values should include more than a familiarisation with professional codes of conduct and the machinery for enforcing them. Nor is it clear that the present approach, whereby professional ethics are taught pervasively across a wide range of legal subjects and topics, is sufficient to meet the complex ethical issues that lawyers are likely to face in modern practice. Professional ethics and conduct should certainly form a central part in the extended education that we hope intending solicitors and barristers will receive in future. Students must be made aware of the values that legal solutions carry, and of the ethical and humanitarian dimensions of law as an instrument which affects the quality of life.[11]

1.20 The ethical challenge goes beyond the obligations that solicitors and barristers owe to their particular clients. The legal profession also carries wider social and political obligations to society as a whole. If the profession is to fulfil its role in protecting the rights of minorities within society and promoting the welfare of the disadvantaged, it is vital that its own composition reflects the social and cultural diversity of today's society. As noted, the expansion of the profession over the past half century has enabled it to serve as a vehicle for social mobility and access to higher status employment, especially for women. In future the problem of maintaining wide social access is likely to prove much more difficult and to require special measures in terms of promoting equality of opportunity for various groups, such as ethnic minorities and persons with disabilities. Those responsible for legal education and training and for recruitment to the profession have their own roles to play in this respect. It is particularly important to ensure that a two-tier system of access to the profession, in which an elite is selected at an early stage and provided with a privileged and well subsidised route to qualification, while the rest are left to struggle through on their own, is not allowed to develop further or become entrenched.

E. Summary

1.21 The argument in this Chapter may be summarised as follows:

- There will be significant new domestic and international markets for legal services in the 21st century;

- The core profession of solicitors and barristers will continue to play a central role, whatever forms the delivery of legal services may take;

- Education and training are required that will enable lawyers to maintain and improve their contribution to fundamental democratic values, including the protection of human rights and providing legal services for disadvantaged sections of the population;

- Solicitors and barristers must be equipped to respond to greater competition for the

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[11] See further, R. Cranston in *Legal Ethics and Professional Responsibilities,* (ed. Cranston), Oxford, 1995, at p.32.

provision of legal services, by becoming more flexible and diverse in their range of knowledge and skills;

- They must also be able to meet the shift to non-court based solutions to disputes;

- The drive to greater specialisation must not be allowed to force intending lawyers into premature career choices; specialisation should be a function of continuing professional development after the point of initial qualification; before then students must acquire a sound foundation for learning and changing their fields of specialisation with relative ease;

- These aims can be achieved only by providing greater depth in areas of basic legal knowledge, as well as education and training in generic skills and common professional values;

- This should include a sound knowledge of legislative rule handling, as well as case handling, of EU law and an introduction to civil law systems, legal research skills and methods of appropriate dispute resolution;

- Intending solicitors and barristers need the opportunity to experience training in a variety of different practice settings, and also to master legal information technology;

- The legal profession itself needs to reflect the social and cultural diversity of our society, and actively to promote equality of opportunity in legal education and training;

- From the earliest stages of education and training, intending lawyers should be imbued not only with the standards and codes of professional conduct, but also more generally with the obligations of lawyers to help protect individuals and groups from the abuse of public and private power.

1.22 We must turn now to our vision of a system of legal education and training capable of meeting these changing needs.

2.

A NEW VISION OF LEGAL EDUCATION

A. The changing shape of higher education

2.1 The future of legal education and training cannot be separated from that of higher education in general. If the past is any guide, then developments in higher education may have an even greater impact on the education and training of lawyers, than will changes in legal practice or in the legal system.[12] The most problematical and crucial of these developments is the future financing of higher and professional education. This question is so central to reform that we devote the whole of the next Chapter to it. Another major issue relevant to our Report is that of quality assurance, and this forms the subject of Chapter 7. Some of the other major developments which are likely to have an impact are the following:

- Demand for tertiary education in general is likely to continue to grow, particularly from mature entrants. The development of a mass and possibly a universal system of higher education will encourage a sense among men and women of all social classes and ethnic groups of entitlement to access to the graduate professions, including law, and vestiges of elitism in the legal professions will be under increasingly severe pressure from the new entrants to the profession, in particular women and those from ethnic minorities;[13]

- University courses will continue to diversify, with students able to choose between a range of courses, institutions and modes of study. Most degree courses will be modular, and students may be able to make increasingly adventurous use of the options open to them, for example combining legal subjects with those from other disciplines; an increasing proportion of students will be on part-time and distance learning courses; credit accumulation and transfer schemes will become routine, and as a result the demarcations between undergraduate and postgraduate courses, and initial and continuing education will become much fuzzier; Higher Level (4 and 5) General National Vocational Qualifications (GNVQs) will begin to have a significant impact on higher education, with the result that older patterns of vocational education, based on deep professional socialisation, will be replaced by a "competences" approach;

- The balance will shift from specific knowledge or skills in university degrees to generic "outcomes", this being an inexorable consequence of modularisation; the single honours degree (e.g. in law) could be the exception rather than the rule; this in turn will affect the balance between the universities and the professional bodies in regulating the early years of higher education, with an erosion of the distinction between "academic" and "vocational" stages as students become able to follow

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12 See William Twining, *Blackstone's Tower: The English Law School,* The Hamlyn Lectures, London, 1995, p.37.

13 See generally, Peter Scott, *The Meanings of Mass Higher Education,* SRHE Open University Press, 1995.

novel, even customised, packages; the influence of NVQs will have a similar effect;

- Public funding of higher education will continue to decline relative to the number of students, threatening the quality of and access to legal education; the pressure to find alternative sources or forms of finance for students and institutions will grow.

B. Requirements and aims of the system of legal education and training

2.2 In order to meet the changing needs of legal practice (outlined in Chapter 1) and the changing shape of higher education (above), the system of legal education and training needs to meet a number of general requirements:

- Flexibility, variety and diversity. The growing variety of practice settings, the need to respond to rapid changes and to take opportunities as they arise, on the one hand, and the emphasis on "outcomes" rather than prescribed content in higher education, on the other hand, imply considerable variety in the means by which these outcomes are delivered, and suggest that a pluralistic approach should be encouraged, with providers of legal education and training having greater discretion than they are currently allowed;

- Multiple entry and exit points. The increasing demand from students, across the social, gender and ethnic spectrum, for access to the legal profession, on the one hand, and the fluctuations in the availability of places for barristers and solicitors, as well as the development of new services, on the other hand, make it essential both to ensure a wide variety of entry points into legal education and, at the same time, to provide meaningful qualifications at different stages so as to extend the range of careers leading on from legal education beyond the narrow choice of becoming a barrister of solicitor;

- Legal education as an all-round preparation for a wide range of occupational destinations. At present less than half of all law graduates become barristers or solicitors and this proportion is likely to continue to decline. There was consensus among the respondents to our Consultation Paper on the Initial Stage that the university degree in law should be seen as a liberal discipline and an excellent preparation for many high-level careers. The logic of this is that there should be a further liberalisation of the requirements by the professional bodies for the content of university degrees; similar considerations apply to vocational courses where over-prescription of training in specific skills limits the variety and flexibility of qualifications;

- Intellectual rigour.[14] A liberal and humane legal education (on which see para. 2.4),

[14] Several respondents to our Consultation Paper on the Vocational Stage appear to have misunderstood the references in paras. 3.10 and 5.8, and Question 3, to an "intellectually rigorous basic education". This misunderstanding may have been the result of our reference in para. 3.7(ii) to the problem that in the present arrangements the "balance between intellectual rigour and the development of practical skills underplays the importance of the former in the education of lawyers

implies that students are engaged in active rather than passive learning, and are enabled to develop intellectually by means of significant study *in depth* of issues and problems as part of a coherent and integrated course, and that the teaching of appropriate and defined skills is undertaken in a way which combines practical knowledge with theoretical understanding;

- Common professional education. The need to maintain and develop a core of common professional values and skills in an increasingly diverse legal profession providing a wide range of legal services, as well as the desirability of avoiding premature career choices, implies that there should be the highest amount of common education which is practicable;

- Partnership between universities and professional bodies. The freedom of universities to decide what, whom and how they teach, has to be reconciled with the duty of the professional bodies to maintain and improve the educational standards and qualifications of entrants and practitioners; if greater flexibility, variety, diversity and intellectual rigour are to be achieved, as well as a liberalisation of the law degree, universities will need greater freedom of manoeuvre and institutional autonomy; at the same time the rigid demarcation between the "academic" and "vocational" stages needs to disappear; what is required is a new partnership between the universities and the professional bodies at all stages of legal education and training.

2.3 Another way of approaching a statement of our goals is to list the *general aims* of legal education and training. The Ormrod Report (para. 100) provided a fairly detailed analysis of the characteristics of professional work generally, and of the requirements for work as a barrister and solicitor:[15]

> "the professional lawyer requires a sufficiently general and broadbased education to enable him to adapt himself successfully to new and different situations as his career develops; an adequate knowledge of the more important branches of the law and its principles; the ability to handle fact, both analytically and synthetically, and to apply the law to situations of fact; and the capacity to work, not only with clients, but also with experts in different disciplines. He must also acquire the professional skills and techniques which are essential to practice, and a grasp of the ethos of the profession; he must also cultivate a critical approach to existing law, an appreciation of its social consequences, and an interest in, and positive attitude to, appropriate development and change."

2.4 While this provides a good starting point, a modern statement has to take account not only of the changing shape of legal services and higher and professional education, but also of new research on higher education and the professions in general, and on legal education in particular. In the light of these writings and the responses to our consultation papers, we offer the following necessarily superficial general statement of what legal education and

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at the vocational stage." We trust that the definition of intellectual rigour offered in the text will dispel any misunderstanding, and make it clear that we did not mean to suggest that "academic" education is intellectually rigorous, whilst "vocational" skills training is not. We see intellectual rigour as a requirement of all elements of legal education and training. In Chapters 4, 5 and 6 we suggest some ways in which professional education could be made more intellectually rigorous.

15 Report of the Committee on Legal Education, Cmnd. 4595, 1971, esp. chap. 3.

training should aim to achieve:

- Intellectual integrity and independence of mind. This requires a high degree of self-motivation, an ability to think critically for oneself beyond conventional attitudes and understanding and to undertake self-directed learning; to be "reflective", in the sense of being self-aware and self-critical; to be committed to truthfulness, to be open to other viewpoints, to be able to formulate and evaluate alternative possibilities, and to give comprehensible reasons for what one is doing or saying. These abilities and other transferable intellectual skills are usually developed by *degree-level education*;[16]

- Core knowledge. This means a proper knowledge of the general principles, nature and development of law and of the analytical and conceptual skills required by lawyers. These abilities are normally developed through a *degree in law* or the equivalent;[17]

- Contextual knowledge. This involves an appreciation of the law's social, economic, political, philosophical, moral and cultural contexts.[18] This appreciation may be acquired in part by the study of legal subjects in a law degree in their relevant contexts, or by taking a non-law or mixed degree which provides these perspectives;

- Legal values. This means a commitment to the rule of law, to justice, fairness and high ethical standards, to acquiring and improving professional skills, to representing clients without fear or favour, to promoting equality of opportunity, and to ensuring that adequate legal services are provided to those who cannot afford to pay for them. These values are acquired not only *throughout the legal educational process* but also over time through *socialisation* within the legal professions;[19]

- Professional skills. This means learning to act like a lawyer, and involves a combination of knowing how to conduct oneself in various practice settings, and also carrying out those forms of practice. These skills are normally acquired through *vocational courses and in-service training*.[20]

C. Features of the present arrangements

2.5 The present arrangements for legal education and training must be judged according to whether or not they operate satisfactorily in meeting these requirements and delivering these general aims. The current arrangements have evolved, in the period since the Ormrod

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16 See generally on the features of a liberal degree, Ronald Barnett, *Improving Higher Education: Total Quality Care*, SRHE and Open University, 1992, esp. chaps 1, 2, 11.

17 See generally on the "Quest for a Core", Twining, op. cit., chap. 8.

18 The importance of these contexts was stressed to us by a wide range of consultees, including academics (e.g. Fellows of the British Academy in their response to our Initial Consultation Paper), and practitioners especially in City law firms.

19 These values are usefully analysed in the Report of The Task Force on Law Schools and the Profession [the "MacCrate Report"], *Legal Education and Professional Development,* ABA, 1992, esp. chaps. 4 and 5.

20 Ibid.

Report, as a series of uneasy but relatively stable compromises between the academic and practising sides of the legal profession. (The developments are outlined in Appendix C.) Their most distinctive feature is that they are based on a rigid three-stage structure of education and training: academic, professional, and post-admission continuing professional development. In Professor Twining's words, this structure has "entrenched three separate spheres of influence,"[21] the first being that of the universities, and the second and third those jointly of the Bar and the Law Society.

2.6 The universities are primarily responsible for delivering the "academic" stage which the Ormrod Report envisaged would "normally, but not necessarily," be a degree in law. This apparent control by the universities has, however, been undermined by the power of the professional bodies to grant or withhold recognition of law degrees as satisfying the initial stage. Although the Ormrod Committee (para. 108) recommended that "the professional bodies ought not to specify the contents of the curriculum ... as a condition of recognition" of a particular law degree, the professional bodies continue to lay down fairly precise minimum requirements. The current Announcement on Qualifying Law Degrees, issued jointly by the Law Society and the Council of Legal Education, and approved by the Lord Chancellor and the designated judges on 19 December 1994 (for text see Appendix D), prescribes seven "foundations of legal knowledge" which must be studied, and specifies the proportion of a student's workload which these subjects must occupy. This represents some relaxation of previous requirements, but it still imposes uniformity, inhibits innovation and diversification in law degrees, and contributes to the overload of the undergraduate curriculum (see Chapter 4). Moreover, the law degree route can be circumvented by a shorter alternative which was not envisaged by the Ormrod Committee. That Committee proposed that non-law graduates should be able to take a two-year conversion course covering eight subjects, five obligatory and three optional. The professional bodies, however, allow non-law graduates to proceed to the vocational stage after passing a Common Professional Examination (CPE) or gaining a Diploma in Law. The Diploma courses cover the seven "foundations of legal knowledge", prescribed by the professional bodies. They now usually last for 36 weeks. As many as one-third of students on the vocational courses enter through this route, rather than a law degree. The merits and demerits of the present CPE are controversial (see Chapter 4), but ironically, as Professor Twining notes, "the existence of conversion courses for non-law graduates served as a buffer against direct professional influence on law degrees -for it would have been unreasonable to prescribe more for a law degree than what could have been covered in a one-year conversion course."[22]

2.7 The hopes of creating a unified and integrated system of legal education and training, which were at least implicit in the terms of reference of the Ormrod Committee, were not fulfilled. Not only did the Committee's proposals result in a sharp line between the academic and professional stages, but the professional stage was bifurcated as a result of the failure of the Bar and the Law Society to reach agreement on a joint professional qualification and their insistence on retaining their own separate courses and examinations for their respective vocational stages, with the result that there is no element of common professional training of solicitors and barristers. One way of bridging the gap between the academic and vocational stages would have been, as a majority of the Committee recommended, for the proposed vocational courses to be provided within the university and college of higher

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21 Twining, op. cit., p.35.
22 Op. cit., p.37.

education structure (paras. 138-40). However the Law Society decided that the (then) Law Society Finals should be provided at the privately-funded College of Law and at nine of the then Polytechnics. The Bar Finals were provided only at the Inns of Court School of Law (ICSL). Although the Law Society has now validated the teaching and examining of the new vocational Legal Practice Course (LPC) provided at 32 locations through 22 universities and the College of Law, and the Bar also proposes to validate a number of universities, as well as the ICSL, for purposes of the Bar Vocational Course (BVC), these vocational courses are not an integral part of the law degree. The Law Society's Training Regulations do allow, as an alternative to the LPC, the satisfactory completion of an "Integrated Course" (incorporating study of the foundations of legal knowledge and an LPC) or obtaining an "Exempting Law Degree" (a qualifying law degree incorporating an LPC), but to date only the University of Northumbria provides such a degree.

2.8 A lasting achievement of the Ormrod Committee was to establish beyond question that the law should be a graduate profession, and to give the universities a clear and crucial role in providing the intellectual foundations for intending lawyers. The importance which the Committee attached to the law degree as the normal mode of entry to the vocational stage was a recognition, in Professor Birks' words, not only that "the law, studied thoughtfully and in depth, makes for a superb education", but also that "the lawyer needs to have studied the law thoughtfully and in depth."[23] Both "core" and "contextual" knowledge of law have become the special preserve of the law schools. By common consent, initial stage legal education in England and Wales is today "dramatically better intellectually" than it was 25 years ago.[24] This is reflected both in the diversity of undergraduate law degrees, and in the academic contribution through research and teaching to the development of the law.[25] The quantitative expansion of law schools, including a fifteen-fold increase in the number of full-time academic law teachers since 1945,[26] has been matched by an impressive growth in the range and depth of legal scholarship, and in the significant assistance which this scholarship gives to law reform, judicial decisions, and public understanding of the law. The high teaching standards in law schools are reflected in the results of the first quality assessment by the Higher Education Funding Council for England (HEFCE) carried out between May 1993 and February 1994.[27] Of the 67 major providers of law degrees in England, 19 institutions or approximately 28 per cent were assessed as providing excellent legal education, with the vast majority of the remainder considered to be achieving their aims and objectives and offering the students a rewarding and satisfactory experience. All five institutions providing law in Wales were found to be satisfactory by the Higher Education Funding Council for Wales (HEFCW).

2.9 The *strengths* which we see in current law degree courses are that they provide a firm basis for pluralism, variety, flexibility and diversity, as well as intellectual rigour through the teaching of core and contextual knowledge. There are interesting examples of structural variety, such as the Northumbria exempting degree which integrates the academic and vocational stages, the long-established external LL.B of the University of London, and the part-time degree at some 17 universities. There are sandwich law degrees at four universities. As an example, the four-year course at Brunel University enables students to spend two semesters, each of about 20 weeks, on work placements in legal contexts, which

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23 P. Birks chap. 3 in *Reviewing Legal Education*, (ed. Birks), Oxford UP, 1994, p.20.
24 R. Stevens, in Birks (ed.), op.cit., p.89.
25 Twining, op. cit., pp.40-1.
26 Op. cit., p.39.
27 HEFCE, Subject Overview Report Q0 1/94, Quality Assessment of Law 1993-94.

may lead to a reduction of up to six months in the time which they have to spend as trainee solicitors. Developments such as these may provide models for the multi-entry and multi-exit system which we favour.

2.10 There are also considerable strengths in the present Legal Practice Course (LPC) and the Bar Vocational Course (BVC). These courses represent a considerable improvement on their predecessors, the Law Society Finals and the Bar Finals, which relied heavily on rote learning and memory of substantive legal rules, with relatively little attention devoted to skills. Research by Shapland and Sorsby[28] indicates that the BVC is seen as a success by its first group of students, providing them with the skills they need in pupillage and the early period as junior tenants in chambers. Evaluative research is not yet available on the LPC.[29] The strengths which we see in the present LPC and BVC are the ways in which they have integrated intellectual and practical skills, enabling students to apply knowledge of substantive law and professional ethics to the solution of clients' problems in a variety of contexts, such as negotiation and dispute resolution. Active teaching methods are used, a far cry from the passive inculcation of "knowledge" in the older vocational courses. The experience and expertise which has been built up by providers of the BVC and LPC provides a basis for further development and innovation in the teaching of professional skills and values.

2.11 The serious structural *weaknesses* of the present arrangements are the following:

1. the artificially rigid division between the academic and professional stages of legal education; and

2. the perception by some of the academic stage as a preparation primarily for vocational training as a barrister or solicitor.

Legal education and training are not treated as a continuum. The rigid division between the stages has had a number of adverse consequences. One of these is the underfunding of students on the vocational courses, which we deal with in the next Chapter. Here some other consequences may be noted. First, the division has encouraged the separation between theory and practice, between "academic" knowledge and "professional" expertise, and between the study of substantive and adjectival law. This has resulted in the relative neglect by law schools of subjects such as civil and criminal procedure and professional ethics, and in some academic courses being regarded as too far removed from reality. Secondly, it has deprived the legal profession of the contribution of a wider range of academic lawyers to the development of subjects which are thought to be appropriate only for the vocational stage. The validation of the LPC and BVC in universities offers an opportunity to expand the academic contribution, but so long as these vocational courses are viewed as something quite distinct and separate from "academic" study of the law this contribution will be stultified. We recognise the danger, pointed out by Lord Hoffman, that "vocational training will, in the hands of the universities, become a battleground between the academics who regard it as an extension of the law degree and the skills trainers who try to equip the students for practice."[30] But we believe that there has been an unnecessary

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28 Joanna Shapland and Angela Sorsby, *Starting Practice: Work and Training at the Junior Bar*, Institute for the Study of the Legal Profession Sheffield University, 1995.

29 The Law Society is conducting a review of the LPC which is to be completed in 1997.

30 ACLEC, Review of Legal Education: Third Consultative Conference, 10 July 1995, p.3.

compartmentalisation of the "vocational" and the "academic" aspects of legal education. The legitimate tensions between academic lawyers and skills trainers can and should be the basis for creative partnership rather than a cause of hostility.

2.12 A third consequence of the current academic/vocational division is that it has led the professional bodies to see themselves as regulators of the law degree rather than facilitators and partners with the universities, and for their part the university law schools have been suspicious and resentful of the professional bodies. We have already referred (para. 2.6) to the adverse effects of prescription of the content of law degrees, including uniformity, and the inhibition of innovation and diversification. Moreover, as the emphasis in vocational courses has increasingly focused on skills training, more areas of substantive law have been loaded on to the prescribed "core" subjects, so as to ensure that those entering the vocational courses are sufficiently prepared in these areas of knowledge. The Ormrod Report suggested five "core" subjects, the professional bodies added a sixth, and a seventh "foundation of legal knowledge" (as the "core" is now named) was added from 1995. There are many dangers in forcing the universities to teach an expanding prescribed core. These include the encouragement of superficial treatment of a wide range of topics rather than study in depth which, we have already pointed out, is essential to intellectual rigour. University law schools are well able to devise foundational courses and to build upon them by a range of optional courses, without detailed prescription of content by the professional bodies.

2.13 The second major weakness of the present arrangements is that the academic stage is seen primarily as a preparation for the vocational courses leading to qualification as a barrister or solicitor, with no element of common professional education after the law degree or conversion course. This, too, has a number of adverse consequences. First, it leads to unrealistic expectations by many of those entering upon law degree courses or the conversion course that they will, after passing their academic and vocational examinations, be able to enter pupillage or a traineeship contract and ultimately be able to practise as barristers or solicitors. Secondly, law students are forced to make premature career choices being under pressure to decide as early as the end of the first year of their degree courses whether or not they wish to seek enrolment on the LPC or BVC, and before the start of their third year whether or not to enter the competition for training contracts. This concentration on narrow and early career choices is bad for students, bad for the professions who may spend time and effort selecting and training those who drop-out, having not been mature enough to make informed choices, and not in the public interest because of the inefficient use of university and vocational courses. It runs counter to several of the general requirements which we have postulated (para. 2.2), in particular multiple exit points and legal education as an all-round preparation for a wide range of occupational destinations.

D. Some alternative models

2.14 In seeking an alternative model to the present rigid division between academic and vocational stages and the narrow range of career choices which it fosters, we have examined the variations between the arrangements for legal education and training in England and Wales, and those in our sister United Kingdom jurisdictions, Scotland and Northern Ireland, and in other Member States of the European Union, in particular France, Germany and the Netherlands. We have also taken note of recent developments in legal education in the United States and some Canadian jurisdictions, Australia, and Japan.

Members of the Committee have made study visits to New York and Leiden. While there is much of interest in the patterns of legal education and training in these countries, we have been conscious of the dangers of superficial comparison and of attempting to transplant foreign models. Legal education transmits national cultures and reflects the organisation of general education and of the legal professions in each country. The main value of comparisons is that they enable us to see more clearly the strengths and weaknesses of our arrangements as they operate within our own national context. Similarly, we have considered the organisation of education in some other learned professions in England and Wales. The main characteristic of the organisation of professional education is its sheer variety. There is no general pattern against which legal education can be assessed. But at the risk of over-simplification, three broad models can be identified.

2.15 The first is *integrated education and training.* A fully integrated approach results in a combination of initial education and vocational training. Medicine, veterinary science, nursing, and (more debatably) architecture are examples of this approach. No attempt is made to distinguish between education and training: even demarcations in medicine between clinical and pre-clinical phases, or in nursing between nursing, studying in the classroom and working in the wards have been eroded. The most important advantage of "integrated learning" is that professional skills and values are studied within a substantive and transactional context.

2.16 The four-year "exempting" law degree at the University of Northumbria is, to date, the only example in the field of legal education and training in England which has moved partially towards this model. The Northumbria course combines both academic and vocational stages. This allows for progressive learning of analytical and conceptual understanding of both substantive law and procedure, and the acquisition of basic professional skills and values. For example, in the first year of the course students study Criminal Law in conjunction with litigation and evidence. Thus the student's introduction to the criminal justice system is not confined to learning substantive rules of Criminal Law in isolation. Instead these rules are learned together with procedure and evidence. The same integrative approach is continued in the second year with the study of Tort, Litigation and Evidence. An example from another jurisdiction is the five-year integrated degree at Griffith Law School in Queensland.[31] This degree attempts to reconcile criticisms of Australian legal education by the Pearce Report (1987)[32] as not being sufficiently critical and theoretical, with the demands by the legal profession for more and better teaching of practical skills.

2.17 The second model is *postgraduate professional education and training.* After receiving undergraduate degrees in mainstream academic disciplines, prospective entrants follow intensive graduate courses. There is almost no coordination between initial education and vocational education and training. In England teaching and social work are examples of this model, although it is possible to study both at undergraduate level. The most important advantages of this model are that students are more mature and knowledgeable and have a better general liberal education when they come to professional education and to the choice of careers. We received a great deal of anecdotal evidence from solicitors and vocational trainers that those who come to legal practice through the conversion course (i.e. who

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31 See further on Australia, Appendix H. We are grateful to Professor Charles Sampford for written and oral evidence to us on these matters.

32 The Pearce Committee, chaired by Professor Dennis Pearce of the Australian National University, examined the then 12 university-based law schools.

come to law only as postgraduates) tend to be broader and more flexible in their approach to problem solving than those who have done only a first degree in law. Experience has shown that those who have had an opportunity to study some other liberal discipline before studying law, make a valuable contribution bringing in skills and knowledge which the legal profession needs, such as languages, economics, natural sciences, medicine and so on.

2.18 American legal education offers a foreign model of this kind.[33] In nearly all states, applicants for admission to the Bar must normally have graduated from a three-year *postgraduate* law degree programme at a law school accredited by the American Bar Association (ABA), following a college degree usually not in law, lasting for two to four years. One of the striking features of many American law schools is the number and range of interdisciplinary courses which they offer. For example, there are courses in many law schools in which the concepts used by economists are used to analyse laws and their effects, courses in which developments in philosophy are related to questions of legal ethics, and courses in which the lessons of social psychology are applied to appropriate dispute resolution. Clinical legal studies, where students engage in actual cases under supervision, feature in the programmes of many law schools. There are also numerous courses with a field work component, and there is considerable integration of the study of substantive law and professional skills. Courses of these kinds are facilitated by the postgraduate nature of legal study.

2.19 The third model is *apprenticeship*. This originated in a clear separation between the processes of higher education and professional qualification. It was not necessary to be a graduate to acquire professional status. Prospective entrants were able to qualify independently by passing, or being exempted from, examinations set by professional bodies, although generally they attended preparatory courses provided by higher education institutions, often on a part-time basis while employed as trainees. This was once the primary route to qualification in the English legal profession, but now the two-year training contract for solicitors or one-year pupillage for barristers comes only after the postgraduate LPC or BVC. Apprenticeship is still essentially the route to qualification in accountancy, although undergraduate courses are also offered. However, the apprenticeship model has been modified in two ways. First, it has moved closer to the postgraduate model because many professions, in practice if not by rule, require new entrants to be graduates. Secondly, there has been a drift towards the integrated approach. Most engineering students now qualify by taking degree courses that confer exemption from taking additional examinations. The development of the MEng and the shifting balance of power between individual engineering institutions and the Engineering Council has moved engineering even closer to the integrated model.

2.20 Legal education in England and Wales at present has elements of all three models. We have argued that legal education and training should be regarded as a continuum with an element of common professional education. A number of universities offer law degrees and LPCs, and in the future may be validated to provide the BVC. So legal education is already taking on some of the characteristics of the integrated model. It will become possible to redistribute elements between the academic and vocational stages, as has happened in medicine, although this will be difficult so long as students can pursue their BVC/LPC at a

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33 See generally, Appendix H. Four states permit law office study as a substitute and three permit a combination of law office and law school study for those who wish it: see MacCrate Report (1992), p.108.

different institution from the academic stage. Other universities may be encouraged to follow the Northumbria model. This implies that more discretion will have to be left to the teaching institutions. On the other hand, if, as we have also suggested, law degrees should provide an academic platform for a wider range of legal and non-legal careers, the second (postgraduate) model needs to be emphasised. It is at the postgraduate stage that common professional education would take place accompanied or followed by vocational education for specific careers, including but not limited to bar-specific and solicitor-specific training. This too, implies greater autonomy for institutions in devising either integrated four-year undergraduate courses or undergraduate degrees followed by common professional education and career-specific training. Finally, the "apprenticeship" model (already a misnomer for what occurs in trainee contracts/pupillage) is likely to change as the integration of skills and knowledge improves in degree and post-degree courses.

E. Our recommendations in outline

2.21 In order to meet the requirements and deliver the general aims we have suggested (paras. 2.2 and 2.4), our preferred model is one which encourages *integration* of legal education and training, in a way which breaks away from the traditional linear model of academic and vocational stages towards qualification as a barrister or solicitor. A series of exit points must exist, each with an appropriate qualification, leading to a variety of careers not limited to the present narrow choices. The starting point is that law must continue to be a *graduate profession.* This would normally be by way of a *qualifying law degree* although, consistent with our philosophy of wide access, a route must also exist for mature candidates with appropriate experience (e.g. as Fellows of the Institute of Legal Executives) to qualify as lawyers, and for non-law graduates to convert to law after an appropriate conversion course, leading to a postgraduate *law degree* or a *Diploma in Law.* In Chapter 4 we make detailed recommendations for improving the content, length and structure of law degrees and conversion courses.

2.22 Those who have a qualifying law degree or the conversion degree or diploma, should be able to build on these qualifications by acquiring additional knowledge and skills relevant to all kinds of lawyering. The Committee believes that there should be a period of *Common Professional Legal Studies (CPLS)* as a preparation for a wide range of occupational destinations, including those of solicitors and barristers. This would recognise the fact that many new lawyers at present change their work setting once or more in their first five years in practice, and that this is a trend likely to continue throughout their working lives for the reasons explained in Chapter 1. Completion of the CPLS course would lead to a distinct qualification which we have provisionally named a *Licentiate in Professional Legal Studies (Lic.PLS)*. This qualification will provide a new exit point. We envisage that the Licentiate stage will normally be offered as a self-contained course lasting for 15-18 weeks. A four year qualifying law degree which incorporates the requirements for a Licentiate, would confer exemption from this stage. Such a degree might also carry exemption from the BVC or LPC if it included the requirements for those courses. A *Master's degree in Professional Legal Studies (MPLS)*, which incorporates the Licentiate stage requirements and the BVC or LPC requirements, would carry similar exemptions. The details are discussed in Chapter 5.

2.23 After the Licentiate stage, we envisage three further modules of education and training for those wishing to reach the *point of initial qualification as solicitors or barristers*:

- The Legal Practice Course (LPC) for those intending to become solicitors or Bar Vocational Course (BVC) for intending barristers. The period of these courses would be reduced to 15-18 weeks in order to take account of the period spent on the Licentiate stage;

- A first (elective) module of in-service training, which we term the general training agreement (GTA), for six months in any approved practice setting where a significant part of the work has a legal content, including but not limited to a solicitor's office or barristers' chambers;

- A second module of in-service training which would be either a training contract with a solicitor for an intending solicitor or a pupillage with a barrister in independent practice for an intending barrister. We recommend that the Law Society should consider a period of not more than 12 months for this second period, which we term the solicitor's training contract (STC), and possibly as short as six months. When this is added to the first module (GTA) it would mean that the minimum overall period to the point of initial qualification as a solicitor would be between five years six months and five years (between six years, six months and six years in the case of a non-law graduate). The second module for intending barristers, which we term the pupillage with a barrister in independent practice would last for six months. When this is added to the first module (GTA), the minimum period before obtaining a final practising certificate as a barrister would remain unchanged from the present five years (six years for non-law graduates).

2.24 We envisage that the LPC or BVC could be taken either before or after the first (elective) period of in-service training (GTA). The advantage of such in-service training before commencing the vocational course would be that the student would be able to postpone any career choice until after a spell of work experience, and would come to the course with a better appreciation of at least one aspect of the world of legal work. *Initial qualification* as a *solicitor* would then be possible after completion of the LPC and of the STC, and would include satisfactory attendance at a *Professional Skills Course (PSC*). A *final practising certificate as a barrister*[34] would be possible after completion of the BVC and of the period of pupillage supervised by a barrister, and would include attendance at an *Advanced Advocacy course* and other practical classes. The details are discussed in Chapter 6.

2.25 We must emphasise that these recommendations relate only to education and training up to the point of initial qualification. *Continuing professional development* is an essential part of the continuum of legal education and training and in future its importance will grow as the foundation for specialised legal practice. This will be the subject of later consultation and report (see Introduction).

2.26 The following flow charts illustrate our recommendations in outline. The illustration of the route for Fellows of the Institute of Legal Executives is provisional and will be considered further within the Advisory Committee's developing review of the education and training of paralegals and legal executives.

[34] This is distinct from the time of call to the Bar, on which the Committee expresses no view at present.

3.

ACCESS AND FUNDING

A. Access

3.1 The Committee is required "to have regard to the desirability of equality of opportunity between persons seeking to practise any profession, pursue any career or take up any employment, in connection with the provision of legal services."[35] Our proposals for multiple routes of entry into the legal profession, as well as multiple exit points, are designed to meet this objective. The threats to equality of opportunity at the present time arise in three main ways: first, from proposals to place arbitrary limits on the numbers of those training to become solicitors or barristers; secondly, from the steady decline in financial support for students, which deters those from low- and middle-income homes from entering the profession or causes them to drop out; thirdly, from the contraction in the *per capita* funding of higher and professional education. This particularly affects the learning experience of students from disadvantaged educational backgrounds. These developments endanger the many advances which have been made over the past 25 years to broaden the social base of the legal profession. We take it to be self-evident that equality of opportunity in legal education and training is essential if the legal profession is to reflect the social and cultural diversity of our people and to serve their needs.

3.2 The number of entrants to legal education has increased dramatically over the 25 years since the Ormrod Report. (See Table 1, Appendix F.) In 1993 there were 9,172 acceptances for university first law degree courses compared with just 1,778 entering university law degree courses, and 318 taking CNAA (polytechnic) law degrees in 1970.[36] There are now 75 universities and colleges of higher education in England and Wales offering first law degrees, compared with 19 universities and seven polytechnics in 1970. The number of law graduates (i.e. with single honours in law) in 1994 was 6,499, itself an increase of 9% over the previous year. To this must be added those graduates with mixed and joint degrees including law, many of whom intend to proceed to the vocational stage. In 1993/94 there were in addition a total of 3,441 non-law graduates enrolled on the CPE, progressing to the vocational stage through conversion courses. These numbers reflect the general expansion of higher education. There has been a marked increase in student participation rates during the past decade. Nearly one in three young people now enter full-time higher education compared with one in eight in 1979.

3.3 The Committee provided financial assistance to support a research project on access to and participation in undergraduate legal education.[37] This is an issue which has received relatively little attention in academic literature and in the light of the project report we hope that further work will be undertaken. The findings of the project demonstrate the gender revolution. The proportion of law students who are women rose to 55.1% in 1994/95. There is now also significant representation of ethnic minority students following law

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35 Courts and Legal Services Act 1990, s.20(3)(b).

36 Ormrod Report, pp.106-107.

37 V. Bermingham, C. Hall & J. Webb, *Access to and Participation in Undergraduate Legal Education*, Faculty of Law Working Paper No.2, University of the West of England, 1996.

courses, although the proportion of Afro-Caribbean students in law schools appears to be below their representation in the undergraduate population as a whole. Both women and ethnic minorities are under-represented in the "old" university law schools. At present four-fifths of law undergraduates are drawn from the traditional GCE A-level route. Ethnic minority applicants, particularly black students, appear to face greater difficulty than white applicants in obtaining places through this route. They are more likely to be accepted by a "new" (i.e. former polytechnic) university law school than by an "old" one. This, in turn, places them at a disadvantage in obtaining employment as solicitors. The composition of law schools by social class appears to have remained relatively constant, continuing to draw markedly on students from professional or managerial backgrounds. In this respect, law schools do not seem to have kept pace with the general developments in higher education. The Student Income and Expenditure Survey (1992-93) indicated that for the first time over half the new entrants to higher education were from lower income groups.[38]

3.4 The project pointed up some weaknesses in the equal opportunity policies of universities. We are concerned in particular at the absence in some institutions of transparent admissions policies using objective criteria, and the lack of effective training of admissions staff and monitoring of admissions and subsequent student progress. One important route for disadvantaged students is through Access courses. These are approved for funding purposes by the Secretary of State for Education and Employment as specific preparation for higher education. Research commissioned by the Committee points up the significance of these Access courses as an entry route for many black and other ethnic minority students, and for mature students.[39] In 1994/95, 30% of black students entered law school through an Access course, as against less than 10% of white and Asian students. Access and participation has been affected in many other ways, not least by the diversification of modes of study available to students. The growth of part-time courses and distance learning in higher education has extended considerably the accessibility of provision. General National Vocational Qualifications (GNVQs) are also beginning to have a considerable impact on post-16 education. The aim of GNVQs is to raise the status of vocational qualifications alongside the traditional General Certificate of Secondary Education (GCSE) and the General Certificate of Education Advanced Level (GCE A-level) qualifications. The Advanced GNVQ is designed to be of comparable standard to that set by GCE A-levels. This may offer an important route into higher education as an alternative to A-levels.

3.5 At the vocational stage significant problems have arisen affecting access both to courses of vocational education and subsequent practical training. In the 1980s there was perceived to be a shortage of trainees with many solicitors' firms having fewer applicants than there were training places or jobs available. In the 1990s, however, a growing number of students who have completed the Legal Practice Course (LPC) have been unable to obtain training contracts. Between 1991-94 nearly 4,000 people fell into this category. For four years there was an upward trend. In the first year of the new LPC (1993-94), courses were oversubscribed with 10,729 applications for full-time places. Enrolment of full-time students was 5,792. In the second year (1994/95), the number of full-time applications fell to 9,846 but the number of filled full-time places was 6,539. The margin of "excess production" stood at 19% for those who completed the old Law Society's Finals in 1991,

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38 Department for Education and Employment, *The English Education System: A Briefing Paper,* November 1995.

39 V. Bermingham, C. Hall, J. Webb, op. cit.

but the excess from the LPC was 34% in 1994. However, the figures for the LPC in 1995/96 show that the upward trend had been halted. Applications fell to 8,959. The number of full-time places available grew to 6,922 but only 6,390 full-time students commenced the course. Taking into account part-time places as well, 852 places remained unfilled on the LPC. The number of applications has again fallen, to 7,595 candidates wishing to commence the full-time LPC in September 1996. If, as in 1995, only 71% of these candidates take up places, then 5,400 students will commence the course in 1996. The pass rate fell from 93% (taking resits into account) in 1994 to 82% in 1995. If 82% pass in 1997, 4,320 will be available to enter training contracts. At the same time, the number of training contracts has been rising steadily over the past four years. It therefore seems possible that the number of students completing the LPC will only marginally exceed the number of training contracts available.

3.6 In the case of the Bar, Table 5 in Appendix F shows that the number applying for the ICSL course more than doubled between 1989 and 1994, from 1,070 to 2,400. In 1989, there were 845 enrolments, with 644 successful completions of the course, and in 1994 there were 1,027 enrolments, with 883 completing the course. Of those completing the course in 1994 only 657 gained a pupillage for a first six months during the year from October 1994 (Table 6), and just over 500 tenancies are available each year. The number of applicants fell to 1,456 in 1995, and is 1,549 to commence the course in 1996. The validation of the BVC at a number of institutions for 1997 may lead to an increase in the number of those seeking pupillages and tenancies.

3.7 The Law Society Research Study[40] on entry into the legal profession provides valuable insights into access at the vocational stage. The key conclusion of the third survey is that "progress along the pathway of legal training does not simply depend upon academic performance. Financial pressures prevent some aspiring lawyers from pursuing their legal training and there is evidence that certain groups are disadvantaged when they seek to enter the profession".[41] Those from less traditional backgrounds, or the less prestigious institutions, are less likely to obtain training contracts. The survey suggested that ethnic minority applicants were finding it particularly difficult to gain LPC places and training contracts. There was no evidence of a similar disproportionate difficulty facing ethnic minority applicants in respect of BVC places.

3.8 It is against this background that we have to consider proposals to limit the numbers of those on LPC and BVC, and the suggestion that obtaining a training contract or pupillage should be a pre-condition for entry upon either of these courses. No one has advocated to us that there should be any attempt to limit the numbers of those taking law degrees. Indeed, even if it were possible to do so (and this is a matter for the Funding Councils and the universities), such a limitation would be entirely contrary to our vision of the university law degree as a liberal education which should prepare students for a wide variety of occupations. We, therefore, confine ourselves to the LPC and BVC.

3.9 The Committee does not feel able to recommend that there should be any arbitrary limitations on the numbers to be set for entry to the profession; nor could we support restrictions on the availability of places on the LPC and BVC unrelated to educational or

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40 M. Shiner and T. Newburn, Policy Studies Institute, *"Entry into the Legal Profession The Law Student Cohort Study Year 3"*; The Law Society 1995.

41 Op. cit., p.xii.

resource considerations. It has been pointed out to us that some possible developments, such as the validation of the BVC at a number of institutions, and our proposals for common professional legal studies, leading to a new Licentiate, and the exempting law degree and Masters degree in Professional Legal Studies (Chapter 5), could be a source of increased numbers seeking entry to the profession. It is true that demand for places on courses leading to certification as a Licentiate is potentially much greater than demand for the LPC and BVC in view of the alternative vocational routes to which that qualification could lead. But the availability of the Licentiate stage as a new exit point could, in our view, relieve pressure on the LPC and BVC most particularly because of the scope it allows for students to retain real options about ultimate career choice until a later stage than is currently the case. In this connection we believe that one of the reasons for increased demand for the BVC from 1993 was the lack of availability of places on the LPC. The Licentiate stage should act as an important filter, giving new outlets to law graduates and at the same time moderating the numbers going on to the LPC and BVC.

3.10 The Committee has not found evidence of successful models of planning and control of entry into professions in this country or internationally. The current decline in the number of applications for the LPC and BVC indicates that, over time, the market can be relied upon to respond to imbalances in the supply and demand for new entrants. Restrictions on numbers would require bureaucratic machinery. We are not satisfied that workable arrangements are possible. Not only is it wrong in principle for professional bodies which have a monopoly over entry to impose restrictions on the right to train and to work, but any such restrictions are likely to have an adverse and unjustifiably discriminatory effect on entry, particularly by those from disadvantaged educational and social backgrounds.

3.11 What is needed to help the market for trainees is that students should have the benefit of the fullest and clearest information about the routes to the professions, the likely financial costs, and the experience of previous student cohorts. They should have a flexible framework for legal education providing multiple entry points and different exit points as they progress and perhaps reassess their position. At all points they should have the benefit of *informed* choice. This should not be left to some undetermined point during their initial education in law. Nor should it be restricted to information about becoming a solicitor or barrister. If the first degree in law is to be recognised as a liberal academic experience then it should be projected as such prior to admission and throughout their undergraduate experience. It is also essential that steps be taken by the Higher Education Statistics Agency, the universities and other institutions, to make up-to-date and comprehensive statistical data available. In this respect we acknowledge the work being done by the Law Society through its Research and Policy Planning Unit, and also by academic researchers.

3.12 **We therefore recommend that:**

1. **No restrictions should be placed on the numbers seeking entry to the profession either by arbitrary restrictions on the number of places available on validated vocational courses, unrelated to the educational or resource considerations, or by externally imposed limitations on the number of training contracts or pupillages to be made available by firms and chambers;**

2. **The professional bodies, law schools, and public agencies should make every effort to improve the collection, coordination and publication of data, and provide realistic information for students, based on the most up-to-date data,**

indicating inter alia the likely availability of training contracts and pupillages and the postgraduate/employment experience of recent graduates;

3. **Law schools should review their equal opportunities policies to ensure that they have transparent admissions policies, using objective criteria, and that they train admissions staff and monitor admissions;**

4. **Law schools should make greater use of Access schemes and routes of entry other than GCE A-levels in order to make the social, ethnic and age distribution of law students more representative of society at large.**

B. Financial support for students

3.13 The availability of public funds and other sources of financial support for students has a major impact on access to legal education. The Ormrod Report considered the position affecting students at the vocational stage, but could see no way by which mandatory awards (covering tuition fees and a maintenance grant) could be secured for this stage. The Report recommended simply that local education authorities should be encouraged to be generous in the exercise of their discretionary powers to make student awards to intending lawyers. The Committee did not believe that primary legislation to extend mandatory awards was a realistic expectation in view of the "far-reaching and controversial issues of policy extending well beyond the legal profession."[42] The Committee favoured merging the vocational courses into the higher education structure so as to overcome this problem. Whether or not this was ever a realistic prospect, it did not happen.

3.14 The Royal Commission on Legal Services (the Benson Report), reporting some eight years later,[43] recommended that local education authorities should be encouraged to provide discretionary awards for non-law graduates in their law studies at the academic stage and that awards at the vocational stage should be mandatory, including grants for the first six months of pupillage. It pointed out that providing for such a course of study did not simply confer benefit on the student. It also secured the future of a service essential to the public. The Commission acknowledged the low priority which might be attached to such change by Government.

3.15 In 1988, the Marre Report concluded that non-law graduates following the conversion courses should be eligible for mandatory awards, which should also be available for students at the vocational stage of training.[44] While recognising the prevailing climate, the Committee saw non-law graduates as a valuable addition to the pool of lawyers, while the public service aspect of the profession rehearsed by the Benson Report was repeated.

3.16 At present, provision for law students at the initial stage is determined by the Education Act 1962, the Education (Student Loans) Act 1990 and related Regulations. Students on designated courses (which include first law degrees) are eligible for an award (administered by the student's home local education authority (LEA)) and a loan (administered by the Student Loans Company). They may apply also for financial assistance from Access Funds administered by higher education institutions. A summary of the financial support available

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[42] Op. cit., p.72.
[43] Report of the Royal Commission on Legal Services Cmnd. 7648, 1979 p.656.
[44] Op. cit., p.120.

for students is set out at Appendix G including data on the maximum levels of grant and loan available since 1990.

3.17 Non-law graduates following a law degree or a conversion course are not eligible for mandatory awards and are subject to discretionary awards policies of their LEA. Similarly students following the LPC or BVC have no eligibility for mandatory awards. They too can apply to LEAs for a discretionary award (but see para. 3.22 below). They are also able to apply for Career Development Loans and for grants from Training and Enterprise Councils and charitable trusts. Details of these provisions are set out in Appendix G. The terms of these loans and grants are limited and we understand that the Law Society is trying to improve the Career Development Loan arrangements. Postgraduate students in higher education establishments are eligible to apply to institutionally based Access Funds but are not eligible to apply to the Student Loans Company.

3.18 At present, individuals funding their own training may claim Vocational Training Relief (VTR) if their course is one capable of leading to a National Vocational Qualification (NVQ). Basic rate tax relief is given at source. The training provider accepts a reduced fee, and reclaims the tax relief directly from the Inland Revenue. Thus VTR can benefit those not paying tax, such as some unemployed persons. The trainee can claim any higher rate relief directly from his or her tax office. From May 1996 a qualifying course of vocational training will also include a course which is full time, lasts more than four weeks but no more than a year, and is wholly aimed at learning or practising knowledge or skills for gainful employment provided the trainee is 30 or over. While welcoming this extension, we would point out that the age restriction excludes most full-time students. The provision could very usefully be extended also to part-time students following postgraduate vocational courses.

3.19 Four-year exempting degrees of the kind offered at Northumbria, which includes a legal practice element, are automatically designated under the Education (Mandatory Awards) Regulations provided that such degrees lead to a *first* degree. The Department for Education informed the Committee in 1993 that it was concerned at the trend towards longer first degree courses, on the grounds that this reduces the number of people who can enter higher education within the resources available. The Department does not welcome the development of four-year degree courses which have the effect of replacing private funding for the fourth year with public funding. It is highly likely, if the trend to longer first degree courses were to continue, or if a four-year law degree were made compulsory for those intending to become solicitors or barristers, that the Government would seek to amend the Regulations to limit the availability of mandatory awards.

3.20 Students use a variety of other sources of funding including parental contributions, earnings from employment, loans from banks, and building societies, and sponsorships by private and commercial organisations. Successive surveys have illustrated the pressures of indebtedness on students as they progress through their legal education and training. It may be argued that law students are no different in this respect from any other group. Accumulated indebtedness however is an added consideration for those students who aspire to professional training where the lack of personal resources may be more acute than during undergraduate studies. Tuition fees alone for the LPC and BVC at present range up to £5,200.

3.21 In its survey of student financial support in 1995 the Committee of Vice-Chancellors and

Principals of the Universities of the United Kingdom (CVCP) found that 60% of students leaving their courses did so for non-academic reasons. Some 40% of them were students over the age of 21 who comprise a third of the total full-time undergraduates. As well as being over-represented among premature leavers, mature students also had a disproportionately high dependence on Access Funds designed to help the most needy students.

3.22 The absence of a coherent system for student support at the vocational stage, and the financial implications, have been reported as the major cause for students not proceeding even to apply for the LPC or BVC.[45] Both the Council for Legal Education and the College of Law have conducted annual surveys of the availability of grants at the vocational stage. The dramatic reduction in the availability of discretionary awards by local education authorities is well documented. A Law Society survey in 1994/95 found only 34% of LEAs offering awards for graduate LPC entrants. For the Bar Vocational Course the percentage of students receiving a LEA grant towards tuition fees declined from 67% in 1989/90 to 17.2% in 1994/95. The percentage receiving full fees fell from 47% to 5.3%.

3.23 The Government intends to enable private financial institutions to offer student loans on similar terms to those offered by the Student Loans Company. However, the current Education (Student Loans) Bill does not address the main criticisms which have been made of the scheme, such as the exclusion of postgraduates, part-time students and students aged 50 or more, while the extension of the maximum loan has been at the expense of the student grant (Appendix G). The scheme is income-contingent, but students are expected to start repayments from the April following graduation (provided their income is at least 85% of average national earnings) with fixed monthly instalments normally over five years. The scheme is subsidised so that in real terms it is zero interest rated but the repayment burden is significant at the start of a graduate's career.

3.24 We are aware of the substantial commitment and financial support for students by the profession. The provision of scholarships by the Inns of Court and some sets of barristers' chambers, and sponsorship of trainees by solicitors' firms during their LPC are clear examples. Firms provide minimum trainee salaries, (currently recommended by the Law Society at £11,000 per annum) often exceeded in money or in kind by firms perceiving an acutely competitive situation for the most able students. There is a substantial investment, often with a benefit beyond the individual firm, by the in-house development of trainees. The Bar Council adopted the recommendations of the Phillips Working Party on Funding for Entrants to the Bar that all funded pupillages should attract a minimum level of £3000 for each six month set. However, unfunded pupillages were not prohibited and as a result a recent survey showed that 53% of pupillages were funded at or below £3000. The Bar is presently reviewing its arrangements, fully aware of the predicament facing students progressing from the BVC.

3.25 Our consultation paper on the vocational stage invited views on methods of funding. Our respondents consistently identified funding as a major problem. Apart from concerns about discretionary grants and loans, the need for support from the profession itself was stressed. Among solicitors, it is the large firms which bear the main cost of funding and training entrants to the profession. We were told that this is leading to an unsatisfactory and inequitable position from many points of view. Many High Street firms have reduced the

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[45] Shiner and Newburn Op. cit.

number of their trainees or have stopped taking trainees entirely. As a result, students, some of whom are unsuited to or have no long-term interest in commercial work, of necessity gravitate towards City practices simply because traineeships and related funding are available. Similar inefficiencies were referred to in respect of the Bar. Respondents saw no realistic prospect of achieving mandatory student grants, local authority partnership funding, or national means-tested scholarships. The main types of funding which respondents thought should be examined more closely included loan schemes, and sponsorship arrangements by the profession. We have noted that the Law Society is carrying out its own review of funding issues and we look forward to advising and assisting the Society in this respect.

3.26 The professional bodies and Government may be helped by an analytical paper, commissioned by the Committee, considering the advantages and disadvantages of a range of funding models for legal education.[46] The project reviewed seven funding models tested against the following objectives:

- alleviate current financial hardships experienced by law students and trainees;
- improve the representativeness of the profession;
- facilitate an improved match between the structure of vocational training and its cost;
- ensure more equitable funding for both full- and part-time students;
- enhance the quality of legal education and legal services for students, educators, employers, the profession, and ultimately, for clients.

The models were put forward as possible ways to support students through their studies. In effect they correspond closely to schemes reviewed by the CVCP[47] when examining options for generating additional income to support higher education funding generally. These include use of the tax system, a range of loan schemes, a form of graduate tax, the development of a voucher system, top-up fees and employer's training levies or user charges. Consideration of these wider questions of financing of higher and professional education in general falls beyond the remit of the Committee, and it would be inappropriate for us to anticipate the findings of the Committee of Inquiry into Higher Education, chaired by Sir Ron Dearing, set up by the Secretary of State in February 1996 to review these and related issues. We must, however, emphasise the point made by Professor Twining that "even if a substantial financial contribution is made by the legal profession towards the cost of legal education and training, whether by levy or otherwise, it is extremely unlikely that this will be sufficient to finance a large-scale, good quality, full-time system" of professional education and training.[48]

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46 M. Morrison, R. G. Burgess and S. Band; *Funding Legal Education*; Centre for Educational Development, Appraisal and Research, University of Warwick, December 1995.

47 *CVCP Briefing Note Series*: Funding Higher Education and main options for extra resources, September 1995.

48 W. Twining The Benson Report and Legal Education: A Personal View at 186 in *Law in the Balance - Legal Services in the 80s*, P. A. Thomas (ed.), Martin Robertson, Oxford 1982.

3.27 Scholarships and income-contingent loan schemes, supported by the profession, do have a role to play. We observe that in the United States scholarships are administered along with other loan schemes by the university law schools rather than the profession (in some cases with a loan-forgiveness programme in respect of those students who enter public service). A similar pattern could be developed in this country. The Committee is concerned that a great deal of the funding provided by the profession in England and Wales may in practice be going to those who need it least. A review of current and prospective professional sponsorship could identify the scope for more extensive common funds along with agreed codes of conduct between firms in view of the competitive issues at stake. The establishment of such common funds need not impact on the competitive freedoms of firms to sponsor trainees throughout their training. A common fund could provide for the award of discrete means-tested trainee scholarships which might be to the benefit of a number of students. It might be possible also for the profession to commit financial support on a means-tested basis towards a loans scheme for students on the proposed Common Professional Legal Studies course (Chapter 5), the LPC and BVC. This would not preclude partnership funding of such a loan scheme with governmental as well as professional contributions.

3.28 In summary we believe that arrangements should be made which provide for an equitable distribution of costs between the individual student, the employer, the profession as a whole, and the public. This is most likely to be achieved by the development of income-contingent loan arrangements covering both tuition and maintenance at the vocational stage. It would in any case be appropriate to review existing contributions by the profession and, in the absence of income-contingent loan arrangements by government, investigate possible schemes for means-tested loans utilising private funding sources combined with some subsidy of interest payments by the profession. This would be supplemented by a scheme of means-tested scholarships.

3.29 **We recommend that:**

1. **In whatever form a new system for support for students emerges from the Committee of Inquiry into Higher Education provision should be made for students on conversion courses, on the proposed Common Professional Legal Studies course, the LPC and BVC;**

2. **A review should be undertaken by the professional bodies to investigate the extent and nature of professional sponsorship of students and educational institutions;**

3. **Any such review should consider inter alia means-tested income-contingent loans covering both tuition fees and maintenance, means-tested scholarships, and the possibility of a common professional fund administered through law schools.**

C. Institutional funding

3.30 The Government's general policies for higher education were set out in the 1991 White Paper "Higher Education: A New Framework". This proposed the removal of the division between the universities and the former polytechnics and colleges of higher education, and the creation of a single funding structure for England, Scotland and Wales. In England and

Wales this was implemented by the Further and Higher Education Act 1992. The new Higher Education Funding Councils for England (HEFCE) and for Wales (HEFCW) assumed responsibility for funding from 1 April 1993. The binary line between universities and the former polytechnics was removed. Prior to these changes universities had been funded through the Universities Funding Council (UFC) while polytechnics, following their removal from their maintaining LEA arrangements by the Education Reform Act 1988, were funded through the Polytechnics and Colleges Funding Council (PCFC).

3.31 At present, the funding of higher education institutions in the public sector comprises two distinct elements: block grant from the Higher Education Funding Councils and tuition fees. Independent institutions such as the College of Law and the Inns of Court School of Law do not receive block grant from the Funding Councils. They may be in receipt of income from public funds to the extent that the tuition fees of students are occasionally paid wholly or in part by a discretionary LEA award or grant by some other public body (e.g. a Training and Enterprise Council). The allocation of the block grant to law schools is a matter for each higher education institution to determine. The funding methodology adopted by the Funding Councils in determining block grant funding for teaching purposes is based on each institution receiving a core allocation reflecting historic funding levels subject to any required efficiencies being achieved. Over and above the core, margin funding provides for additional student numbers, the development of infrastructure and support for specific initiatives in teaching. Funding is allocated through formulae with reference to 11 broad academic subject categories. Law is in the social sciences category but is not separately identified.

3.32 Numbers of fundable students on roll are reported to the Funding Council by institutions in December each year. The Funding Council uses those numbers as the basis of the funding contract with each institution for the following year. Numbers are identified separately for a combined grouping of undergraduates with taught postgraduates, and for research postgraduates, each specifying numbers of full-time and of part-time students. Institutions are expected to recruit at least the numbers funded by the Funding Council in each broad category. Subject to some recent limitations, institutions have been free to recruit more students if they could fund them from tuition fee income or other sources. These arrangements apply to undergraduate law courses and to postgraduate courses including the LPC and, from September 1997, the BVC. As a result of the Chancellor's Autumn 1995 statement, universities will be under acute financial pressure in 1996-97 and for at least the following two years. They will be required to make significant efficiency gains, which will reduce available funding per student. Capital budgets are to be cut by 31% in 1996-97. It would not be an exaggeration to say that many universities, including law schools, are facing their most severe financial crisis since 1945. For this reason we welcome the appointment in February 1996 of a Committee of Inquiry into Higher Education, chaired by Sir Ron Dearing. This Committee is expected to report in Summer 1997, and its recommendations will be of crucial importance to legal education as well as to higher education in general.

3.33 In view of the rate of expansion of student numbers up to 1993/94 the Government announced a policy of consolidation under which controls on the growth of student numbers have been applied in order to limit public expenditure. This policy has reduced the amount of margin funding available (with core funding now representing some 97% of the total funds available for teaching in 1995-96), and has set upper limits on the number of mandatory awards holders who may be enrolled. In addition, tuition fees for undergraduate

courses have been reduced to remove incentives to recruit students who could be funded from the fee alone. (Institutions were compensated for the reduction in tuition fee income payable by LEAs through an equivalent increase in block grant by the Funding Councils.)

3.34 Institutions set their own fees for postgraduate courses, including the CPE and the LPC. Courses such as the LPC have been established with tuition fees which are assessed on the basis of the course being an economically viable provision. Tuition fees will therefore reflect at minimum the marginal costs of provision. The student numbers are incorporated in returns to the Funding Council but to the extent that they represent additional students there will be negligible evidence of change in the block grant provided to the institution because of the insignificance of margin funding. The funding model dampens any growth in full-time (and part-time) student numbers which is not supportable through an economically viable tuition fee.

3.35 HEFCE funding is separately identified for teaching and for research. Research funding is allocated in 72 units of assessment of which law is one. There are special research assessment exercises undertaken to determine the position every four years. An exercise is to be completed in 1996.

3.36 The operation of formula based block grant funding from the Funding Councils implies that the public funding of legal education could be improved generally if two conditions applied. First it would need to be argued successfully that higher education resources in general should be increased. Secondly at an institutional level that improvement in resourcing would need to be reflected in increased funding of the law school. The second condition would not follow automatically as each institution determines its own funding arrangements to utilise the block grant. Given the experience of higher education institutions over recent years and the immediate position, referred to above, we do not believe that additional resourcing of higher education in real terms is in prospect. Within an institution the case could be made to try to improve the funding of legal education as against other competing local claims on a limited block grant. The prospects for legal education would depend upon the strength of the case made within each institution to support particular patterns of resource allocation. Some universities adopt a transparent funding model, but others do not.

3.37 A research project on commercial sponsorship of legal education reported in 1991[49] that sponsorship not only improved resource availability but assisted in links with the profession, developing the profile and morale of the department and a law department's ability to recruit staff, especially in commercial areas. The project also found negative effects, concerned with the administrative burden and fears for departmental autonomy. The growth of commercial sponsorship has coincided with the Government's wishes to increase the role of the private sector in the funding of higher education. Its availability will be dependent upon a range of commercial considerations within the sponsoring organisation. A great deal of sponsorship is the result of arrangements between individual institutions and individual donors. There would be considerable benefits if collective arrangements, such as the City Solicitors Educational Trust, could become more extensively available.

3.38 In our view the following factors are distinctive to the funding of legal education within

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[49] S. Bright and M. Sunkin, *Commercial Sponsorship of Legal Education Research Working Papers*, Institute of Advanced Legal Studies, University of London, 1991.

higher education institutions, and should be taken into account by the Funding Councils, professional bodies and the institutions themselves:

- *The law library is a key resource.* It is central to the whole process of legal education and must not be neglected. Even relying on traditional library materials there is a significant and vital call on the funds available to the law school. The Committee was pleased to be closely associated with the major review undertaken by the Society of Public Teachers of Law to publish A *Library for the Modern Law School - a Statement of Standards for University Law Library Provision in England and Wales (1995).* The welfare of library resources is central to the achievement of the Committee's objectives, and more to the point, it is fundamental to the delivery of high quality teaching and learning in legal education;

- *Developments associated with active teaching methods are highly resource intensive.* The development of more interactive and skills based learning, the essential development of information technology systems in teaching and learning, and, in some law schools, the development of clinical methods all reinforce this claim. Those law schools providing the LPC and planning for the BVC are acutely aware of the cost of resource intensive teaching and learning. The development of computer assisted learning is relatively young, but the impetus which is being given by the work of the Law Course Consortium based at Warwick University and by other software and CD-ROM developments is sure to bring with it a serious call on available resources. These will extend beyond hardware and software requirements (and costs of upgrades) to appropriate accommodation and support staff. It is an area of development in which expert guidance is essential. In this respect we again draw attention to the Second BILETA Report on Information Technology (1996);

- *Staff of law schools require particular consideration.* They face a wide range of pressures, responding to new developments in teaching and assessment, to the new technologies, to the contraction of resources, and to change. Staff development is essential. We are conscious that the changes which we are recommending will increase these pressures, and believe that these must be met by planned provision for the support and development of law teachers, responding to both individual and institutional needs;

- The Committee recognises the importance of teaching staff being involved in *research and scholarly activity.* Such activities should be fostered. Teachers of law at undergraduate level and beyond must be enabled to continue to play a major role in analysing and explaining the law, in revealing its defects and in making proposals for its improvement. This work in published form benefits not only law students but also provides a valuable service for the legal profession and for society as a whole in terms both of understanding the law and its development. Moreover the general outcomes which the Committee believes that legal education should produce (Chapter 2) will not be achievable without research and scholarship on the part of teaching staff. Quite apart from this, the quality of learning is undoubtedly enhanced for students by close contact with those actively engaged in research and scholarship. Research and scholarly activity are not possible unless staff are given the necessary time, including regular periods of study leave, and supporting facilities;

- *Membership of the European Union*, and the consequent need to study the law of the EU and civil law systems (see Chapter 2), places a special demand on resources. There has been an encouraging development of law degrees providing for foreign law, including European languages, while Erasmus schemes and similar initiatives have provided positive beginnings to the kind of links with European law schools that need to be taken much further. These degree courses with options permitting a year or more to be spent abroad are demanding on staff time for appropriate liaison and support. We wish to see developments taking place which facilitate staff exchanges between law schools, as well as student exchanges.

3.39 **We recommend that:**

1. **The universities in utilising their block grants should take account of the distinctive features of legal education, in particular the minimum law library needs, information technology, clinical legal studies, active teaching methods, staff development, the need to undertake research and to have regular study leave, and the European dimension;**

2. **The Committee of Inquiry into Higher Education should take account of these distinctive features when considering a future funding model for universities;**

3. **The professional bodies should review their support for teaching institutions and seek to develop mechanisms for sponsorship and funding, which take account of these distinctive features.**

4.

THE QUALIFYING UNIVERSITY LAW DEGREE AND CONVERSION COURSES

4.1 Our starting point is that the law must essentially continue to be a graduate profession for the reasons discussed in Chapter 2. In this Chapter, we elaborate on our recommendations that:

1. Any degree which satisfies certain broad requirements should be accepted as a "qualifying law degree"; and

2. There should continue to be a route for non-law graduates through a conversion degree or Diploma in Law, replacing the present CPE.

The first recommendation assumes that the degree course has been assessed as satisfactory through recognised quality assessment mechanisms, a question which is discussed in Chapter 7. The proposed "exempting law degree", which integrates elements of university and professional training, and a Master's degree in Professional Legal Studies following a qualifying law degree, will be discussed in Chapter 5, in the context of common professional education.

A. Aims of university education[50] in law

4.2 The need to define a "qualifying law degree" arises because of the responsibility of the professional bodies to ensure that those who seek admission have had a good general education in the discipline of law. The Ormrod Committee (para. 102) stated that the law degree means teaching "legal principles and the basic subjects...without which no one can begin to be a lawyer, and developing the intellectual processes which are usually referred to as 'thinking like a lawyer'". At present, a "qualifying law degree" is the normal gateway to the vocational stage of education as a solicitor or barrister. Broadly speaking, this is a degree awarded by a university in England and Wales which is of a satisfactory standard and which includes the study of the seven "Foundations of Legal Knowledge" (for the text see Appendix D). For the reasons indicated in Chapters 1 and 2, we envisage that in future a "qualifying law degree" will increasingly be recognised in a variety of other professions as well, as a prerequisite for further training. All these professions, and the public, have a legitimate expectation that those who hold themselves out as having a "law degree" have met certain basic standards and have acquired the knowledge and transferable skills which enable them to think, in a critical way, as creative lawyers.

4.3 There is no single prototype of a good general education in law. One of the strengths of the present arrangements is the pluralism in the structure, content and educational philosophy of undergraduate law degrees.[51] There are content-based classifications such as, single honours, joint honours, interdisciplinary, English Law and Foreign Law, and

[50] There was some comment by respondents that our Consultation Paper on the Initial Stage referred to the functions of Initial Stage "Training". We agree with them that the word "training" is a misnomer in this context.

[51] Professor William Twining ACLEC, First Consultative Conference, 9 July 1993, p.2.

structure-based classifications such as part-time, sandwich, integrated, external, and conversion degrees, and there is a diversity of universities with different aims and modes of delivery of undergraduate legal education. There is a healthy variety of approaches to legal scholarship: doctrinal, socio-legal, contextual, critical, jurisprudential, interdisciplinary, comparative, clinical and skills-oriented. This pluralism is worth conserving and developing because it is one of the foundations of a democratic legal system. At the same time, the responses to our consultation exercises indicated wide acceptance of the central values of a liberal education which can serve as a standard by which to assess any particular degree programme.

4.4 These central values are encapsulated in our general statement of aims of legal education in Chapter 2 (para. 2.7), in particular in the notion that a degree course aims to develop *intellectual integrity and independence of mind.* There was widespread support among our respondents for Professor Dawn Oliver's statement, cited in our Consultation Paper, that:

> "A liberal education will have as an aim that students should not merely *know or know how to* but *understand* why things are as they are and how they could be different" and it is "about a 'deep' approach to a subject, in which students try to relate ideas in one subject to those in others, to understand what they read, questioning material, making links, pursuing lines of inquiry out of interest."[52]

In addition, the law degree must provide *core knowledge* "of the general principles, nature and development of law and of the analytical and conceptual skills required by lawyers", as well as *contextual* knowledge "of the law's social, economic, political, philosophical, moral and cultural contexts" (para.2.7). The law degree should also impart *legal values*, including "a commitment to the rule of law, to justice, fairness, and high ethical standards" (ibid.). Our respondents identified a number of intellectual *skills* which the law degree should aim to provide. One university law faculty offered the following useful list:

(i) the construction of logical argument;

(ii) the capacity for abstract manipulation of complex ideas;

(iii) the systematic management of complex factual information;

(iv) the ready identification of critical areas of dispute and discussion;

(v) the use of language at all times with scrupulous care and integrity;

(vi) the related ability to write clear, consistent and compelling prose.

To these skills others could be added such as:

(vii) oral communication;

(viii) competence in retrieving, assessing and using legal texts and information

52 Professor Dawn Oliver, "Teaching and Learning Law: Pressures on the Liberal Law Degree", in (Birks, ed.) *Reviewing Legal Education,* Oxford, 1994, at p.78.

including information technology skills;

(ix) the ability to apply conceptual analysis and to handle rules in a variety of contexts;

(x) intelligent, critical reading of texts;

(xi) mastery of a specified range of basic numeracy skills.

4.5 Our Consultation Paper (para. 2.1) suggested one further aim for the degree course in law, namely that it should "contain enough conceptual and substantive material for vocational training to be comparatively short." This proved to be controversial. Some practitioners thought this to be essential, while most academic respondents argued that it undermined other functions of a liberal degree. On reflection, we are persuaded that it would be wrong to specify this as a function of the law degree. Our new vision of legal education, set out in Chapter 2, makes it clear that we do not see the law degree simply as a preparation for the vocational stage for those intending to become barristers or solicitors. In the words of Professor Jolowicz, "it is legitimate to specify...what an undergraduate degree course can and should do in the education of an intending practitioner considered as such, but the undergraduate law student must not be considered simply as a candidate for entry to a vocational course."[53] We expect that any satisfactory law degree will contain sufficient knowledge of the main areas of substantive law to enable professional skills trainers to teach skills in the context of the students' existing knowledge of substantive law. However, where those offering particular forms of professional training find that students lack knowledge of an area of substantive law which is appropriate to the skills of a particular form of legal practice, it is open to them to require students to obtain that knowledge either by attending "add-on" courses after the degree or through self-education. Provided that the university degree has taught the student how to find and learn new areas of law there is no reason why the degree should contain those specific areas of substantive law which professional trainers consider appropriate to their courses. There are various other ways in which the gap between the university degree and professional education and training can be narrowed. The most important of these is likely to be the development of integrated "exempting law degrees" (on which see Chapter 5). Short of this, it is possible for those providing training specific to a particular branch of the profession to advise degree students to follow optional courses relevant to that vocation, or to take "add-on" courses. As the range of professional courses diversifies, it will become increasingly difficult for degree courses to be seen as the feeders for particular vocations such as barrister or solicitor.

4.6 **We recommend that the degree course should stand as an independent liberal education in the discipline of law, not tied to any specific vocation.**

B. Arguments for autonomy

4.7 A pervasive theme of this Report is that the quality of legal education would be improved by giving higher education institutions greater freedom to determine the content and arrangement of courses. Many of our recommendations are predicated on this assertion of

[53] Observations on Consultation Paper on the Initial Stage, 8 November 1994, para. 3.4.

autonomy. We pointed out in Chapter 2, that the emphasis on "outcomes", rather than prescribed content, implies that institutions should have greater autonomy than they are currently allowed. The same assumption lurks behind our reiteration of the need for "intellectual rigour", which means giving universities the room for academic manoeuvre needed to develop courses that are as intellectually challenging as those in other disciplines. The law schools need this freedom if they are to compete with other disciplines by continuing to attract the best and the brightest. This freedom is also essential if law schools are to be at the frontiers of knowledge, encouraging experimentation and so producing better practice. Universities need to be encouraged to find new or better ways of providing legal education, and this requires a greater degree of institutional autonomy. Institutions must be free to experiment. "Best practice" depends on there being a variety of approaches, in terms of content, organisation, teaching methods, assessment patterns and so on. The same variety is essential to meet the needs of different constituencies in order to provide wider access. At present, although it may be argued that there was some relaxation in 1990, and also in the Joint Announcement approved in December 1994 (Appendix D), the universities appear to be over-constrained by professional requirements that focus on prescribed content or pre-specified skills, neither of which is likely to stimulate critical learning, especially when associated with time requirements (e.g. a module of time prescribed for each foundation). If law degrees are over-constrained, law teachers find it more difficult to introduce new and exciting ideas and new subjects that are likely to attract the ablest students. Justified or not, legal education still has a reputation as a highly instrumental, even anti-intellectual discipline. Some students, especially those who are dedicated from the start to careers as barristers or solicitors, may be comfortable with such characteristics, because they do not realise what they are missing. But two groups of students are likely to be repelled by this reputation. First, those who are looking for intellectual excitement and want to be challenged academically. They may seek this excitement and challenge in other less constrained disciplines. Secondly there are those students who are attracted to law as a humane discipline or social science, and see it is a platform for entry into a wide range of legal and non-legal occupations, rather than simply as preparation for a career as barrister or solicitor. We stressed, in Chapter 2, the need for legal education to be an all-round preparation for a wide range of occupational destinations. The logic of this is that institutions should have greater freedom to shape legal education.

4.8 Another reason for autonomy is the diversification of university courses, which we noted in Chapter 2 (para. 2.1), in particular through the influence of modularisation and GNVQs. This makes it increasingly difficult for the professional bodies to regulate the content of higher education. Variety is an inevitable consequence of modularisation, as law degrees are required to be articulated more coherently with other higher education courses. The universities, rather than the professional bodies, are the main market-makers in modular schemes.

4.9 The development of quality assurance mechanisms (discussed in Chapter 7) is also relevant to our theme of institutional autonomy. Traditional methods of professional validation have been supplemented by new mechanisms such as academic audit (collective self-policing of standards by universities through the Higher Education Quality Council), teaching quality assessment (peer-based inspection by, or on behalf of the Higher Education Funding Councils), various industry standards (British and International Standards), and even branding processes such as Investors in People. Despite their variety many of these quality assurance mechanisms have three broad characteristics in common:

- They tend to accept as given the institution's own definitions of their aims and objectives; their role is confined to assessing the extent to which these objectives are being met, although the emphasis varies between auditing processes and assessing outcomes;

- They rely heavily on self-assessment by institutions, partly because given the scale of their operation this is the only feasible method but mainly because the process of self-evaluation is seen as a key element in quality enhancement; quality assessment is seen as a dynamic process designed to improve standards not a static measurement of pre-existing standards;

- Their ethos is evaluative rather than prescriptive; they are much less concerned with what is taught than how well it is taught; they embrace pluralism not only of goals but also of pathways to those goals.

These characteristics, common to disparate quality assurance mechanisms, emphasise the need for institutions to be able to determine their own goals and design their own evaluation processes. To that extent they reinforce the case for institutional autonomy. But they pose difficulties for professional accreditation based on more traditional principles. Typically, the latter's concern is (i) to determine appropriate content, even if this is denominated in skills rather than knowledge; and (ii) to establish minimum standards, in effect a quality threshold. We return in Chapter 7 to the problem of devising a system of quality assurance that will accommodate the demands of the professional bodies, with the requirements of other forms of quality assurance which the universities must satisfy. The point which is worth emphasising here is that old-style professional validation of qualifying law degrees will have to acknowledge the intentions of modern quality assurance systems by tolerating greater institutional autonomy.

4.10 The case for granting institutions this greater freedom in legal education is, therefore, supported by both external and internal considerations. First, legal education cannot regard itself as immune from the wider evolution of the higher education system, broader trends in professional education, and the development of new quality assurance schemes. Overall these wider trends emphasise the need for institutional initiative and enterprise. Second, the Committee has stressed the need for (i) diversity to encourage wider access; (ii) greater intellectual rigour and creativity; and (iii) more broadly-based professional preparation to equip students for a wider range of legal and other careers. All three support the argument that institutions should be given greater room for manoeuvre.

C. The prescribed common element

4.11 It follows from these arguments that the substantial regulation of the law degree by the Law Society and the Bar based on prescribed subjects is a serious obstacle to the broad requirements and aims which we have proposed in order to meet the new challenges in the provision of legal services and the changing shape of higher education. Our Consultation Paper on the Initial Stage set out three main arguments against subject-based prescription, which may be summarised as follows:

- Overload: this comes in part from pressure to increase the range of "foundations of legal knowledge", to increase the amount of substantive law in order to allow for more teaching of skills at the vocational stage, and the fear of prejudicing the

degree's qualifying status by reducing "foundation" or "core" syllabuses;

- Superficiality: the prescription of particular subjects encourages students and teachers to see the main aim as coverage (often at low levels of intellectual rigour) of these areas rather than in-depth study;

- Separation of knowledge and skills: students are likely to have forgotten the memory-based aspects of the "core" by the time they come to vocational training.

In their clear and interesting response, the College of Law, which is the main provider of the LPC, opposed a narrow subject-based approach on similar grounds:

- "in the past it has not been particularly effective. It gives somewhat artificial reassurance to the profession and it runs the risk of those effects of studying core subjects very early on in the law degree which are identified in ... the Paper;"[54]

- "it has all the problems of superficiality, rigidity and compartmentalised thinking identified by the Committee in... the Paper. In practice it has not tended to develop in students either a clear grasp of legal principles, nor the creative critical thinking required by the modern employer in the legal profession or outside."

4.12 Only two universities who responded were in favour of a subject-based prescribed common element. One university suggested that this was a safe approach because it was at least familiar to law schools, and another suggested that the subject-base should not be totally abandoned. In contrast, most of the respondents from the professions who commented on this were in favour of retaining a subject-based approach. The Law Society stated that they had accepted and encouraged an extremely wide variety of approaches to the teaching of the core subjects, and the development of legal research skills rather than didactic methods of teaching. They said it was rare for professional bodies to be approached on pruning the curriculum of core subjects and argued that there was little evidence that the curriculum had been overloaded as a result of their requirements.[55] The General Council of the Bar and the Four Inns of Court argued that "the correct policy should be to teach a basic knowledge of law sufficient to be a foundation for vocational training, but to do so by teaching principles rather than simply teaching a great deal on particular subjects."[56] However, they made no suggestions as to how the present "Foundations of Legal Knowledge" could be modified in order to meet this policy, and acknowledged that their proposal "amounts to a considerable body of prescribed material which has to be fitted into the time available. Options have to be limited to accommodate to this fact."

4.13 For our part, we strongly favour an approach which puts less emphasis on specifying content and more on the development of the student's intellectual and other skills and the quality of the educational experience, in line with the broad requirements and aims set out in Chapter 2 (paras. 2.2 and 2.4). We cannot accept that it is essential to prescribe syllabuses in the present detail, for example, requiring every student to have studied Mareva

[54] The College of Law, Response to the Consultation Paper on the Initial Stage, p.4, note 10, provided statistics in support of this, in particular 33% of graduates with qualifying law degrees said that before coming on the LPC on 1994/95 they needed some help with academic core subjects, 3% needed a lot of help.

[55] The Law Society, Response to Consultation Paper on the Initial Stage, 19 December 1994, pp.4-5.

[56] Response of the General Council of the Bar and the Four Inns of Court, 21 December 1994, p.12.

injunctions and Anton Piller orders, or registered conveyancing or the law of defamation. Some of these topics, studied in appropriate depth might form a good basis for acquiring intellectual and practical skills, and it should be possible for students with legal research skills to discover the detailed rules for themselves. The problem of obtaining the proper balance between depth, which is essential to intellectual rigour, and sufficient coverage to enable a student to spot a potential issue across a broad band of legal knowledge, is not a new one. We cite with approval, as did the Ormrod Committee, the late Professor Kahn-Freund's reflection that "each student should in the course of his studies obtain two things; a general survey of his field, and a detailed map of a few selected areas, selected by him or for him."[57] The student must know how to "apply the modes of thinking and the methods of research which he has learned in the study of a limited number of law topics to other fields, as and when the occasion arises."[58]

4.14 What then, should replace the present subject-based prescription? The view of the Society of Public Teachers of Law, of the Committee of Heads of University Law Schools, and of most of the old universities who responded to this question was: "Please trust the universities."[59] The SPTL argued that prescription is unnecessary. The introduction of quality assessment in universities (on which see para. 4.8 above) meant that professional validation was not necessary in order to ensure high educational standards. Prescription "to indicate to students the educational and training value of particular areas of their courses" (as suggested in para. 3.7 of the Consultation Paper) would soon lead to the return of the core. The use of prescription in order to "guide the relationship between the initial and later stages" (para. 3.7) could best be achieved by other means such as information about the later stages. The logic of this approach, as articulated by Professor Zander, is that "accreditation should be given to all university law degree courses that (1) in regard to teaching have been rated at least as satisfactory by the Funding Councils, and (2) have been approved by the Advisory Committee as a 'law degree course'"[60]. What is a "law degree" would not be defined by reference to a common prescribed core, but by whether a prescribed percentage of courses could broadly be described as having a legal content. These views received minority support from those new universities who responded on this question, but virtually no support from the professional bodies. The majority of new universities and other academic institutions favoured some prescription based on a combination of an "outcomes" and "descriptive" approach. Respondents from the professions were evenly split between a preference for a purely descriptive approach and a mixed outcomes and descriptive approach. A complementary outcomes and descriptive approach was also favoured by some governmental respondents, including the Higher Education Funding Council for Wales. We note that in the United States (US), the American Bar Association (ABA) makes no attempt to prescribe a core curriculum for law schools, apart from instruction in legal ethics and an opportunity to opt into clinical legal

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57 O. Kahn-Freund, "Reflections on Legal Education", (1966) 29 MLR 121 at p.129; derived perhaps from *Blackstone's Commentaries,* vol.I, p.35:"[An academical expounder of the laws] should consider his course as a general map of the law, marking out the shape of the country, its connections and boundaries, its greater divisions and principal cities; it is not his business to describe minutely the subordinate limits, or to fix the longitude or latitude of every inconsiderable hamlet"; cited in Ormrod Report, para. 102, n.1.

58 Ormrod Report, para.102.

59 SPTL Response to Consultation Paper on the Initial Stage, p.5.

60 Response by Professor Michael Zander, 27 August 1994, p.4. It must be pointed out that, for reasons given in Chap. 7, the Advisory Committee has no power to regulate or "give approval" to the qualification regulations of authorised bodies.

education, and confines itself to issues of quality, resources, and the length of the degree. Similarly, in the Netherlands the profession avoids detailed prescription of core subjects in the university degree.

4.15 We have carefully considered all the views and foreign experience in the light of our overall statement of requirements and aims for legal education (Chapter 2, paras. 2.2 and 2.4). The common ground which exists is that the degree course must:

1. as regards teaching have been rated at least as satisfactory by an appropriate quality assessment mechanism (on which see Chapter 7); and

2. contain a minimum proportion of "legal subjects" (on which see para. 4.38 below).

The points in issue are whether or not there should be any further prescription than this and, if so, what outcomes or description or combination of these should be prescribed. As to the first point, we believe that some prescription by the professional bodies, at a minimalist level, is necessary in order to ensure coherence in the legal education of those intending to continue with common professional legal studies and to become solicitors or barristers. We have pointed out that modular degree courses are becoming the norm. In theory at least, students are free to pick-and-mix their modules, which may be both legal and non-legal. The pressures on law schools to conform to the modular schemes imposed by their universities, make it essential that there be some external standard by which particular modular packages can be judged as "qualifying law degrees". Moreover, an assessment of the quality of a course can only be made against its aims. While it must be possible for individual law schools to formulate their own aims, those aims should, at least, be consistent with the broad aims which we have articulated for all stages of legal education (para. 2.4) if they wish their degree to be recognised as qualifying the student to proceed to common professional legal studies, or further to solicitor-specific or bar-specific training. The existence of these common aims for all qualifying degrees will help to steer legal education in the new directions which we wish to promote.

4.16 As to the second point, there was wide, although not unanimous support among our respondents for the view that a combination of "outcomes" and "descriptive" approaches is inevitable and desirable, but the latter should be seen as no more than a clarification of the former. The emphasis at the undergraduate stage is on the acquisition of knowledge and understanding, and so it is not appropriate to specify "competences", in the sense of professional skills, in the way that this is done at the vocational stage.[61] The "outcomes" of an undergraduate law degree should include general transferable intellectual skills, but they are not limited to skills. We are persuaded that the separation between these outcomes and a descriptive approach is not as stark as the Consultation Paper appeared to suggest. For example, the outcome we suggested of "some knowledge of judge-made law through reading and analysis of cases" cannot be achieved without some study of some common law subjects which lend themselves to this, such as tort and contract. "Some knowledge of statute law and the legislative process" is impossible without understanding the general principles of constitutional and administrative law. The descriptive approach is now encapsulated in our broad statement of aims for all stages of legal education (para. 2.4), when we refer to "core knowledge", "contextual knowledge", and "legal values." These

[61] See Philip A. Jones, *Competences, Education and Assessment in Undergraduate Law Courses Project (CASEL)*, IALS 1994, p.39.

indicate that the degree course must enable the student to acquire knowledge of the general principles, nature and development of law and of the analytical and conceptual skills required by lawyers, an appreciation of the contexts in which law operates, and of basic legal values.

4.17 Our respondents pointed out the dangers of a statement of learning outcomes which is so detailed that it will lead to the same problems of overload as are seen to result from the present subject-based approach. We are also conscious of the problem of resources. For example, a requirement that all law schools should teach the basic numeracy and computer skills necessary to function as a lawyer or to give students the ability to work in teams, might require the recruitment of additional staff and the acquisition of technology beyond the means of many institutions. This indicates that some outcomes should be expressed as desirable, and the professional bodies should join with the organisations of law teachers and heads of law schools in pressing universities and government for the necessary resources to achieve them. But they cannot all be stipulated as compulsory. Similarly any description of subjects as compulsory, even if only by name, carries with it the danger of a "creeping core", and would suggest that some subjects are inherently more important than others at a time when the divisions and boundaries of law are undergoing changes that should not be stifled by syllabus requirements, which rapidly become outdated. Important areas of law, such as public law, the law of the European Union, restitution, and intellectual property have in the past been neglected in undergraduate teaching because of adherence to the old "core" subjects. Moreover, exposure to subjects such as legal theory, legal history, comparative law, the civil law systems, and the general topic of legislation, are a very important part of the undergraduate's experience not only because of their intrinsic value for a critical understanding of our changing English law, but also because of their capacity to develop general intellectual skills. One cannot deal with this by adding subject after subject, even if only by name, to the prescribed common element.

4.18 We expect that in practice law schools will respond to the market, that is to the demands made by students and the providers of legal services. The providers will be able to keep law schools informed of the areas of law which they consider to be essential or important. Subjects such as property and trusts, obligations, criminal law, constitutional and administrative law, and the law of the European Union will continue to be provided by law schools and the vast majority of students will opt for these courses in their first degree or in conversion courses or by way of "add-on" subjects after graduating. But the straitjacket of subject prescription must be lifted.

4.19 **We recommend that law schools should be left to decide for themselves, in the light of their own objectives, which areas of law will be studied in depth, which only in outline, which (if any) shall be compulsory, and which optional, provided that the broad aims of the undergraduate law degree are satisfied.**

D. Teaching methods and assessment

4.20 Our statement of outcomes implies an active rather than passive learning process. During our visits to law schools we saw many encouraging examples of active learning methods. The intellectual rigour which we advocate involves not just knowing and understanding but acquiring and using relevant skills that allow one to put theory into practice. Learners should be actively involved in solving real problems that require the use of deeply understood knowledge. It is inevitable that a change from the present subject-based

prescription to the one which we advocate will have an impact on the method of teaching and assessment of qualifying law degrees. Quality assessment (on which see Chapter 7) should ensure that appropriate standards are maintained. The question arises, however, whether teaching and assessment methods should be prescribed. There is a wide range of such methods, not all of which involve substantial resources. New methods have arisen alongside new forms of learning. The three-hour unseen paper is no longer the norm because it is seen by some to encourage rote learning at the expense of understanding and to devalue intellectual skills. We expect that law schools will continue to develop a mixture of criterion referencing assessment of skills (comparing performance against pre-specified criteria and standards), and norm-referencing (indicating a student's relative standing in a class on the basis of impressionistic marking and consensual standards).[62] To prescribe how law schools should use these methods might help them to meet the required standards of quality assessment, but it would also conflict with the greater autonomy for law schools which we have advocated. Most important, teaching is likely to be best where the teachers have a sense of "ownership" of their courses, free to develop their own methods and styles of teaching and assessment. A clear majority of our respondents both from the professions and the universities, who commented on this question, were opposed to prescription and favoured only looser guidance as to methods of teaching and assessment and the appropriate resources to maintain those methods. We agree that flexibility and diversity of teaching and assessment methods should be encouraged, subject only to the overall quality assessment procedures.

4.21 **We recommend that all teaching institutions should consider the adoption of active learning methods.** We acknowledge that this will involve significant investment of time and effort for those university teachers who are not familiar with the range of active methods it is worth using. Nonetheless, we believe that the time will be repaid in the improvement of quality in undergraduate courses. Teaching institutions should consider how staff can best be supported in this process. Appropriate professional development courses, dealing with the development of active learning should be made available at least for staff new to teaching. Refresher and higher level courses should also be provided for more experienced teachers.

E. Length and structure of the law degree

4.22 Unlike the Continental law student who spends a minimum of four or five years on the initial law degree, the *standard* route for entry to the vocational stage in England and Wales is a three-year *first* degree in law. The intending solicitor or barrister may start the study of law at the age of 18 and be finished all stages by the age of 23. This may mean that law graduates in England and Wales are less mature and less prepared for subsequent legal practice than law graduates in countries which are our major competitors for the provision of international legal services. The law degree curriculum in the Continental countries is generally more demanding than that in England and Wales. For example, in the Netherlands most students spend five years on the law degree, this being the period for which grants are payable.

4.23 In Scotland, 95% of entrants to the profession have a law degree which may last two years (if one already has a prior non-law degree), three years (ordinary degree), or four years

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62 Jones, op. cit., pp.48-51.

(honours degree). In this period, some 11 or 12 "core" subjects will have been studied. (The vocational stage in Scotland is described in Chapter 5, para. 5.9.)

4.24 The contrast is even more marked with the USA where, as we have noted earlier, applicants for admission to the Bar must normally have graduated from a three-year *postgraduate* law degree programme at an ABA-accredited law school, following a College degree lasting two to four years. The MacCrate Report, pointed out that "what law schools require of their students in educational performance can significantly affect the stage of professional development reached by graduates when they seek admission to the Bar."[63] The resources of many American law schools, and their range of courses and teaching methods, far outstrip the best that English and Welsh law schools can offer.

4.25 These comparisons need some qualification because of the different contexts of legal education in each country. In Continental European countries entry is usually not selective and teaching normally takes place in large classes with relatively little assessment of written work. There are wide variations in the post-graduation stage. In some Continental countries there are further training and examination requirements, but this is not universal. In the USA, while the postgraduate law degree itself lasts for three years with much use of case-method and other participatory teaching methods, the only requirement to be licensed to practise law after completion of the law degree is a passing grade in a written state bar examination, which we were informed could be passed by rote learning, with no apprenticeship requirement.

4.26 Comparisons may also be made with the period of degree-level education for other professions in the UK. General medical practitioners must undertake five years' education at medical school (two years' pre-clinical), followed by a "house year" before registration and three years' full-time equivalent post-registration experience including one year as a trainee GP (nine years in all). Architects spend a minimum of seven years' study, five of which are in architecture school. Most professional engineers today must take a four-year honours degree or Master's degree followed by salaried work experience lasting a further three or four years in order to acquire chartered engineer status. It cannot be seriously suggested that the modern practice of law is any less complex or demanding than that in these major professions, yet law degrees remain the poor relative of other forms of professional qualification.

4.27 In our view, the essential issue is not length as such, but the *quality* and *timing* of the educational experience of intending lawyers. The disadvantages which may be felt by English lawyers competing with those from other European states and the USA include the following:

1. Law has become increasingly more complex and pervasive. Students need a firm grounding in legal principles and skills in order to become reflective, all-round professionals, able to pursue lifelong learning, to develop and keep up to date, to enter new areas of law, and to provide the highest standards;

2. Serious study involves time for reflection. The shorter the law degree, the less mature and reflective the graduates are likely to be;

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63 Ibid, p.113.

3. Students need to develop their understanding of legal principles and skills by studying a variety of subjects. For example, by studying environmental law or employment law, the students gets a deeper appreciation of foundation subjects such as contract, tort, property law, and criminal law, as well as the techniques of statutory interpretation. Legal philosophy allows a broader view of legal concepts and of the underlying moral or ethical basis of law. In the three-year degree subjects of great importance are neglected;

4. The development of optional courses provides a major stimulus for legal research and writing in these areas, and so serves a critical role in the formation and evolution of law. The restriction of these courses, resulting from the present structure, impoverishes our law.

4.28 These are powerful educational, professional and public interest reasons for encouraging four-year degree courses in law. There are already some highly successful four-year qualifying law degrees, such as those which allow the study of English law and a foreign (usually European) legal system, including a year of study abroad. The four-year Northumbria exempting law degree to be discussed in Chapter 5 falls into a separate category because it integrates the present academic and vocational stages, and so does not in effect entail any longer period of study of legal subjects. But these are not the only possible models. Four-year degrees can be used, as well, to allow some study of related non-legal subjects such as economics, psychology, politics and history, so as to broaden the perspectives of English lawyers.

4.29 We have not received any objections *in principle* to the idea of a four-year law degree. The reluctance to introduce such degrees springs almost entirely from the practical difficulty of securing public funding for such degrees. As has been shown in Chapter 3, if a requirement for a four-year law degree were to be imposed now this would have an adverse impact on students from disadvantaged backgrounds who cannot afford to maintain themselves; it would also place a considerable burden on the public purse. Whilst we would encourage universities to make provision for four-year degrees, as a desirable option for those students who can afford it, we recognise that the critical problem of financing a longer period of legal education, discussed in Chapter 3, must be resolved before there can be any compulsion to undertake a four-year degree.

4.30 Non-standard degrees, in which law is combined with another subject or subjects, take many different forms. Some offer joint honours over three or four years, in say, Law and History, or Law and Philosophy, spending roughly equal times on each. The Cambridge tripos system allows students to do one or two years of law, before or after one or two years in another discipline. Other mixed degrees allow non-law subjects or modules to be combined with law subjects or modules and, in this context, it may sometimes be difficult to categorise the topic within any particular discipline (e.g. law and economics; the family in society; industrial relations etc. which are interdisciplinary in character). As we pointed out in Chapter 2, the growth of modularisation may lead to complex packages being assembled in which relatively short legal courses could form only part of the overall degree.

4.31 The non-standard degrees offer the advantage of broadening the students' educational experience through disciplines other than law, and the Committee recognises the very valuable contribution that such degrees have made to the fostering of interdisciplinary studies of law and the legal system within our universities. They should therefore be

welcomed and accommodated within the initial stage of the legal educational continuum. The controversial question is what should be treated as the *minimum legal content* of any such degree. The responses to our Consultation Document suggested a range from 45% of a four-year degree to 80% of a three-year degree course. Most of the figures, however, were between half (the current requirement by the professions) and two-thirds (proposed among others by the SPTL) of a three-year course. We note that the Law Society's 1992 Consultation Paper on legal training proposed that the proportion should be 60 per cent, although this was later dropped following representations that even this increase in the minimum law content might threaten the viability of existing mixed degree courses. It is our view, for the reasons given in paras. 4.27-4.29, that it is desirable that the equivalent of not less than two years full-time study should be spent on the study of legal subjects.[64]

4.32 At the same time, the Committee would not wish to do anything to undermine existing mixed degree programmes or to discourage the provision of new ones. We believe that, given sufficient time to make transition arrangements, the problem of adapting mixed degrees to the new requirements for minimum study of legal subjects could be met in an a number of ways: by extending three-year programmes to four years (if funding becomes available), by making more legal subjects available to students at least by way of options, or by students who have not completed the equivalent of two years study of legal subjects being able to complete additional legal subjects at any time prior to initial qualification as a solicitor or the grant of a final practising certificate as a barrister. The latter proposal is analogous to one made in para. 4.34 below in respect of conversion courses, and as in the case of such students allowance should be made, in determining the extra amount of post-degree law studies that should be required, for the fact that graduates from non-standard degrees would be more mature and highly motivated students with a background in more than one discipline to enable them to understand the contexts in which the law operates. Whatever transitional arrangements are made, they will require an extensive period of consultation and planning. The requirement of a minimum of two years study of legal subjects should therefore be set as a forward planning target to be met over a number of years.

4.33 **We recommend that a degree should be recognised by the authorised professional bodies as a "qualifying degree in law" for purposes of entry to common professional legal studies [the Licentiate stage] and, subsequently, to the BVC or LPC, provided that the following requirements are satisfied:**

1. **The degree course is satisfactory to the authorised body with regard to the provision of adequate learning resources (see Chapter 7);**

2. **The degree course has been rated at least as satisfactory by the appropriate quality assessment mechanism (see Chapter 7);**

3. **The degree course includes the study of legal subjects for not less than two years of full-time study (or its part-time equivalent), subject to adequate transitional arrangements being made to ensure the continued viability of mixed degrees as discussed in para. 4.32 above;**

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[64] We have not translated this into modular terms because of the variety of modular schemes in operation. By way of illustration, this would represent 12 modules on an 18-module three year full-time degree course.

4. **The degree is satisfactory to the authorised body with regard to the acquisition of general intellectual skills, the analytic and conceptual skills required by lawyers, a proper knowledge of the general principles, nature and development of law and the contexts in which it operates, and of legal values and ethical standards;[65] [An illustrative statement of outcomes fulfilling these requirements is set out at the end of this Chapter as an Annexure.]**

5. **All existing qualifying law degrees should be presumed to satisfy the requirements set out in para. 4 above, but the authorised body should have the right to withdraw recognition in future if it appears that the course has deviated significantly from these aims. Recognition may be withheld from new degrees on similar grounds. These powers are subject only to the obligations of the professional bodies authorised for purposes of sections 27 and 28 of the Courts and Legal Services Act 1990 to seek approval of their qualification regulations, or changes in them, under the provisions of Schedule 4 to that Act.**

F. Conversion courses

4.34 As many as one-third of students on the present LPC and one-third of those on the BVC are non-law graduates who have done a one-year conversion course, which may be either a Common Professional Examination (CPE) or a recognised Diploma in Law. At present the CPE consists of six "core" subjects but from 1996-97 it will consist of the seven "foundation" subjects and one additional subject, as the Diploma already does. Initially, some CPE courses were formerly 27 weeks in length, but it is expected that in future all CPE courses will last for 36 weeks, as is the case with the Diploma. The length and structure of the conversion course for those who have a non-law degree has been a source of major controversy between the SPTL and the professional bodies. The SPTL's view is that the conversion courses are not a satisfactory substitute for a law degree. It points out that the professions overturned the Ormrod Committee recommendation that the law degree should be the normal way of entry into the vocational stage by allowing conversion courses to be completed in one year. It claims that "the constraints on time mean that all too often people taking the course learn the law by cramming - sometimes with only one book per subject and no consultation of primary materials," and argues that such people are unlikely to perceive legal problems in the same way as those who have studied law more fully. The Association of Law Teachers (ALT), on the other hand, doubts whether those on conversion courses achieve only a superficial and mechanical knowledge of law, and says that these students are mature and highly motivated and are able to cope with a greater workload than undergraduates. A majority among the old universities support the SPTL's proposal for a two-year conversion course at (postgraduate) degree level, while among new universities, which have actual experience of the abilities of those on these courses, there was little support for increasing the length of conversion courses. One such university saw the aims of the conversion course as fundamentally different, since it is the basis for a vocational course and is not intended, like a standard law degree, to provide a general liberal education. None of the respondents from the professions shares the antipathy of the

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[65] This is to be read with para. 2.4 of this Report.

SPTL and the majority of old universities to the one-year conversion course.

4.35 We share the view of the Ormrod Committee that a rigid requirement for a three-year law degree would be an undesirable deterrent on entry into the profession. The Ormrod Committee envisaged a course of two years' duration for all non-law graduates, although these graduates might qualify for exemption in certain subjects. It is to be noted that, although Ormrod had envisaged an examination *common* to both intending solicitors and barristers, in fact until 1988 there were separate courses for barristers. In the 25 years since the Ormrod Report, the practice of law has become more complex and demanding. At the same time, we recognise the force of the argument that a simple linear measure of how long any course should take ought to be avoided. What matters is the knowledge and understanding (i.e. outcomes) achieved by those taking a course. Conversion courses are intensive postgraduate courses, not simply truncated undergraduate degrees. The CPE and Diploma are taught for longer than the normal 30-week academic year.

4.36 In weighing up these arguments, we recognise that longer exposure to the discipline of law than at present is necessary for non-law graduates. We would encourage universities to continue to provide two-year conversion law degrees for non-law graduates. However, we are strongly moved by the consideration that to make this compulsory at the present time for all non-law graduates would in practice close this route into the legal profession to many talented people without private financial means. Whilst the conversion courses should be longer, so as to enable more legal subjects to be studied, this should be done in a way which would enable students to pay their way through part-time study of these additional subjects after completing the 36-week full-time conversion course (or its part-time equivalent), and before the point of initial qualification as a solicitor or barrister. The additional period of study which we envisage is the equivalent of 10 weeks of full-time study.[66] This could be undertaken in a variety of ways before, during or after the periods of common professional legal studies, the LPC or BVC and in-service training, for example by a vacation course or courses, by evening classes or distance-learning or day-release. This period could also lend itself to one or more projects utilising legal research skills instead of written papers. The result would be to extend the present period of 36 weeks of full-time study to a total of 46 weeks, including assessment. Although this is shorter than the (usual) 60 weeks of a two-year law degree, it may be expected that non-law graduates will have acquired transferable intellectual skills in their first degree, and in many cases also an understanding of the humanities or social sciences so enabling them to appreciate the contexts in which law operates. These graduates are mature and highly motivated students. This justifies a somewhat shorter minimum period for conversion courses than for initial law degrees.

4.37 The conversion course should concentrate on developing a knowledge and understanding of the general principles of law, the nature and making of law, and the associated analytical and conceptual skills and legal values (see Chapter 2, para. 2.4). Similar arguments for institutional autonomy to those for the initial qualifying law degree apply here (see above). We do not believe that it is either necessary or desirable for specific subjects to be prescribed by the professional bodies, for the same reasons as we gave in relation to

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66 We have not translated this into modular terms because conversion courses are not usually structured in modules comparable to the university degree. But if a comparison were made with a 12 module two-year law degree, the total of 36 weeks plus 10 weeks of the conversion course would be reflected in nine modules.

qualifying degrees. The conversion course should satisfy a modified version of the statement of outcomes set out below as an Annexure to this Chapter. However, we do expect that the providers of these courses will keep themselves closely informed of the needs of legal practice and will offer a range of courses which are directly relevant to the knowledge and understanding required by solicitors and barristers.

4.38 One problem, in relation both to qualifying degrees and conversion courses, will be to define what constitutes a "legal subject." A test which has been suggested to us is that a "legal subject" is one taught by a teacher qualified and held out as a teacher of law who teaches in a faculty or department of law. While this factor may give rise to a presumption that the subject is a legal one, it cannot be regarded as conclusive. For example, a course in jurisprudence taught by a philosopher who is not a law teacher, or a course in criminology taught by a sociologist, or one in legal history taught by an historian, are ordinarily thought of as "legal subjects." We believe that no definition is necessary. The professional bodies should be able, as a matter of common sense and after consultation with the university concerned and, where appropriate seeking expert advice, to recognise a "legal subject" when they see one just as they do at present when deciding whether a qualifying law degree has the required proportion of "legal subjects" where these are not all "foundations of legal knowledge."

4.37 **We recommend that:**

1. **Conversion courses for non-law graduates should lead to a degree or a Diploma in Law, replacing the present CPE;**

2. **Part I of the course should last for 36-weeks of full-time study including assessment of legal subjects (or an equivalent period of part-time study);**

3. **Part II of the course should consist of the equivalent of 10 weeks of full-time study of legal subjects, but would normally be undertaken on a part-time or distance learning basis or by completion of project work;**

4. **On satisfactory completion of Part I a student would be eligible to be admitted to a Common Professional Legal Studies course (the Licentiate stage), and on satisfactory completion of that course to the LPC or BVC and in-service training;**

5. **A student would not be eligible to proceed to initial qualification as a solicitor, or to a full practising certificate as a barrister, until Part II had been satisfactorily completed and a Diploma awarded;**

6. **The conversion course must be satisfactory to the authorised body with regard to the provision of adequate learning resources (see Chapter 7);**

7. **The course must have been rated as satisfactory by the appropriate quality assessment mechanism (see Chapter 7);**

8. **The course must be satisfactory to the authorised body with regard to the analytic and intellectual skills required by lawyers, a proper knowledge of the general principles, nature and development of law and the contexts in which**

it operates, and of legal values and ethical standards.[67] **[Paras. 2, 3 and 5 of the illustrative statement of outcomes fulfilling these requirements, set out in the Annexure, might be used for this purpose.]**

ANNEXURE

ILLUSTRATIVE STATEMENT OF OUTCOMES

The degree course should enable the student to acquire through study in depth of substantive areas of law, and by using primary sources:

1. *General transferable intellectual skills, including: (i) the construction of logical argument; (ii) the capacity for abstract manipulation of complex ideas; (iii) the systematic management of complex factual information; (iv) intelligent, critical reading of texts; (v) the use of the English language at all times with scrupulous care and integrity; (vi) the related ability to communicate orally and in writing in a clear, consistent and compelling way; (vii) competence in retrieving, assessing, analysing and using legal texts and information, including information technology skills;*

2. *Knowledge and understanding of the general principles, nature, and development of law, and of the making, and interpretation of common law and legislation, including the law of the European Union. This includes: (i) the ability to handle judicial decisions, through reading and analysis of cases; and (ii) the ability to handle U.K. and EC legislation through reading and analysis of statutory and other relevant materials;*

3. *Legal values including a commitment to the rule of law, to justice, fairness and high ethical standards;*

4. *Contextual knowledge and understanding of the relevant social, economic, political, historical, philosophical, moral and cultural contexts in which law operates;*

5. *Knowledge and understanding of the main similarities and differences between common law and civil law systems.*

Note: Conversion courses should satisfy the requirements of paras. 2, 3 and 5, assuming that the non-law degree has provided the other outcomes.

[67] This is to be read with para. 2.4 of this Report.

5.

COMMON PROFESSIONAL LEGAL STUDIES

A. The case for common education

5.1 The need for common professional legal studies is one of the central themes of this Report. We are convinced that this is essential in order to meet the changing needs for legal services, and to ensure the efficient delivery of those services to the public.

5.2 Most respondents to our Consultation Paper on the Vocational Stage were in favour of introducing some form of common vocational legal education. Four distinct advantages of common education were anticipated:

- Students would not be forced to make premature career choices between different branches of the profession;
- It might assist in making savings in the cost of legal education and training because there is an undoubted area of overlap between the knowledge and skills required for different branches;
- It would improve mutual understanding between the different branches, implying a better working relationship and service to the client;
- It would help to develop those common ethical and professional standards needed in increasingly diverse legal professions.

5.3 Reservations about common education for barristers and solicitors were mainly expressed by the Bar. It was said that the area of overlap between the two branches is at present undefined and may in fact be very limited. Common education therefore risks a dilution of training quality. It would reduce the vocational course to the lowest common denominator, and fail to provide properly for the continuing differences in function between barristers and solicitors. The (then) Chairman of the Bar suggested that "the large group of solicitor trainees would by virtue of its numerical supremacy give the centre of gravity to the focus of the course."[68] The Bar also rejected the idea that prospective barristers should take the same course as solicitors, followed by a wholly separate Bar course, as is the practice in Scotland (see para. 5.9 below). However, the Bar did accept "commonality", to the greatest extent practicable, as an aspect of vocational training.

5.4 Estimates of the extent to which common training of barristers and solicitors is practicable ranged across a broad spectrum. Some respondents considered the common elements to be very limited, recommending that common training should form a core restricted to lawyer-client relations and matters of confidentiality. A comparison by Mr John Sprack indicated that there are very substantial differences between the BVC and LPC in subject

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68 Mr Peter Goldsmith QC, speaking at a Conference organised by the Oxford Institute for Legal Practice and the Inns of Court School of Law, 29 April 1995.

matter, skills content and prescribed assessment methods, but suggested that it would be fruitful to explore the possibility of joint teaching of barristers and solicitors in *complementary* areas, based on the different activities of each branch of the profession, e.g. prospective solicitors preparing instructions for counsel, which the prospective barristers carried out.[69] At the other end of the spectrum of responses, some respondents were in favour of merging the BVC and LPC to produce common professional education at all levels prior to qualification, and possibly including common work experience. The majority of respondents, however, adopted a midpoint position. Common vocational education was preferred as a common core alongside specialist options and different subjects catering for the divergent training requirements of solicitors and barristers. Views were put forward as to how the common element might be determined and what it might contain. Some respondents, notably the Law Society and the ICSL, were in favour of taking a gradual evolutionary approach in determining the common element, allowing it to emerge where overlaps became apparent in institutions teaching the BVC and the LPC alongside each other. The majority, however, favoured a more structured approach. They argued that the overriding principle must be that all vocational education is conducted according to clearly identified competence criteria based on empirical evidence of what barristers and solicitors actually do in practice. Many respondents, directly or indirectly indicated that there is at present no secure basis upon which to design a common programme, and that there should be prior research to determine the common elements in the work of barristers and solicitors, to define competence criteria and desired training outcomes.

5.5 All these responses were based on the assumption of common education limited to those intending to become barristers or solicitors. We have, however, argued (Chapters 1 and 2) that legal education must be seen as an all-round preparation for a wide range of occupational destinations, and that there must be multiple exit points. A qualifying law degree provides one such exit point, which may lead on to a variety of legal and non-legal careers. Some honours degrees may in future equate to the proposed higher level GNVQ Level 4, on the basis of a minimum of two years' study of legal subjects and core skills.[70] The next exit point should be a recognised self-standing qualification for those who have acquired the knowledge, understanding and associated cognitive skills needed to "apply a significant range of fundamental principles and complex techniques [of law] across a wide and often unpredictable variety of contexts."[71] This may in the future equate to a higher level GNVQ at Level 5.[72] The qualification could be used to good advantage by those who

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[69] John Sprack, Comparison of the Bar Vocational Course and the Legal Practice Course, ICSL, 16 March 1995.

[70] See *GNVQs at Higher Level, A Consultation Paper.* NCVQ, September 1995, p.17. The NCVQ definition for Level 4 is "competence in a broad range of complex technical or professional work activities performed in a wide variety of contexts and with a substantial degree of personal responsibility and autonomy. Responsibility for the work of others and the allocation of resources is often present." For a possible model in the field of the law degree, see John Randall, "National Vocational Qualifications in Higher Education - A Possible Model,", *Competence and Assessment No.29,* pp.10-15.

[71] NCVQ definition for Level 5, which adds: "Very substantial personal autonomy and often significant responsibility for the work of others and for the allocation of substantial resources feature strongly, as do personal accountabilities for analysis and diagnosis, design planning, execution and evaluation."

[72] In their response to our Consultation Paper on the Vocational Stage, the University of Leeds suggested that Level 4 would equate with the Vocational Stage (ability to demonstrate readiness for the early stages of practice), and Level 5 would be the outcome of several years of experience, with an ability to demonstrate some specialisms. We note that the NCVQ Consultation Paper (note 3 above) contemplates the possibility of a Level 4a and Level 4b within the context of honours degrees. Cf

do not proceed to barrister-specific or solicitor-specific training. Accreditation through certification as a Licentiate in Professional Legal Studies (Lic.PLS) at this point would be an exit point, facilitating a change of career path.

5.6 Some scepticism has been expressed by those whom we have consulted as to whether employers are likely to accept this intermediate qualification. Respondents from the Bar and solicitors were in favour of limiting vocational courses to students proposing to enter private practice as barristers or solicitors. They thought it would be hard to persuade prospective employers and students that such a qualification was not a second class standard of achievement for "failed" barristers or solicitors. We believe that these arguments overlook the changes which are taking place generally in career ladders of professional development. In the words of a recent Consultation Paper from the National Council for Vocational Qualifications:

> "The changing pattern of employment is resulting in increasing demand for professionally qualified staff and a more diverse range of expertise. Professions are subdividing, with increasing specialisation, and combining in different ways as new areas of knowledge are developed. New professions are growing and the status of many functions previously performed by less qualified staff is being raised to professional (or para-professional) level. This implies a wider range of training, standards and qualifications, and new frameworks for progression. Unit-based systems of qualifications are being sought to provide the flexibility needed to create appropriate systems, for both initial training and subsequent learning."[73]

What we propose implies a broader and more flexible foundation of vocational education both as an entry point into other types of professional activity, and as a basis for subsequent learning and specialisation. It is not a "second-class standard of achievement" but is capable of being a first-class general professional education in its own right. It is a proposal aimed at achieving greater choice and flexibility for those interested in a legal career. At present those who have a law degree but are unable or unwilling to become barristers or solicitors have no recognised avenue for acquiring a general qualification. This either denies them a marketable vocational qualification, or forces them to undertake training as a barrister or solicitor where this choice may be premature or unwanted. We recognise that those who have firmly made up their minds to become either barristers or solicitors may prefer to go immediately into that specialisation. But this carries with it the dangers of narrow specialisation at too early a stage, and lack of attention to the general principles of those core skills, such as communication and negotiation, which are common to all types of lawyering. We are not suggesting that these general principles should be dealt with in the abstract. On the contrary, it is our view that the present BVC and LPC are too narrowly focused, for example teaching negotiation skills only from the perspective of a solicitor or that of a barrister as the case may be, instead of acquiring an understanding of basic principles and having the opportunity to apply these in a wide variety of contexts.

5.7 It should be clear from this that we are not advocating either that all lawyers must first qualify as solicitors before proceeding to qualify as barristers, nor are we suggesting a merger of the BVC and LPC into a single course. Our proposals will have implications for

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Randall, op. cit. (note 3) who sees the LPC as providing an opportunity for assessment of transferable core skills at Level 5.

73 *GNVQs at Higher Level: Consultation Paper,* p.10.

the length and content of the BVC and LPC (see Chapter 6, below), but we anticipate that these courses will continue to be run separately, after the period of common education. If BVC courses are validated to be run by the same institutions as provide the LPC, then areas of commonality and complementarity are likely to emerge, with some joint teaching. But we see this as an evolutionary development, based on experience over a number of years. Differences will remain between the BVC and LPC so long as there are divergences in the functions of barristers and solicitors.

B. Northern Ireland and Scotland

5.8 There is a divided legal profession of barristers/advocates and solicitors in other United Kingdom jurisdictions, and so it may be instructive to compare our proposals with existing practice in those countries. In Northern Ireland the Armitage Report (1972) recommended joint training for barristers and solicitors, and following the Bromley Report on Professional Legal Education in Northern Ireland (1985) both branches of the profession "threw themselves into a radical new partnership with [an Institute which is part of Queen's University] from 1987 onwards which has transformed the face of vocational training."[74] The Institute offers two courses, one for 20 bar students and one for 70 solicitor students. The intending solicitors undertake work experience in solicitors' offices from September to January, then attend the course at the Institute until December returning to their offices in vacation periods, and returning to the office for the eight months post-Institute before being admitted as solicitors. The Bar students do a one-week "work-shadow" with their pupil-masters in mid-September, then commence their vocational course at the Institute, overlapping for three months with the previous year's intake of solicitors, and from January until June with the new intake. They are called to the Bar in September and commence pupillage for one year. During the second six months of pupillage they may undertake paid work. This is best described as "joint" rather than "common" training. Eighty percent of the subjects are taken together, with students attending the same lectures but not necessarily the same tutorials or practice sessions. The subjects taken jointly are criminal procedure, High Court and County court procedure, tribunals, consumer, family, licensing, criminal injuries, wills, European practice, basic drafting, accounts, revenue, conveyancing, Chancery, court visits and client care. According to Professor McAleese, "what works for us is a day to day, visible effective partnership between provider and professional body, between experienced practitioners turned professional full-time teachers and active members of the profession."[75] This experience suggests to us that there is, indeed, a common core of education and training but there are also differences where a divided legal profession exists. The joint training has, in practice, led to a large area of commonality with valuable cross-fertilisation of ideas between bar and solicitor students and among teachers from different branches of the practising profession.

5.9 In Scotland[76] since 1980 all intending entrants to both branches of the profession must embark on a one-year full-time postgraduate course, the Diploma in Legal Practice. This consists of conveyancing (including planning), civil procedure and advocacy, criminal procedure and advocacy, wills and trusts, finance, taxation and investment, accountancy,

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74 This account draws heavily on a paper by Professor Mary McAleese at the Oxford Conference (above note 1). See further Appendix H.

75 Ibid.

76 This account draws heavily on papers by Professor Alan Paterson, ACLEC Third Consultative Conference, 10 July 1995, p.5, and Professor Douglas Cusine at the Oxford conference (above note 1). See further Appendix H.

professional responsibility, and a choice of formation and management of companies or public administration. The Diploma is taught almost exclusively by part-time practitioners most of whom are solicitors. It is administered in each of the five universities (each of which also offers qualifying law degrees) by full-time academic lawyers who are also solicitors. Following upon the Diploma, all those wishing to become solicitors must undertake two years' in-service training in an office; intending advocates must do at least 12 months in a solicitor's office followed by nine months' pupillage/devilling, half on civil business and half on criminal business. An intending solicitor does not need to take further examinations, but an entrant to the Faculty of Advocates must pass an additional examination in evidence and procedure and also in professional responsibility. There is a rigorous advocacy training course. After one year of training a solicitor may apply for a limited practice certificate which allows the individual to appear in court, but does not permit entering into a partnership or operating as a sole practitioner. There are continuing professional development requirements. To be admitted as a solicitor with higher court rights of audience, the solicitor must have relevant experience of court work for not less than five years immediately prior to the application and must undertake training, a sitting-in period, and examinations. According to Professor Paterson, "everyone involved with the Diploma is of the opinion it needs to be reformed" because "it looks very dated now."[77] The lesson which we draw from this is that a subject-based prescription may rapidly become dated. We also note that despite the existence of a large measure of common training and work experience, the separate needs of advocates have been catered for by an increasing amount of specialist training.

C. France

5.10 The notion of distinct qualifications for each stage of legal education and training, with multiple entry and exit points, is well-established in some Continental European countries. An example is France. The first cycle of study at University leads after a minimum of two years to the *Diplôme des Études Universitaires Générales (D.E.U.G.), mention droit*. Those who leave with the *D.E.U.G.* go to work in various occupations such as banks, insurance companies and property agents, or shift from law to economics, politics, business studies and other subjects. They may instead transfer to an *Institut Universitaire de Technologie* for a year's professional training which makes them eligible to work as qualified legal consultants in law practices. Those entering the court service as clerks will compete in an entrance examination for places at the national training college, the *École Nationale des Greffes*. Those wanting to become fully qualified professional lawyers will proceed to the second cycle of study, gaining the *Licence en droit* after a further year with a minimum of 410 class contact hours. The student may take a general course, receiving the *Licence en droit*, or they may specialise at this stage in either public or private law, in which case the student will be awarded either *Licence en droit privé or en droit public*. With the *Licence* the student may move into a variety of occupations in public administration or private corporations. Those who wish to continue, however, must complete the second cycle with a *Maîtrise*. At this stage there will be specialisation in public or private law or judicial studies. (France has a career judiciary.) Having completed the second cycle, a student may decide to seek employment in the legal department of a private business where the *Maîtrise* is considered sufficient. Those going on to the legal professions, however, must complete a third cycle leading either to a *Diplôme d'Études Supérieures Spécialisées (D.E.S.S.)* or to the *Diplôme d'Études Approfondies (D.E.A.)*.

[77] Paterson, op.cit., p.6

The *D.E.S.S.* is a one-year preparation for the professional stage; the *D.E.A.* is more academic and may lead to a doctorate and an academic career. Thereafter there are several career routes. Entrance to the career of judicial service will normally be after the *Maîtrise* (although in theory students are eligible after completing the *Licence*). This involves entering the *École Nationale de la Magistrature* after a competitive examination, often preceded by a year of preparation at the *Institut d'Études Judiciares (I.E.J.)*, attached to a law faculty. To become an *avocat-conseil*, students have to spend a year at one of the *Centres de Formation Professionelle d'Avocats*. This includes some practical experience to qualify for the *Certificat d'Aptitude à la Profession d'Avocat (C.A.P.A.)*. To become a *notaire*, after completing the *Maîtrise*, the student has to take a competitive examination in order to enter a *Centre de Formation Professionelle Notariale*, leading to a Diploma of Aptitude. There are also shorter routes for qualification as a paralegal.[78] The strength of the French system of qualifications is that it provides many stepping-off points to a variety of legal careers, none of which is considered to be "second-class".

D. Content and length of common professional legal studies (CPLS)

5.11 Our Consultation Paper on the Vocational Stage (para.5.8) suggested that the aim would be "an intellectually rigorous basic education in common professional values and in transferable skills, in both domestic and EU contexts, including legal research skills, problem-solving and professional ethics." The responses included a tentative list of general competences around which common education might be built. Most of these responses, however, were concerned simply with redistributing the content of the present BVC and LPC rather than in devising a new programme suitable for all types of professional legal studies. While we see scope for developing parallel LPC and BVC courses (the Northern Ireland model), we do not see this as an alternative to common professional legal studies. Nor do we accept that the Licentiate stage should simply be an option for those students who do not wish to go straight on the LPC or BVC. That would require exactly the kind of premature choice which our proposals are designed to avoid. It would also lead to the CPLS stage being treated as a route only for those who fail to gain a place on the LPC or BVC courses. In our view the CPLS stage must be a seen as a necessary element in professional development.

5.12 We must resist the temptation to provide a definitive list of abstract transferable skills and common professional values.[79] If the course is to be of real value to a wide variety of lawyering tasks, it will need to be carefully designed on the basis of an assessment of the needs of those likely to recognise the qualification. Research, which expands that undertaken for the BVC and LPC, needs to be done. Moreover, the emphasis should be on *integrated learning*. Our Consultation Paper on the Vocational Stage sought views on the current balance between "skills" and "knowledge" on the vocational courses. Most respondents were in favour of the strong weight currently given to skills training, while some practising solicitors thought there was insufficient knowledge of some areas of law. On reflection, we are persuaded that there is a danger of false dichotomies between skills and knowledge, and that the attitudinal dimension (professional responsibility, working in a

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[78] See Sue Wall, "Legal Education in France," (1992) 26 *Law Teacher* 208, on which this summary is based. See further Appendix H.

[79] There is no shortage of such lists: the Marre Committee (1988) produced a "provisional" list, as did the Law Society, *Training Tomorrow's Solicitors* (1990). The most elaborate is that provided by the MacCrate Report for the American Bar Association, pp.138-41, which lists 47 "fundamental lawyering skills" and 11 "fundamental values of the profession."

team etc.) must not be neglected. In the words of Professor David Cruickshank, Executive Director of the Continuing Professional Education Institute of British Columbia:

> " Integrated learning involves skill learning and the use of prior knowledge or transferable knowledge. It takes account of attitudes and law or legal practice in context ... Unfortunately the terms 'skills' seems associated with 'technical', 'non-academic' or unreflective. This misrepresents the cognitive challenge of integrated learning."[80]

The National Council for Vocational Qualifications (NCVQ) in England expresses the integrated approach by defining "knowledge and understanding" as a shorthand to cover "not only the body of facts and principles needed for competent performance but also the *associated cognitive skills."*[81]

5.13 The CPLS course which we propose is not simply a redistribution of bits and pieces in the present LPC and BVC. We envisage a new and independent course designed after careful research into the main vocations which holders of the qualification may wish to pursue. In particular, it will be necessary to complement studies which have been undertaken of the skills requirements of solicitors and barristers with similar studies of other vocations such as those of government lawyers, employed lawyers in commerce and industry and legal workers in the voluntary sector. We offer the following as an illustration of the knowledge and skills which might appropriately be learned on a CPLS course. These would build on the law degree or conversion course in a practical, work-oriented context:

- Legal research skills: the student should be able to (i) understand the client's problem; (ii) find the relevant legal sources; (iii) apply the relevant principles to the problem; (iv) construct arguments from fact and law to support different sides of a case; (v) assess strengths and weaknesses of a case; (vi) communicate this orally and in writing in a way which the client can understand; (vii) find practical solutions and exercise a degree of creativity;

- Communication skills: the student should be able to (i) communicate orally and in writing in clear English (letters, documents, advice); (ii) elicit information through interviews using appropriate questioning techniques and developing the ability to listen; (iii) conduct meetings and conferences;

- Negotiation skills: the student should be able to (i) identify the forms of negotiation; (ii) understand the principles of effective negotiation and appropriate strategies and tactics; (iii) plan a negotiation; (iv) develop alternative solutions which meet the parties' main goals;

- Fact management: the student should be able to (i) examine facts in detail and to make all possible interpretations; (ii) identify gaps and ambiguities; (iii) place the information in context; (iv) identify and indicate priorities and relevance in factual issues; (v) distinguish between fact and inference, and direct, circumstantial and

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80 Response to the Consultation Paper on the Vocational Stage, 20 September 1995. In the British Columbia course the breakdown is approximately: knowledge 30%; skill knowledge and demonstrations 15%; attitudes (express teaching) 5%; integrated learning including assessment 50%.

81 National Council for Vocational Qualifications, "NVQ Criteria and Guidance", January 1995, p.30.

hearsay evidence of fact; (vi) organise facts in a way which aids understanding and supports appropriate propositions of law.

The attitudinal aspect of common professional values might be studied both as a discrete subject and also as a pervasive theme in all practical courses. There is a danger that if professional ethics is simply taught pervasively at this stage, it will be limited to the codes of professional conduct of barristers and solicitors. The students need to understand the nature of professionalism, the fiduciary obligations of professional lawyers to their clients (e.g. on conflicts of interest, confidentiality etc.), as well as the wider commitment to values such as the rule of law, representing clients without fear or favour, and to equality of opportunity, and ensuring that adequate legal services are provided to those who cannot afford to pay for them. The details of the professional codes of conduct will feature in the BVC and LPC courses (see Chapter 6).

5.14 All these skills and attitudes have to be integrated within specific contexts and real life situations. One of the important lessons of the LPC and BVC is that students are best motivated and can acquire understanding by working through particular fact situations. We envisage that these fact situations would include many that occur in the context of what solicitors and barristers do. However, there is a risk that if these practice areas are almost entirely court-oriented they will be relevant only to barristers and solicitors and those other groups who now or in the future enjoy rights of audience or to litigate. This would tend to exclude the work done by lawyers in government and industry, company secretaries, tax consultants, citizens' advice bureaux advisers and others. Moreover, if the practice areas are confined to business law or corporate practice, this would be of little relevance to those who will work in areas such as family mediation, social security, employment disputes, immigration law and so on. An added difficulty for the course providers, particularly if our recommendations on the qualifying degree are accepted (Chapter 4), is that it cannot in future be assumed that the knowledge base of all those with law degrees will be the same. As an illustration of one of many models which might be adopted, the following is put forward:

1. Professional Responsibility, general principles, with projects in the context of criminal and civil procedure and evidence;

2. Appropriate dispute resolution, general principles (including conciliation, mediation, negotiation, arbitration, litigation), with projects in the context of business or family or employment disputes;

3. Accounts, basic understanding of the need for accounts, the main financial statements, concepts used in preparing accounts, and (where necessary) basic numeracy skills;

4. *Two options* chosen from, for example, business (including corporate and tax) law; financial services; family law; employment and social security law; the law and practice of the European Union;[82] or an aspect of public law, such as immigration, planning etc. [options to which others could be added or substituted by teaching

[82] Hopefully, some institutions will also offer an opportunity to improve language skills at this stage, and will impart an appreciation of the organisation and nature of the legal profession in other EU Member States.

institutions] in each of which the student would concentrate on understanding the nature and purpose of the relevant legislation and its interpretation, and would be actively engaged in legal research, fact management, case analysis, problem solving and transaction planning, as well as communication and drafting skills.

5.15 Ideally, common professional education is desirable over an extended period. But recognising the problems of funding and access (Chapter 3), our view is that a course of this kind, with four or five modules or units of assessment, would require a minimum of 15 to 18 weeks (including assessment). It would be valuable if some work experience could be provided either before or during the course for two to four weeks, but we recognise that this may be difficult to organise in practice and costly in administrative terms for course providers. The experience of the BVC and LPC shows that vocational courses can be run satisfactorily without direct work experience, using simulation and projects in realistic settings. The integrated learning which we recommend will require partnership between full-time academic lawyers who administer the courses and provide some of the teaching of general principles with part-time practitioners from a variety of fields (not limited to barristers and solicitors). It will also rely heavily on self-study and legal research by students, particularly of areas of substantive law which they have not covered in their degree courses. The learning situations will involve the use of their knowledge in a variety of transactions in different factual and social contexts. Courses of this kind are likely to meet our basic requirement of intellectual rigour.

5.16 We have given much thought to an appropriate title for this new qualification. This should avoid confusion with other qualifications and give a clear indication of its status. A number of titles have been considered including "Intermediate Legal Vocational Qualification" (ILVQ). The title which we suggest for consideration, is "Licentiate in Professional Legal Studies" (Lic.PLS). The Oxford English Dictionary (OED) defines a "licentiate" as "one who has received a formal attestation of professional competency ... from some collegiate or other examining body." We note that in France the Licence en droit is a recognised exit point short of the Maîtrise (para. 5.10 above). Although the Licentiate stage which we propose differs in various respects from the French Licence, the terminology will not be unfamiliar to European ears. Our suggestion will need to be reviewed in the light of the forthcoming Harris report on Postgraduate Qualifications which is likely to make general recommendations about titles of this kind.

5.17 Delivery of the course would be through higher education institutions, and probably also the College of Law and the ICSL given their experience and expertise in the field of legal education, either in their own right or through franchise arrangements with higher education institutions. We envisage that the Licentiates would be certified by the institutions themselves, but the courses would need to be validated for this purpose by a national board responsible for setting the minimum standards and competences required at all institutions, and to provide a guarantee that these are achieved. Unlike the BVC and LPC, which are specific to the Bar and solicitors, and are therefore validated by the Bar Council and Law Society respectively, the new qualification may be common to a much wider range of professional bodies and employments, and the national body should be representative of all these bodies.

5.18 **We recommend that:**

1. **There should be a qualification, provisionally titled a Licentiate in**

Professional Legal Studies (Lic.PLS), after completion of a Common Professional Legal Studies (CPLS) course, designed to provide general practical lawyering knowledge and skills for those who have a qualifying law degree or (conversion) Diploma in Law;

2. **The CPLS course should be for a minimum period of 15 weeks and a maximum of 18 weeks (including assessment);**

3. **The award of a Licentiate should be a requirement for entry on the LPC or BVC (see Chapter 6);**

4. **A Common Professional Legal Studies Board should be established, as the Lead Body, responsible for designing the criteria for validation of CPLS courses, and for validating the courses at institutions. The CPLS Board would also be responsible for approving the appointment of external examiners and for quality assessment exercises (see Chapter 7);**

5. **The Board should include representatives of the professional bodies, who would be expected to contribute to the costs of administration;**

6. **In designing the courses, account should be taken of the illustrative models which are set out in paras. 5.13 and 5.14 above.**

E. Exempting law degrees, and a Master's Degree in Professional Legal Studies (MPLS)

5.19 We have extolled the virtues of integrated education and training (para. 2.20), as exemplified at present by the Northumbria exempting degree. We envisage that a four-year degree which combines the requirements for a qualifying law degree with those for a Licentiate in Common Professional Legal Studies, would qualify the student to be exempted from the Licentiate stage. Some changes might be needed so as to broaden the variety of practice settings and subjects beyond those relevant to an intending solicitor. This would have the advantage of broadening the degree so as to make it a springboard for a wider range of careers. The four-year degree could also continue to include the requirements for the LPC or for the BVC because we propose that these courses should be shortened to take account of the Licentiate course (see Chapter 6). The four-year degree could also provide courses in specialisations which may be of value in other careers, or it could be broadened to include a wider range of "academic" options.

5.20 A further possibility, which we envisaged in our Consultation Paper on the Vocational Stage as a standard route for delivery of the vocational stage, is a Master's degree in Professional Legal Studies (MPLS), following a qualifying law degree or conversion course. A majority of respondents in private practice and the professional bodies raised objections to this. One reason given was that this would raise the cost of access to legal education and the profession. This would, however, only be the case if the Master's degree were an additional stage, and we are not proposing this. Universities are free to set their own fees for Masters' courses, and will have to compete with each other in setting fee levels for the MPLS. The economies of scale possible in some universities may in fact make it as cheap to provide an MPLS as part of a range of law degree programmes, rather than a free-standing vocational course. A second objection was that the Master's degree

would be perceived by employers and students as secondary to a full qualification. We have already explained why we think a Licentiate stage would be attractive to employers and students (para.5.6). A Master's degree would carry an even higher status and recognise a further level of intellectual attainment. A third objection was the possibility of confusion with other existing Master's degrees, such as the LL.M which is offered by several universities. We do not believe that a separate MPLS would detract from the high standing of existing Master's degrees, any more than say, an MBA (Master of Business Administration) detracts from more "academic" or theory-based MAs or MPhils. It would be a distinctive postgraduate vocational degree. Finally, it was argued that a Master's degree would simply be an extension of the qualifying degree, implying an overly "academic" and not "practical" approach. Exactly the same objection could be raised against the integrated exempting undergraduate degree or, for that matter, the LPC currently offered by universities. But it has not been suggested to us that these university-based courses are overly academic in content. They tend to be taught by specially recruited full-time professional lawyers or part-time practitioner teachers. We would expect the same to apply to the MPLS courses, with a creative partnership between academic and practising lawyers. We therefore agree with those respondents (including some in private practice, as well as a majority of academic respondents) that an MPLS would be an excellent way of achieving common legal education, and would raise the status of this vocational stage as an exit point.

5.21 Since we envisage that the common education would last for 15-18 weeks, this would not in itself carry enough credits to the full value of a taught Master's degree. At present the LPC offered by universities is considered to be equivalent to a postgraduate diploma. In some cases this can be converted into a Master's degree by further study. It would be for universities to decide what further study was needed in addition to the requirements for the Licentiate stage. For example, they might add the requirements for the LPC or for the BVC. They could also add other substantive legal subjects, enabling those students who wish to do this additional half-year to combine professional studies with optional subjects, usually of substantive law which they were unable to study in the qualifying law degree, or to do some subjects at a more advanced level, or to fulfil vocational requirements for a law-related profession. This would have the desirable effect of encouraging universities to make provision for four-year education in law.

5.22 **We recommend that:**

1. **A four-year qualifying law degree which incorporates the requirements for a Licentiate in Professional Legal Studies should be recognised as exempting a student from the Licentiate stage, and by adding the requirements for the LPC or for the BVC could also exempt the student from that stage;**

2. **A Master's degree in Professional Legal Studies (MPLS) which incorporates the requirements for a Licentiate in Professional Legal Studies should be recognised as exempting a student from the Licentiate stage, and by adding the requirements for the LPC or for the BVC could also exempt the student from that stage (see Chapter 6).**

6.

PRACTICE COURSES AND TRAINING OF BARRISTERS AND SOLICITORS

6.1 We have proposed that following completion of the Common Professional Legal Studies course Licentiates should be eligible to commence education and training specific to solicitors or barristers. We envisage three modules of education and training for those wishing to reach the point of initial qualification as solicitors or barristers:

1. The Legal Practice Course (LPC)[83] for those intending to become solicitors, or the Bar Vocational Course (BVC) for those intending to practise as barristers;

2. A first (elective) module of in-service training, which we term the General Training Agreement (GTA), for six months in any approved practice setting where a significant part of the work has a legal content, including but not limited to a solicitor's office or barristers' chambers;

3. A second module of in-service training, which would be either a training contract with a solicitor for a period of not more than 12 months, or a pupillage with a barrister in independent practice for a period of six months.

We envisage that the LPC or BVC could be taken either before or after the first (elective) period of in-service training (GTA).

A. The Legal Practice Course (LPC) and Bar Vocational Course (BVC)

6.2 A new vocational course at the Inns of Court School of Law (ICSL) was introduced in 1989 for all those intending to qualify as barristers.[84] The course was highly innovatory. It included a strong element of legal skills training. The BVC is now in its seventh year at the ICSL, and the Bar proposes to validate other institutions as well as the ICSL to offer the course from September 1997. In 1993 a new Legal Practice Course (LPC) for intending solicitors commenced at the College of Law and at a number of universities whose courses are validated by the Law Society.[85] These courses are now in their third year. From 1994 there has also been a Professional Skills Course (PSC), which has to be completed by trainee solicitors.

6.3 These courses were designed on the basis of research into what barristers and solicitors do in practice and what skills they need.[86] They were also influenced by pioneering work on legal skills training in other Commonwealth countries.[87] An outline of the present courses

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83 We refer throughout this Report to the LPC, but if our recommendations are followed then it would be desirable to rename this to make clear that it is a solicitor-specific course, e.g. as the Solicitors' Practice Course (SPC). The BVC could be renamed as the Bar Practice Course (BPC).

84 See Appendix C for an outline of these developments.

85 The LPC was introduced following a consultation paper, *Training Tomorrows' Solicitors* (Law Society, 1990) which mapped out a strategy for the future of solicitor's vocational education.

86 V. Johnston and J. Shapland, *Developing Vocational Legal Training for the Bar* (Sheffield University, 1990); and K. Economides and J. Smallcombe, *Preparatory Skills Training for Trainee Solicitors* (Law Society, Research Study No.7 1991).

87 In particular the "competency" guides prepared by the Continuing Legal Education Society of British

will be found in Appendix E. As we pointed out in Chapter 2 (para. 2.10), the strengths in the present BVC and LPC are the ways in which they have integrated intellectual and practical skills, enabling students to apply knowledge of substantive law and professional ethics to the solution of clients' problems in a variety of contexts such as negotiation and dispute resolution.[88] We wish to pay tribute to the professional bodies, the course providers and the dedicated teachers for the enormous amount of work and resources which have been invested in developing and refining these new courses. Their experience and expertise provides an excellent basis for further developments in the training of barristers and solicitors.

6.4 In our Consultation Paper on the Vocational Stage (para. 3.7) we noted some concerns with the BVC and LPC, based on our visits to course providers and our discussions with pupil masters, trainers of solicitors, and the students themselves. Some of these concerns will be met by the proposals in other parts of this Report. In particular, our recommendations for a Common Professional Legal Studies course (Chapter 5) are designed to overcome the absence of any element of common professional education while at the same time recognising the case which has been made to us to retain a separate BVC and LPC for the specific training needs of barristers and solicitors. The problems of funding, and the mismatch of supply and demand for trainees and pupils are discussed in Chapter 3. Here we discuss our other concerns specific to these courses.

6.5 The first of these concerns is whether the current *balance between skills and knowledge* on these courses is appropriate.[89] Three general points emerged from our consultation on this question. One was a consensus that it is right for the vocational courses to emphasise skills and to impart knowledge in a skills-based way. However, many respondents disagreed with the Consultation Paper's apparent separation of skills and knowledge. It was emphasised that they are not mutually exclusive and "skills" do not detract from substantive course content. Vocational courses need to reinforce not so much "knowledge" as an *understanding* of law and its application to practical problems. For example, in advocacy training, presentation and other relevant skills are acquired at the same time as a practical understanding of procedural and evidential rules and the rules of professional conduct. At this stage, the important skills are those not covered in the qualifying law degree. It is also a fallacy to conceive of skills training as inherently without intellectual rigour. As we have pointed out earlier (para. 2.2 note 3), it was never our intention to suggest that "academic" education is intellectually rigorous, while vocational skills training is not. In the context of vocational education, we are happy to adopt the concept put forward in some responses of "legal competence". This comprises an integration of intellectual and practical skills. This integrated approach to learning, in which skills are taught in a substantive context, can be made intellectually rigorous, encouraging students to engage in critical reflection on the lawyer's function. This theme of integrated learning is as relevant in the context of the BVC and LPC as it is in common professional education (Chapter 5), except that in the BVC and LPC the applications are more narrowly focused to particular functions of the barrister and solicitor.

Columbia and the competency studies by the Institute of Professional Legal Studies in New Zealand: see generally, Philip A. Jones, *Competences, Learning Outcomes and Legal Education*, Institute of Advanced Legal Studies, 1994, pp.23 et seq.

88 In para. 2.10 we refer to the research which shows the success of the BVC in providing young barristers with the skills they need in the early years of practice.

89 Consultation Document on the Initial Stage, para. 3.7(ii), and questions 2 and 3.

6.6 A second general point of consensus is that the balance and content of the vocational courses require constant review and updating. There is no single correct approach and among present courses there is considerable variation. For example, the skills content of the BVC is said to be approximately 60%, and that of the LPC between 25% and 50%. Several respondents recommended emphasising some skills and de-emphasising others. For example, legal research skills were frequently mentioned as an essential tool accompanying a skills-based approach at the vocational stage and it was said that more time should be devoted to this skill. (We note that if our proposals in paras. 5.11 to 5.17 are adopted, this is a skill which will be a required outcome of common professional legal studies, so allowing the BVC and LPC to build on this competence.) The essential point is that training must be capable of meeting the *changing* needs of practice. If the vocational training of barristers and solicitors is to be tailored to match the work they will be doing in practice, it is essential for there to be on-going empirical research of what barristers and solicitors actually do, and monitoring of how the courses "fit". We are glad to know that both the Bar and the Law Society have commissioned such research, and that the Law Society is undertaking a review of the LPC.

6.7 A third point is one made in response to Professor Twining's observation that there is a "tendency to produce longer and longer *lists of skills* without much analysis of the relations between them nor any attempt to establish priorities." [90] The responses indicate that there are two separate issues. One is the way in which skills for the LPC and the PSC with the training contract, and for the BVC with pupillage, are integrated. How do skills at later stages build on those at earlier stages? In this respect we acknowledge that great care has been taken by the course providers to ensure progressive development of skills. The other issue, to which several of our respondents pointed, is that existing syllabuses are considered to be too wide, with breadth of knowledge being emphasised at the expense of deeper understanding. Fewer, more in-depth practical exercises may improve "overloaded" vocational courses.

6.8 Our second general concern is whether the training of barristers and solicitors should be *generalist or specialist.* As an example, our Consultation Paper raised the question whether all intending solicitors should be required to study conveyancing and wills, probate and administration. We also asked at what stage vocational education should permit the development of specialisation. The majority of respondents were in favour of a generalist core, comprising approximately 75% of the vocational course syllabuses. This was considered important in enabling students to become well-rounded lawyers and developing constructive, lateral thinking and problem-solving abilities. From the career point of view, generalist training was thought to prepare young lawyers for the unpredictability of future practice. For intending solicitors it would, for example, facilitate moves between commercial City and High Street practices. On both sides of the profession it assists students to make better informed choices in the face of pressure to specialise early. Furthermore, a significant number of lawyers change their work at least once in the first five years of practice, so it is important that there should be a generalist education meeting the demand for a breadth of understanding in the basic areas. It was agreed that the generalised core of training should be subject to regular review, and that such reviews should be informed by on-going research. In particular, many solicitor respondents doubted whether conveyancing, wills, probate and administration should continue to be compulsory. Moreover, it was suggested that it may no longer be appropriate for all the

[90] *Blackstone's Tower: The English Law School*, p.169 (Consultation Document para. 3.7 (iv)).

current LPC compulsory subjects to be prescribed for all trainees to a similar level of detail. Instead, it was argued, the different training needs of those in commercial practice, those in criminal litigation, and those in more generalist work should be recognised. It was said that the LPC currently spends approximately 75% of available time on High Street and very general commercial work. From the point of view of City practices this represents a significant waste of training time. It was suggested that optional subjects taught alongside the compulsory generalist component might be directed thematically at, for example, "City practice " or "Commercial practice" or "High Street practice." Another suggestion to us is that specialist options could be arranged around some specific practice areas, such as:

- private client - residential and commercial conveyancing, landlord and tenant, wills, probate and administration, tax planning etc.;

- provincial commercial - advanced business law, commercial transactions (including tax), commercial conveyancing etc.;

- City commercial - advanced business law, international commercial law, corporate finance;

- advanced criminal - family, legal-aid related practice;

- litigation - personal injury, medical negligence, fatal accidents, commercial litigation.

6.9 The pressure to specialise early was frequently mentioned by both barrister and solicitor respondents. The majority of respondents would prefer training in specialist subjects to be postponed until after the vocational course and commence during pupillage/training contract, or even post-admission. Making in-depth specialist study a feature of continuing professional development would encourage pupils and trainees to transfer between different fields during the period of work experience or in-service training. Earlier specialisation was viewed as unwelcome and to be resisted in the interests of career flexibility and breadth of experience in the first years of practice. A minority view to the contrary was put forward by some solicitor respondents, notably those from City practices. These respondents considered specialisation to be a reality of practice demanded by lay clients. They said that trainees should be prepared to commence specialist subject training in the vocational course. The Bar presented a slightly different approach to specialisation. If advocacy itself is defined as a specialism, then specialisation should commence during the vocational course. But subject specialisation (e.g. in areas of criminal or commercial law) should be postponed until after the vocational course.

6.10 The majority view which emerges is in favour of a generalist core alongside specialist options taught to a basic level with a view to in-depth specialisation during pupillage/training contracts and post-admission through CPD. We agree with this view, which is consistent with our general philosophy (para. 2.2) of encouraging flexibility and as many opportunities as possible for career changes. A generalist education will be provided by our proposed Licentiate stage (Chapter 5). Thereafter, the LPC and the BVC need to concentrate on those skills and subjects which are specific to the work of solicitors and barristers respectively, but they should not require premature specialisation.

(a) The LPC may be expected to concentrate on those subject areas which are

reserved for solicitors by the Solicitors Act 1974, ss. 19-23. These are currently reflected in the compulsory subjects in the LPC. There is no suggestion that Litigation and basic Advocacy should be optional. As regards Conveyancing, Wills, Probate and Administration it would be surprising if someone could call themself a solicitor without having competence in these reserved areas. Moreover, having this basic knowledge will enhance the individual's career flexibility. Our view is that so long as these are reserved areas of practice for solicitors, and there is no provision for conditional admission, these subjects need to be studied to a basic level of competence prior to admission. Those wishing to specialise in these areas could take advanced courses as part of CPD. In respect of advocacy training in the LPC, our respondents were almost unanimous in their view that prospective solicitor-advocates should undertake the same training as other solicitors during the vocational course. Thereafter, those wishing to become solicitor-advocates should undertake advanced training either in common with barristers, or as a specialist course during their training contract, or as part of CPD.

(b) The BVC may be expected to concentrate on Litigation and Advocacy, as it does at present. In this connection it is to be noted that a barrister who holds a final practising certificate may supply legal services unsupervised and has rights of audience in any court and in any area of law, subject only to para. 601(b) of the Code of Conduct which prohibits the barrister from undertaking any task which "he knows or ought to know he is not competent to handle." Pupil barristers are currently required to complete further training in advocacy during pupillage, such training being provided by the Inns or the Circuits.

In each area studied the courses would continue to integrate skills, taught at a more advanced level than at the Licentiate stage, with the law and practice in the practice area. In regard to Litigation, the Licentiate stage would have provided only a very basic introduction. The BVC and LPC would be expected to provide more advanced courses of a generalist kind geared to the needs of each branch of the profession, including civil and criminal procedure and evidence. The projects could be organised in a variety of specific practice areas using knowledge of those subjects studied at the Licentiate stage, such as business and revenue law, family law, employment and social security law. There would be "pervasive areas", as at present and in particular, professional conduct. The general aspects of professional conduct, such as fiduciary obligations and negligence will have been covered at the Licentiate stage. In the LPC and BVC the focus would be on the professional conduct rules, although in practical exercises all aspects of professional conduct would be relevant. There may be other pervasive areas such as the Financial Services Act in the case of the LPC.

6.11 A final concern is that of the *length* of the BVC and LPC reformed in the ways we have suggested. The course requirements for validation of the BVC state that it should include "in the region of 30 teaching weeks". The LPC provides generally for between 30-36 weeks. We have suggested that the CPLS course should last for 15-18 weeks. We believe that a further 15-18 weeks would be sufficient to cover the more limited LPC and BVC which we have proposed, provided that it is recognised that professional skills training and subject specialisation will continue during in-service training, and in CPD for all solicitors and barristers.

6.12 **We recommend that:**

1. **The LPC should last for 15-18 weeks;**

2. **The LPC should seek to develop knowledge and skills which are relevant to those areas of work specific to solicitors, including litigation, advocacy, wills, probate and administration. Further consideration needs to be given to the precise skills but these should include aspects of interviewing and advising, negotiation and other forms of dispute resolution, writing and drafting and basic advocacy;**

3. **Professional conduct and professional relations should continue to be pervasive as well as other areas considered to be essential for practice such as aspects of the Financial Services Act.**

6.13 **We recommend that:**

1. **The BVC should last for 15-18 weeks;**

2. **The BVC should seek to develop skills in the context of those areas of work in which all barristers are expected to be competent in the early years of practice, in particular criminal litigation and sentencing, and civil litigation. Further consideration needs to be given to the precise skills but these should include advocacy, opinion writing, drafting pleadings, conduct of conferences, negotiation and other forms of dispute resolution;**

3. **Professional conduct and professional relations, focusing on those rules of conduct and ethics likely to arise in a barrister's practice, should continue to be a pervasive area.**

6.14 **It is further recommended in respect of the BVC and LPC that, as far as possible, institutions should teach these courses in parallel, so as to allow for interchange between students and for the evolution of common areas of training (see para. 5.7).**

B. The first (elective) module of in-service training

6.15 Our Consultation Paper on the Vocational Stage raised the possibility of work experience in a solicitor's office or barristers' chambers or the legal department of a corporation or public body, before commencing on the stage of common professional education or on a "sandwich" basis. It was also suggested that, after common professional education, one option for practitioner training would be for the trainee solicitor or pupil barrister to have a combination of on-the-job and off-the-job training. While most respondents were sympathetic to the idea of mixing training and work experience and found the proposals attractive in theory, they regarded them as unworkable in practice. Among the reasons put forward were the following:

- Such arrangements would increase costs for solicitors' firms if they were expected to pay for the off-the-job training (block release); this would have a particular adverse impact on small and medium firms and would reduce the number of training contracts;

- Such arrangements would be disruptive, and the period of work experience would be too short or too disjointed to be worthwhile;

- In the case of the Bar, this would lead to a reduction in the period of pupillage in barristers' chambers.

6.16 A number of respondents had given creative thought to the issue of integrating work and training. There was much interest in a "teaching hospital model" as developed by the University of Northumbria, and supported by the University of Central England. In this model, after study of substantive law and legal theory, supported by a clinical programme of simulated practice, there would be supervised live client contact, ideally in a solicitor's office or in a free representation unit operated by the university. A major objection to this is that universities lack the resources to offer such clinical programmes on a wide scale. Even in the postgraduate US law schools which we visited, clinical studies are regarded as highly expensive and are pursued by only a relatively small minority of students. The Trainee Solicitors' Group (TSG) proposed a three-year integrated work experience and training programme. However, it was acknowledged that such a scheme would involve considerable upheaval in the way in which solicitors' practices are currently organised. The Law Society made the point that the purpose of the Professional Skills Course (PSC) and of part-time courses which may be combined with a part-time training contract was to overcome the practical difficulties of combining education in practical skills through a combination of on- and off-the-job training.

6.17 We note that the Bar's rules on pupillage already allow for periods of relevant work experience as an alternative to a full second six-month pupillage in chambers, with the prior approval of the Masters of the Bench. A pupil may act as a judge's marshal for up to six weeks of the six months; or three months may be satisfied by working for that period with a solicitor employed in private practice in England or Wales or another European Union country. The full six months may be satisfied by spending five or more months undertaking a *stage* in the legal departments of the European Commission or a placement at the European Commission in London. Up to six months may be satisfied by spending that period with a pupil master/mistress who is an employed barrister (e.g. with the CPS or HM Customs and Excise or local government). The Law Society's Training Regulations give the Society wide discretion as to the recognition of "training establishments" which are defined as "a body, firm, company or individual authorised by the Society to take a trainee solicitor"[91] in accordance with the standards laid down by the Society. The Law Society's guidelines enable a student who has gained up to one year's work experience which is consistent with work under a training contract to apply to have that time recognised as good service so as to reduce the two year training contract period. To qualify the student must demonstrate substantial exposure to various skills, and also that experience has been gained in one or more defined legal areas. A wide range of experience is recognised, such as court work, work in a citizens' advice bureau or other voluntary legal advice organisations, a local tax office, a chartered accountants, or patents' office, a local authority, barristers' chambers, or work as a paralegal or legal assistant or legal secretary. This shows that the professional bodies recognise the value of training in a variety of legal environments.

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91 Training Regulations 1990, reg. 2(3).

6.18 The advantages of broad practical experience are recognised in several other countries. For example, in Germany after passing the first state examination, the student can move into the vocational stage (*Referendariat*) which combines the methods and goals of a training contract or pupillage with those of a vocational course. This lasts two and a half years and involves training in a series of contexts: seven months at a civil court, six months at a criminal court and in the office of the public prosecutor, six months in legal administration and five months in a lawyer's office. There is an elective six months which can be spent in an area such as tax law etc. The trainee in this vocational phase becomes a short-term civil servant and receives a modest salary from the *Länd* (state).[92]

6.19 Consistently with our general approach of encouraging flexibility, variety and diversity among tomorrow's lawyers (para. 2.2), we strongly recommend that the professional bodies should expand the opportunities for training in a variety of legal environments. We accept that there are practical difficulties in sandwich-type courses, although the experience of those institutions which successfully operate sandwich law degrees shows that these difficulties can be overcome. In order to allow for the gradual evolution of on-the-job and off-the-job training, we propose at present no more than that the student should have a choice as to whether there should be a period of training before or after the vocational course. We hope that it will become the norm rather than the exception for trainees to spend the first six months in a legal environment other than the one in which they ultimately choose to practise. This will not only help to educate more broadly-based and flexible lawyers. It will also help to avoid premature career choices, particularly if the student is able to undertake this before entering upon the BVC or LPC. We appreciate that provisional registration on a course may be necessary at least six months in advance and so students will have to make some decision before their work experience is completed. For this reason, institutions should be willing to accept provisional registration by a student on both the LPC and BVC, leaving final choice to the latest moment possible. We also appreciate that if the timing of the first six months is optional, the teaching institutions will have to receive at least two intakes each year, Licentiates (with no work experience) in April, and Licentiates (with work experience) in September. There may also be a third group of those with an MPLS but no experience, who wish to start in September. Institutions will, therefore, have to gear their courses to take account of these differing backgrounds.

6.20 We believe that the problems which may arise from the relatively short time the student will spend in the first module of in-service training should not be exaggerated. At present the pupillage is formally split into two six month periods, and it is possible for pupils to undertake these periods in different sets of chambers, or in the other work environments mentioned above. The Bar is currently proposing that call to the Bar should be deferred until after the first six months of pupillage have been satisfactorily completed. We have not formed any view on this proposal. Our recommendation is neutral in respect of call. It would, presumably, remain necessary for an intending barrister to complete the BVC before call. If he or she decides to do the first elective module before the BVC, then call could not occur before passing the BVC. If he or she decided to do the BVC before the first module of in-service training, then, call could be immediate but, as at present, a final practising certificate would not be granted until completion of the second module of pupillage. The only significant change which would be required in the Bar's rules would be to allow a period of relevant in-service training in a work environment other than the independent Bar

92 See further Peter Birks, (1992) 26 *The Law Teacher* 215 at 217.

in the first six months rather than, as at present, the second six. We see advantages in the period immediately before a final practising certificate is granted, rather than the first six months, being spent in the chambers of a barrister in independent practice, because this will provide immediately relevant work experience for those intending to practise at the independent Bar.

6.21 As regards intending solicitors, it is a requirement of the Law Society that during the two-year training contract, the trainee solicitor be provided with proper training and experience in at least three of a prescribed list of English legal topics. This indicates that a six-month period can be sufficient to acquire some knowledge of one area of work, provided that rigorous training standards are prescribed and enforced. Under our proposals for an elective period of training before the LPC or BVC, it will remain possible for the student to do the whole of the two periods of in-service training continuously after the BVC or LPC, and to do these with the same training establishment (in the case of solicitors) or the same pupil master/mistress (in the case of barristers). Although our preference is for wider experience, our proposals allow for the evolution of combinations of on- and off-the-job training that best meet the changing needs of practitioners and students.

6.22 There remains the question who will be responsible for arranging and supervising the first (elective) module of in-service training. One possibility would be for the teaching institutions to arrange work placements and to supervise them, as is currently the case with sandwich degrees. Another would be for the professional bodies to do this. A third possibility would be to leave this entirely to students themselves to arrange. The limited resources of teaching institutions makes it unlikely that they could assume responsibility, but they could be expected to help through careers services and liaison with solicitors, barristers and other employers to help students find their own placements. In this respect we note the interest shown by solicitors' firms in organising vacation placements and of the Bar in arranging mini-pupillages. In our proposals the professional bodies would have an important role in laying down and monitoring training standards for the training periods, and in approving the work environment. We propose that this should be placed on a formal basis through a general training agreement (GTA) between the student and the trainer.

6.23 **We recommend that:**

1. **The first (elective) module of in-service training should be under a general training agreement (GTA) with a trainer approved by the Law Society or the Masters of the Bench[93] and subject to the standards laid down by those bodies and to supervision by them;**

2. **The student should be allowed to elect to spend this period in any practice setting in the United Kingdom or another Member State of the European Union or European Economic Area, where a significant part of the work has a legal content;**

3. **The student should be able to elect to undertake the first module of in-service training either before or after passing the BVC or LPC.**

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93 Consolidated Regulations of the Inns of Court, Part V, reg. 46 provides for the Masters of the Bench to grant prior approval of alternative modes of serving part of pupillage.

C. The second period of in-service training

6.24 Our Consultation Paper on the Vocational Stage raised the question whether the period of traineeship/pupillage should be significantly reduced, or be replaced by formal training. There was no support for this among our respondents. We shall deal separately in this respect with the Bar and the solicitors' profession. At present a person who wishes to practise as a barrister must "read as a pupil" for a period of not less than twelve months and must "complete such further training after completion of the [BVC] as may be required from time to time by the Bar Council".[94] After satisfactorily completing a non-practising period of six months, a pupil barrister is entitled to receive a provisional practising certificate. A barrister with such a certificate who satisfactorily completes a practising period of six months of pupillage is entitled to receive a final practising certificate.[95] We agree with the Bar that there should be no reduction in the total period of twelve months, although we have recommended (above) that it should be possible for the first six non-practising months to be spent in legal work environments other than the Bar, and for this to be undertaken before the BVC. That period would be under a general training agreement, but if it was with a barrister it might continue to be styled a "pupillage". The second six months would be under a pupillage.

6.25 The Report of the Royal Commission on Criminal Justice (para. 87) criticised the absence of proper provision for qualitative and quantitative scrutiny of the work undertaken by pupil barristers. In 1994, the Report of the Bar Standards Review Body [the Alexander Report] (para. 166) endorsed the recommendation of the Royal Commission that the Bar needs to ensure effective scrutiny of the work of pupils. Research by Shapland and Sorsby[96] showed that a proportion of pupils are not being given, or are not taking, the opportunity to observe and then practise under supervision the kinds of cases they are likely to undertake in the first few years. They recommended that pupillage should be more systematically organised and monitored than is currently the case. Our own observations, like those of others, are that second-six pupils virtually never are accompanied to their court cases by their pupil master/mistress, and so they (and their clients) have to learn from their own mistakes. The Report of the Bar's Professional Standards Committee Working Party (the Malins Report) presented in December 1994, and an Inter-Inns Working Group under the Chairmanship of the Hon Mr Justice Hooper, have given detailed consideration to these criticisms and made a number of important recommendations. We believe that if these are carried out they will make a considerable improvement in the implementation of the Bar's training standards. This is a matter which we propose to keep under continuing review.

6.26 In relation to training contracts for intending solicitors, we accept that hands-on practical work is absolutely essential. The crucial question, however, is how much of this experience can best be obtained in the period before admission and how much post-admission through CPD. We received much criticism of the present two-year length of the training contract both from trainees who believe that not all their time is spent on genuine training, and from solicitors who resent the obligation to pay a minimum salary to trainees. It has been suggested[97] that a new process of conditional admission, after completing the LPC (as is

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94 Consolidated Regulations of the Inns of Court, Part V, reg. 43.

95 Para. 301(a) of the Code of Conduct.

96 *Starting Practice: Work and Training at the Junior Bar*, Sheffield University, 1994, p.90.

97 See e.g. Robert M. Abbey, "The training contract: time for reform," *New Law Journal*, March 24, 1995, p.426.

the case for example in Western Australia), would help resolve the alleged problems created by the minimum wage for trainees and the scarcity of training contracts. Moreover, just as Bar students can at present obtain the professional status as "barrister" after completing the BVC, so intending solicitors would become non-practising solicitors. A paper qualification of this kind might help them find other forms of employment. It is argued that the need for a two-year period has been reduced by the Professional Skills Course (PSC) details of which will be found in Appendix E. This is normally undertaken during the training contract and must be completed before admission as a solicitor. Further training takes place during CPD. Taking account of all these matters it is our view that the present period of two years for the training contract could be shortened if the PSC and CPD were improved in terms of quantity and quality. We suggest that the total length of in-service training before admission should be between 12 and 18 months. This means that the second period would be between six to 12 months. We have not reached any concluded view on the period, but we believe that the Law Society should review the current length of the training contract with a view to shortening it, while at the same time taking steps to improve the PSC and CPD.

6.27 **We recommend that:**

1. **The second module of in-service training, as a pupil barrister, should continue to be six months with a provisional practising certificate; this period should include attendance at advocacy training and professional skills training;**

2. **The second period of in-service training as a trainee solicitor should be shortened to a period of not less than six months and not more than 12 months after a review by the Law Society which includes the strengthening of the Professional Skills Course and Continuing Professional Development;**

3. **The Bar and the Law Society continue to keep under review the supervision of pupils and trainee solicitors, and professional skills training during pupillage and training.**

D. Continuing professional development

6.28 The Committee attaches the greatest importance to the continuing professional development of all solicitors and barristers as an integral part of life-long learning. As indicated in the Introduction we propose to undertake consultation and to issue a separate report on this by April 1997.

6.29 The Law Society has had a scheme since 1985 for compulsory continuing Professional Development (CPD). Solicitors are required to undertake a prescribed number of hours CPD depending on their date of admission. Initially this applied only to solicitors in the first three years after admission but it has subsequently been extended, and from 1 November 1998 it will apply to all solicitors. The Law Society is justifiably proud of a scheme that goes further than that of most other professions in England and Wales, and which can stand

comparison with schemes for lawyers in other jurisdictions. However, our solicitor respondents consistently identified two main defects in the current system of CPD. First, it was said that CPD is often seen simply as a "numbers game" in which a number of points or hours have to be collected. CPD places a cost burden on firms, and often a financial strain on smaller firms, resulting in courses being selected for their cheapness rather than for their value to the individual trainee or law firm. Secondly, CPD courses are widely considered to be of variable quality or at inappropriate levels, and to be overpriced. There is a lack of specialist courses outside London. The system of accreditation and monitoring of standards is said to be inadequate. Against complaints of this kind, the Law Society points out that, apart from keeping the role of regulation to a minimum in this field, there are issues of practicality. For example, the number of experienced lecturers in the field of professional ethics or specialists in the management needs of solicitors is limited. We received a number of constructive suggestions for improving CPD, as well as some proposals for alternatives for the present scheme. We propose to conduct further consultation on these ideas before publishing a report on this topic.

6.30 The Bar is currently developing proposal for compulsory CPD, with a view to implementation in 1996/97. Proposals put forward in July 1995 indicated that barristers should be required to undertake, in their first three years of practice, courses involving training in advocacy skills (a minimum of six hours), professional conduct and ethics (a minimum of four hours), and practice, procedure and case preparation (a minimum of 18 hours). There may also be a compulsory course in accountancy. It is expected that the Inns, the Circuits, the specialist Bar associations and sets of chambers will provide these courses. We welcome these developments, and look forward to advising the Bar in the development of CPD beyond the first three years of call.

7.

QUALITY ASSURANCE : GUARANTEEING STANDARDS IN LEGAL EDUCATION

A. The concept of "quality" in legal education and training

7.1 Quality assurance (QA) lies at the heart of the problem of balancing academic autonomy and the need of the professions to ensure competence at the point of entry to vocational education. QA is also the aim of validation of professional courses and recognition of in-service trainers. However, the concept of "quality" in higher and professional education is a controversial one.[98] One important element is "input". Quality is dependent on the resources available for higher and professional education, in particular provision for staffing, student support, research, libraries and information technology. We have discussed these matters in Chapter 3. We cannot stress too strongly that the quality of the students selected for legal education is crucial. Unless students are fairly selected on the basis of merit, as distinct from those able to afford it, quality is bound to suffer. "Output" is also an indicator of quality. This encourages one to look at quantifiable factors such as degree results, completion rates, and subsequent patterns of employment so as to determine the "value added". Another approach is the idea of "fitness for the purpose". This may involve judging institutions against an objective national standard. Or they may be judged according to a relative standard, that is whether or not they are fulfilling their own mission statement. A combination of these approaches is possible, particularly if one emphasises the responsibility of each institution to develop and improve quality.

7.2 The Higher Education Funding Council for England (HEFCE) and the Higher Education Funding Council for Wales (HEFCW) are required under the terms of the Further and Higher Education Act 1992, to secure that provision is made for assessing the quality of education in institutions for whose activities they provide financial support. HEFCE and HEFCW have recognised the diversity of educational mission in higher education, and have adopted a framework for quality assessment which examines the student learning experience within the context of a subject's own aims and objectives and the mission of the institution.[99] The purpose of the first HEFC assessment exercises was to ascertain whether or not the educational provision in the subject area was at least satisfactory, to identify excellence, and to rectify any unsatisfactory provision found. In the law assessment exercise carried out by HEFCE between May 1993 and February 1994, each university or college was asked to submit a self-assessment document for law and the opportunity was given to claim excellence. The self-assessment documents were analysed by assessors and specialists attached to the Quality Assessment Division of HEFCE. Where it was agreed that a claim for excellence had made a *prima facie* case a visit was arranged. A sample of those who claimed satisfactory provision was also visited. The assessment teams contained between three and six team members, most of whom were university law teachers, but in virtually all cases also included a legal practitioner.

7.3 The assessors found a wide variety of aims, some being more vocationally-oriented than

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[98] See the discussion by Ronald Barnett, *Improving Quality in Higher Education,* 1992, Chap. 3.

[99] HEFCE, Subject Overview Report Q0 1/94 , *Quality Assessment of Law 1993-94*, on which this and the next para. are based.

others. Within this wide variety, excellent courses were described as those whose objectives were clearly defined, were understood and accepted by all staff, and could be achieved. In assessing the students' learning experience, consideration was given to the overall experience as well as the teaching. Classes were graded as excellent where sessions had been prepared well by the presenters, who offered challenging and stimulating teaching which led participants to be fully involved in, and to know and understand, what they were expected to do. Attention was also paid to matters such as curriculum innovation, assessment of and feedback to students, pastoral support structures, law libraries, information technology, continuing staff development, internal quality assurance procedures, and teaching accommodation.

7.4 In the 1993/94 law assessment exercise, gradings were on the basis of excellent, satisfactory, unsatisfactory. Following a review and evaluation,[100] HEFCE has now introduced a new method of assessment in which six core aspects are examined:

- curriculum design, content and organisation;
- teaching, learning and assessment;
- student progression and achievement;
- student support and guidance;
- learning resources;
- quality assurance and enhancement.

All assessed courses receive a grade 1-4 for each of the six aspects, whatever the subject or professional group, with one summative judgement and one assessment report completed overall. If any one aspect is awarded the lowest grade, the course is deemed not to be approved.

7.5 In our view, the revised HEFCE method of assessing quality provides a good basis for assuring quality in legal education in the provision of both the undergraduate law degree and the proposed Master's Degree in Professional Legal Studies. However, if these degrees are to be recognised by the professional bodies for purposes of entry into or exemption from professional courses, it is essential that minimum standards be set in each of the six core aspects. By "standards" we mean those sets of criteria against which law schools are judged. In the next section we consider the mechanisms for setting these standards. In the present context, we draw attention to our proposed statement of outcomes for the university law degree (Chapter 4, Annexure) as a subject standard within which the institution's own mission must be judged. If those outcomes are to be achieved, a substantial level of resources is required whatever the relevant mission may be.

We recommend that there should be a clear set of guidelines on minimum standards in respect of matters such as:

- **staffing and continuing staff development;**
- **equal access and opportunity;**

[100] R. Barnett et al., *Assessment of the Quality of Higher Education,* Report for HEFCE, Institute of Education, April 1994.

- **student contact hours;**
- **assessment and feedback to students;**
- **teaching accommodation;**
- **library provision;**
- **information technology;**
- **internal quality assurance mechanisms.**

Those who set these standards have to be careful not to set them so low that they lead to harmonisation downwards, nor must they be so high as to be unattainable by competent institutions. They must also be sufficiently flexible to reflect the varying missions of different institutions.

7.6 In relation to validation of LPC courses, and the recognition of training establishments, the Law Society has published training standards. The Bar has recently prescribed the minimum standards for validation, and has laid down training standards for pupils. We have referred earlier (Chapter 6, para. 6.25) to the recommendations of the Hooper Committee for improving the implementation of those standards. There is at present an annual process of assessment visits to LPC providers, and there may, in future, be visits to BVC providers as well. These assessments need to be co-ordinated (see below).

B. Mechanisms for quality assurance

7.7 Our Consultation Paper on the Initial Stage put forward three possible models for QA:

- reliance on the present HEFCE/HEFCW and Higher Education Quality Council (HEQC) mechanisms;

- accreditation by professional bodies;

- peer review.

These models are not mutually exclusive, and various combinations are possible. In particular the Funding Councils' assessment panels are a form of peer review with some contribution from the practising profession (see para. 7.3). In the consultation process, some respondents suggested a role for the Advisory Committee (ACLEC), or a joint council of academic and practising lawyers responsible to ACLEC. The SPTL proposed that ACLEC or a joint council should have power to disqualify degrees and courses. ACLEC or the joint council would normally accept the Funding Council's judgment on an institution but could investigate an institution where there were grounds for believing that it was inadequate in any significant respect. As explained in the Introduction, this particular submission rests upon a misapprehension about the statutory framework provided by the Courts and Legal Services Act. There can be no question of ACLEC performing a direct regulatory role in relation to law degrees, professional courses or in-service training. However, we do propose (below) the establishment of a Joint Legal Education and Training Standards Committee, as a sub-committee of ACLEC, to review the processes by which minimum standards are set, and to devise ways and means of maintaining and improving standards.

7.8 We were able to study a system of professional accreditation of law schools on our visit to

the USA.[101] The American Bar Association (ABA) lays down a large number of standards to be met by a law school which seeks approval. These standards are more prescriptive in some areas than others. For example, a library "should provide study seating for at least 50% of its larger division enrolment...". A staff:student ratio of 20:1 is acceptable, a ratio of 30:1 would not be. Some of the standards do no more than express general and rather vague aspirations. The school's programme has to be "consistent with sound educational policies". Standard 302 says that the law school shall:

(i) offer to all students instruction in those subjects generally regarded as the core of the law school curriculum [no further definition of the "core" is given];

(ii) offer to all students at least one rigorous writing experience;

(iii) offer instruction in professional skills;

(iv) require of all candidates for the first professional degree, instruction in the duties and responsibilities of the legal profession.

The seminars or "small class instruction" that are also necessary are equally ill-defined. A positive commitment to student minorities' programmes is expected (18% of students are "persons of colour"). Most (177) law schools have been approved, although some have not sought accreditation. Renewal of accreditation depends on the return of an annual questionnaire by the school and a seven-year site visit by the ABA, which extends over several days and includes examination of teaching. The visit reports are not published, unless the local State requires this. The reason given to us for this is that publication might inhibit frankness. Our overall impression is that US law schools have greater autonomy than exists in England and Wales. Law schools set what kind of examinations and tests they want. There is no system of external examiners as exists in UK universities and professional institutions, to monitor overall standards. Most law teachers in the USA see professional accreditation as a helpful ally in obtaining additional funding and in ensuring minimum standards. Indeed, the Antitrust Division of the US Department of Justice recently filed charges against the ABA that its process for accrediting law schools had been misused to inflate faculty salaries and benefits. The lawsuit was resolved by a consent decree under which the ABA is prohibited from fixing faculty salaries or refusing to accredit schools simply because they are for profit.[102]

7.9 This form of accreditation by the professional bodies alone would not be appropriate in England and Wales. Neither the Law Society nor the Bar supported the idea of extending and formalising the present system of informal contacts and visits with institutions into one of professional accreditation. We agree with them for two main reasons. First, the US law schools offer a postgraduate professional law degree which leads straight into practice, after passing the State Bar examination. In England and Wales only about half of all law graduates are destined to go into practice as barristers or solicitors, and we have argued throughout this report for the broadening of the law degree so as to provide a basis for a wide variety of occupations. Secondly, there now exists a system for quality assurance in university law schools through the Funding Councils' mechanisms. The point was strongly made to us by academic respondents that they did not wish to see a further layer of

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[101] We are particularly grateful to Dean James P. White consultant on legal education to the ABA.

[102] US Department of Justice, Press Notice 27 June 1995.

assessment alongside that by the Funding Councils and the HEQC. We were told of the amount of time and money which law schools, the professional bodies and the Funding Councils and HEQC have to spend on assessment exercises. Where law schools run vocational courses they also have to face validation exercises and visits by the professional bodies. If the BVC is validated at the same institutions which offer the LPC, these institutions may face separate visits by the Bar and the Law Society. Yet another level of assessment would be an indefensible waste of public resources. At the same time, there was widespread agreement that the HEFC assessment panels' membership should be extended to allow a greater presence for practising lawyers. We consider that it is also necessary for the wider public interest to be represented by other persons with knowledge and experience of professional education, of social conditions, and of consumer and commercial affairs. At the time of writing this Report, discussions are in progress between the Committee of Vice-Chancellors and Principals of the Universities of the United Kingdom (CVCP) and the Funding Councils as to setting up a new single audit and assessment body in England and possibly in Wales as well. We understand that the professional bodies are being consulted. The main difficulty is the variety of requirements of the different professional bodies, and the varying aims of law schools. We have put forward a statement of common outcomes in this Report which could form the basis for an agreement between the professional bodies, the institutions and the Funding Councils. We also note that the relevant legislation does not oblige the Funding Councils to carry out the assessment of universities themselves. They have to ensure QA, and this they could do by delegation to an approved assessment mechanism with representation of law teachers, and of the professions and lay members.

7.10 **We recommend that the new audit and assessment body:**

1. **Should use assessment panels which consist mainly of teachers of law, but should also include on them practising lawyers and other persons with knowledge and experience of professional education, and of social conditions, consumer and commercial affairs;**

2. **Should be recognised by the professional bodies as the mechanism for quality assurance in those institutions which receive financial support through the Funding Councils;**

3. **Should assess law schools in terms of the subject outcomes proposed in this Report (Chapter 4), the guidelines on minimum standards (above), and the law school's own mission statement;**

4. **Alternatively, if this proves to be impracticable, a system of linked assessment exercises (where the same panel assesses for the purposes of the Funding Councils and the professional bodies) should be devised.**

7.11 HEFCE undertook a complete assessment of law providers in 1993-94, and it is unlikely that law schools will be assessed again before the next century. In Wales, the HEFCW is not likely to consider the subject again before 1998-99. This should allow time for co-operation in setting up the new mechanisms which we have proposed. The 1993-94 HEFCE assessments concentrated on first law degree provision, but there was some inquiry into the LPC and CPE where institutions requested this. Our proposals for a Licentiate stage and a Master's degree in Common Professional Legal Studies (Chapter 5)

will also need to be brought within the scope of quality assurance. We have proposed a Common Professional Legal Studies (CPLS) Board to undertake the tasks of designing course criteria, validation and quality assurance (para. 5.18).

7.12 **We recommend that:**

1. **The professional bodies, in respect of the BVC and LPC, and the CPLS Board, in respect of the Licentiate, exempting degrees and the Master's degree in CPLS, should delegate quality assurance to the new single audit and assessment body in respect of those institutions which receive financial support through the Funding Councils;**

2. **Alternatively, if this proves to be impracticable, a system of linked assessment exercises should be devised, with the professional bodies and the CPLS Board adding their additional requirements for vocational courses and common professional studies to the basic HEFC audit and assessment requirement.** These arrangements may, of course, involve payment being made to the assessment body for quality assessment of those courses, and by those institutions which are self-financing and not supported by public funds.

C. Guidelines on minimum standards

7.13 Quality assessment exercises produce judgements on the past performance of law schools. Lessons may be drawn from these external judgements in order to improve future performance. But the primary responsibility for maintaining and improving quality rests upon the teachers of individual courses and on their institutions. The teachers and institutions need the guidance and support of their own professional organisations, and of the professional bodies of practising lawyers, more so than ever at a time of shrinking resources for higher and professional education. For this reason we believe it to be essential that the partnership between academic teachers of law and the professional bodies should be strengthened. One of the main tasks of this partnership is to agree guidelines of minimum standards on the subjects set out in para. 7.6 above.

7.14 A good deal of work has already been done on minimum standards, for example the SPTL's Statement of Standards for University Library Provision in England and Wales, the British and Irish Legal Education Technology Association (BILETA) proposals for standards on information technology in law schools[103], and training standards for the LPC by the Law Society, and those for the BVC by the Bar. These standards and those to be devised on other subjects are most likely to be successful if both teachers and the professional bodies have "ownership" of them by being actively and jointly involved in their preparation, revision, and implementation. At the same time, it has to be recognised that it is for the authorised professional bodies to enforce training standards, subject only to their statutory obligations under the Courts and Legal Services Act 1990.

7.15 **In order to advise and assist the professional bodies, we propose to set up, as a sub-committee under Sched. 1 para. 3 of the Act, a Joint Legal Education and Training Standards Committee with representatives of those bodies. The function of the Committee will be to review the processes by which minimum standards are set, and**

[103] See The Second BILETA Report into Information Technology and Legal Education, 1996.

to devise ways and means of improving standards.

SUMMARY OF MAIN RECOMMENDATIONS

TOWARDS A NEW PARTNERSHIP

The proposals in this Report are aimed at preparing the system of legal education and training for a new era. Whatever new forms of legal services may emerge in the next century, the core profession of barristers and solicitors will continue to have a central role to play, and will provide the benchmark against which the standards and values of the new service providers must be judged. That is why this, our first report on legal education and training, concentrates on those two branches of the profession, while at the same time looking forward to the emergence of new forms of legal practice and the need to maintain and extend the teaching of common professional values between all providers of legal services.

To this end we make the following recommendations:

CHAPTER 3: ACCESS AND FUNDING

R 3.1 **We recommend that:**

1. **No restrictions should be placed on the numbers seeking entry to the profession either by arbitrary restrictions on the number of places available on validated vocational courses, unrelated to the educational or resource considerations, or by externally imposed limitations on the number of training contracts or pupillages to be made available by firms and chambers;**

2. **The professional bodies, law schools and public agencies should make every effort to improve the collection, coordination and publication of data, and provide realistic information for students, based on the most up-to-date data, indicating inter alia the likely availability of training contracts and pupillages and the postgraduate/employment experience of recent graduates;**

3. **Law schools should review their equal opportunities policies to ensure that they have transparent admissions policies, using objective criteria, and that they train admissions staff and monitor admissions;**

4. **Law schools should make greater use of Access schemes and routes of entry other than GCE A-levels in order to make the social, ethnic and age distribution of law students more representative of society at large.**

(paragraph 3.12)

R 3.2 **We recommend that:**

1. In whatever form a new system for support for students emerges from the Committee of Inquiry into Higher Education, provision should be made for students on conversion courses, on the proposed Common Professional Legal Studies course, the LPC and BVC;

2. A review should be undertaken by the professional bodies to investigate the extent and nature of professional sponsorship of students and educational institutions;

3. Any such review should consider inter alia means-tested income-contingent loans covering both tuition fees and maintenance, means-tested scholarships, and the possibility of a common professional fund administered through law schools.

(paragraph 3.29)

R 3.3 **We recommend that:**

1. The universities in utilising their block grants should take account of the distinctive features of legal education, in particular the minimum law library needs, information technology, clinical legal studies, active teaching methods, staff development, the need to undertake research and to have regular study leave, and the European dimension;

2. The Committee of Inquiry into Higher Education should take account of these distinctive features when considering a future funding model for universities;

3. The professional bodies should review their support for teaching institutions and seek to develop mechanisms for sponsorship and funding, which take account of these distinctive features.

(paragraph 3.39)

CHAPTER 4: THE QUALIFYING UNIVERSITY LAW DEGREE AND CONVERSION COURSES

R 4.1 **We recommend that the degree course should stand as an independent liberal education in the discipline of law, not tied to any specific vocation.**

(paragraph 4.6)

R 4.2 **We recommend that law schools should be left to decide for themselves, in the light of their own objectives, which areas of law will be studied in depth, which only in outline, which (if any) shall be compulsory, and which optional, provided that the broad aims of the undergraduate law degree are satisfied.**

(paragraph 4.19)

R 4.3 **We recommend that all teaching institutions should consider the adoption of active learning methods.**

(paragraph 4.21)

R 4.4 **We recommend that a degree should be recognised by the authorised professional bodies as a "qualifying degree in law" for purposes of entry to common professional legal studies [the Licentiate stage] and, subsequently, to the BVC or LPC, provided that the following requirements are satisfied:**

1. **The degree course is satisfactory to the authorised body with regard to the provision of adequate learning resources (see Chapter 7);**

2. **The degree course has been rated at least as satisfactory by the appropriate quality assessment mechanism (see Chapter 7);**

3. **The degree course includes the study of legal subjects for not less than two years of full-time study (or its part-time equivalent), subject to adequate transitional arrangements being made to ensure the continued viability of mixed degrees as discussed in para. 4.32;**

4. **The degree is satisfactory to the authorised body with regard to the acquisition of general intellectual skills, the analytical and conceptual skills required by lawyers, a proper knowledge of the general principles, nature and development of law and the contexts in which it operates, and of legal values and ethical standards; [An illustrative statement of outcomes fulfilling these requirements is set out at the end of Chapter 4 as an Annexure.]**

5. **All existing qualifying law degrees should be presumed to satisfy the requirements set out in para. 4 above, but the authorised body should have the right to withdraw recognition in future if it appears that the course has deviated significantly from these aims. Recognition may be withheld from new degrees on similar grounds. These powers are subject only to the obligations of the professional bodies authorised for purposes of sections 27 and 28 of the Courts and Legal Services Act 1990 to seek approval of their qualification regulations, or changes in them, under the provisions of Schedule 4 to that Act.**

(paragraph 4.33)

R 4.5 **We recommend that:**

1. **Conversion courses for non-law graduates should lead to a Diploma in Law, replacing the present CPE;**

2. Part I of the course should last for 36 weeks of full-time study including assessment of legal subjects (or an equivalent period of part-time study);

3. Part II of the course should consist of the equivalent of 10 weeks of full-time study of legal subjects, but would normally be undertaken on a part-time or distance learning basis or by completion of project work;

4. On satisfactory completion of Part I a student would be eligible to be admitted to a Common Professional Legal Studies course (the Licentiate stage), and on satisfactory completion of that course to the LPC or BVC and in-service training;

5. A student would not be eligible to proceed to initial qualification as a solicitor, or to a full practising certificate as a barrister, until Part II had been satisfactorily completed and a Diploma awarded;

6. The conversion course must be satisfactory to the authorised body with regard to the provision of adequate learning resources (see Chapter 7);

7. The course must have been rated as satisfactory by the appropriate quality assessment mechanism (see Chapter 7);

8. The course must be satisfactory to the authorised body with regard to the analytic and intellectual skills required by lawyers, a proper knowledge of the general principles, nature and development of law and the contexts in which it operates, and of legal values and ethical standards.

(paragraph 4.37)

CHAPTER 5: COMMON PROFESSIONAL LEGAL STUDIES

R 5.1 We recommend that:

1. There should be a qualification, provisionally titled a Licentiate in Professional Legal Studies (Lic. PLS), after completion of a Common Professional Legal Studies (CPLS) course, designed to provide general practical lawyering knowledge and skills for those who have a qualifying law degree or (conversion) Diploma in Law;

2. The CPLS course should be for a minimum period of 15 weeks and a maximum of 18 weeks (including assessment);

3. The award of a Licentiate should be a requirement for entry on the LPC or BVC (see Chapter 6);

4. A Common Professional Legal Studies Board should be established, as the Lead Body, responsible for designing the criteria for validation of CPLS courses, and for validating the courses at institutions. The CPLS Board would also be responsible for approving the appointment of external examiners and for quality assessment exercises (see Chapter 7);

5. The Board should include representatives of the professional bodies, who would be expected to contribute to the costs of administration;

6. In designing the courses, account should be taken of the illustrative models which are set out in paras. 5.13 and 5.14 above.

(paragraph 5.18)

R 5.2 We recommend that:

1. A four-year qualifying law degree which incorporates the requirements for a Licentiate in Professional Legal Studies should be recognised as exempting a student from the Licentiate stage, and by adding the requirements for the LPC or for the BVC could also exempt the student from that stage (see Chapter 6);

2. A Master's degree in Professional Legal Studies (MPLS) which incorporates the requirements for a Licentiate in Professional Legal Studies should be recognised as exempting a student from the Licentiate stage, and by adding the requirements for the LPC or for the BVC could also exempt the student from that stage (see Chap. 6).

(paragraph 5.22)

CHAPTER 6: PRACTICE COURSES AND TRAINING OF BARRISTERS AND SOLICITORS

R 6.1 We recommend that:

1. The LPC should last for 15-18 weeks;

2. The LPC should seek to develop knowledge and skills which are relevant to those areas of work specific to solicitors, including litigation, advocacy, wills, probate and administration. Further consideration needs to be given to the precise skills but these may include aspects of interviewing and advising, negotiation and other forms of dispute

resolution, writing and drafting and basic advocacy;

3. Professional conduct and professional relations should continue to be pervasive as well as other areas considered to be essential for practice such as aspects of the Financial Services Act.

(paragraph 6.12)

R 6.2 **We recommend that:**

1. The BVC should last for 15-18 weeks;

2. The BVC should seek to develop skills in the context of those areas of work in which all barristers are expected to be competent in the early years of practice, in particular criminal litigation and sentencing, and civil litigation. Further consideration needs to be given to the precise skills but these may include advocacy, opinion writing, drafting pleadings, conduct of conferences, negotiation and other forms of dispute resolution;

3. Professional conduct and professional relations, focusing on those rules of conduct and ethics likely to arise in a barrister's practice, should continue to be a pervasive area.

(paragraph 6.13)

R 6.3 **It is further recommended in respect of the BVC and LPC that, as far as possible, institutions should teach these courses in parallel, so as to allow for interchange between students and for the evolution of common areas of training (see para. 5.7).**

(paragraph 6.14)

R 6.4 **We recommend that:**

1. The first (elective) module of in-service training should be under a general training agreement (GTA) with a trainer approved by the Law Society or the Masters of the Bench and subject to the standards laid down by those bodies and to supervision by them;

2. The student should be allowed to elect to spend this period in any practice setting in the United Kingdom or another Member State of the European Union or European Economic Area, where a significant part of the work has a legal content;

3. The student should be able to elect to undertake the first module of in-service training either before or after passing the BVC or LPC.

(paragraph 6.23)

R 6.5 **We recommend that:**

1. **The second module of in-service training, as a pupil barrister, should continue to be six months with a provisional practising certificate; this period should include attendance at advocacy training and professional skills training;**

2. **The second period of in-service training as a trainees solicitor should be shortened to a period of not less than six months and not more than 12 months after a review by the Law Society which includes the strengthening of the Professional Skills Course and Continuing Professional Development;**

3. **The Bar and the Law Society continue to keep under review the supervision of pupils and trainees solicitors, and professional skills training during pupillage and training.**

(paragraph 6.27)

CHAPTER 7: QUALITY ASSURANCE: GUARANTEEING STANDARDS IN LEGAL EDUCATION

R 7.1 **We recommend that there should be a clear set of guidelines on minimum standards in respect of matters such as:**

* **staffing and continuing staff development;**

* **equal access and opportunity;**

* **student contact hours;**

* **assessment and feedback to students;**

* **teaching accommodation;**

* **library provision;**

* **information technology;**

* **internal quality assurance mechanisms.**

(paragraph 7.5)

R 7.2 **We recommend that the new audit and assessment body:**

1. Should use assessment panels which consist mainly of teachers of law, but should also include on them practising lawyers and other persons with knowledge and experience of professional education, and of social conditions, consumer and commercial affairs;

2. Should be recognised by the professional bodies as the mechanism for quality assurance in those institutions which receive financial support through the Funding Councils;

3. Should assess law schools in terms of the subject outcomes proposed in this Report (Chapter 4), the guidelines on minimum standards (above), and the law school's own mission statement;

4. Alternatively, if this proves to be impracticable, a system of linked assessment exercises (where the same panel assesses for the purposes of the Funding Councils and the professional bodies) should be devised.

(paragraph 7.10)

R 7.3 **We recommend that:**

1. The professional bodies, in respect of the BVC and LPC, and the CPLS Board, in respect of the Licentiate, exempting degrees and the Master's degree in CPLS, should delegate quality assurance to the new single audit and assessment body in respect of those institutions which receive financial support through the Funding Councils;

2. Alternatively, if this proves to be impracticable, a system of linked assessment exercises should be devised, with the professional bodies and the CPLS Board adding their additional requirements for vocational courses and common professional studies to the basic HEFC audit and assessment requirement.

(paragraph 7.12)

R 7.4 **In order to advise and assist the professional bodies, we propose to set up, as a sub-committee under Sched. 1 para. 3 of the Act, a Joint Legal Education and Training Standards Committee with representatives of those bodies. The function of the Committee will be to review the processes by which minimum standards are set, and to devise ways and means of improving standards.**

(paragraph 7.15)

APPENDIX A

THE LORD CHANCELLOR'S ADVISORY COMMITTEE ON LEGAL EDUCATION AND CONDUCT (1991-1996)

Membership

1. The members of the Advisory Committee are appointed under section 19 of the Courts and Legal Services Act 1990, which came into force on 1 April 1991. The Act provides that the Committee's Chairman must be a Lord of Appeal in Ordinary or a judge of the Supreme Court, and that the rest of the members must include: a judge who is or has been a Circuit judge; two practising barristers; two practising solicitors; and two people with experience in the teaching of law. In appointing the remaining 9 members, who are not to be lawyers, the Lord Chancellor is to have regard to the desirability of appointing people with knowledge or experience of:

    - the provision of legal services;
    - civil or criminal proceedings and the working of the courts;
    - the maintenance of professional standards among barristers or solicitors;
    - social conditions;
    - consumer affairs;
    - commercial affairs; or
    - the maintenance of professional standards in professions other than the legal profession.

2. The first membership was appointed as from 1 April 1991 for a period of 3 years. On 1 April 1994 the Committee was reconstituted and 8 members were appointed to serve a further 2 years (subsequently extended by a further year), with 8 members being newly appointed for a period of three years.

3. The Chairman of the Committee is the Right Honourable the Lord Steyn, who was appointed from 1 October 1993. He was appointed as a Lord of Appeal in Ordinary on 11 January 1995. The Right Honourable the Lord Steyn ceases to be a member of the Committee with effect from 1 May 1996.

4. The Vice-Chairman of the Committee is His Honour Judge Gower QC who retires from membership on 31 March 1996. He is succeeded as Vice-Chairman by Professor Peter Scott.

5. The membership at the completion and approval of this report was:

The Right Honourable The Lord Steyn (Chairman)	Lord of Appeal in Ordinary
His Honour Judge Gower QC (Vice-Chairman)	Resident Judge, Crown Court, East Sussex
Lee Bridges	Principal Research Fellow, University of Warwick
Professor Richard Card	Head of School of Law and Professor of Law, De Montfort University, Leicester
Eric Hammond OBE	Member of the Employment Appeal Tribunal; General Secretary, Electrical, Electronic, Telecommunication and Plumbing Union, 1984-92
Professor Bob Hepple	Professor of Law; Master of Clare College, Cambridge
Dr Neville Hunnings	Editor, Common Market Law Reports, 1964-94. Author of several books and contributor to many journals on European law
Ian McNeil JP	Chartered Accountant in practice. President of Institute of Chartered Accountants, 1991-92; Chairman of the Institute's Professional Conduct Directorate; magistrate and former Chairman, Hove bench
Charles Plant	Solicitor, Partner with City of London Solicitors Herbert Smith
Usha Prashar CBE	Civil Service Commissioner; Director, National Council for Voluntary Organisations, 1986-91
Nicholas Purnell QC	Barrister; Chairman of the Criminal Bar Association, 1990-91
Professor Peter Scott	Professor of Education, University of Leeds; formerly Editor of the Times Higher Education Supplement
Graham Smith CBE	Her Majesty's Chief Inspector of Probation
David Steel QC	Barrister, called (Inner Temple) 1966. Head of Chambers, 4 Essex Court, QC 1981. Chairman Commercial Bar Association 1989-91

Mary Tuck CBE	Head of Home Office Research and Planning Unit 1984-90; former National Chair, Victim Support; member of the Parole Board
David Ward	Solicitor; President of the Law Society 1989-90
David Wilkins	Educational Consultant; former Chief Inspector of Schools, Nottingham.

6. Former members of the Committee (1991-94) were:

The Right Honourable The Lord Griffiths MC (Chairman)	Lord of Appeal in Ordinary
Liliana Archibald	Chairman, Adam Brothers Contingency Ltd; Director, Holman Wade Insurance Brokers Ltd, 1989-92
Brian Harvey	Solicitor; Recorder of the Crown Court
John Hosking CBE JP	Chairman, Agra Europe (London) Ltd; Chairman of the Magistrates' Association, 1987-90
Patrick Lefevre	Lay Worker, Brent Law Centre; Founding Director, Public Law Project
Luke March	Director of Compliance, TSB Group plc
The Reverend Dr Colin Morris	Director, Centre for Religious Communication, Westminster College, Oxford; Controller, BBC Northern Ireland, 1987-90
Dr Clare Palley	Constitutional Adviser, Republic of Cyprus; Principal of St Anne's College, Oxford, 1984-91
Peter Scott QC	Barrister; Chairman of the General Council of the Bar, 1987

Secretariat

7. Members of the Committee's secretariat at the completion and approval of this report were:

Mr I T Zackon	(Secretary)

Ms H B De Lyon
Mr R L Jones
Ms E M Welfare
Ms P A Bell
Ms J Patterson
Miss L Gray
Ms H S Patel

8. Former members of the secretariat during the review were:

Mr A E Shaw	Secretary to November 1994
Miss B M Griffith-Williams	April 1991 to January 1994
Mr K M Economides	August 1993 to July 1995
Professor P Hassett	June 1991 to July 1993
Miss R M Lyon	September 1992 to December 1995
Miss K Low	August 1994 to February 1996
Ms D Patrick	October 1992 to November 1993

Statutory Functions of the Committee

9. The statutory objective of the Courts and Legal Services Act 1990, which governs all the Committee's functions, is:

> "The development of legal services in England and Wales (and in particular the development of advocacy, litigation, conveyancing and probate services) by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice."

General Duty

10. The Act confers on the Advisory Committee the general duty of assisting in the maintenance and development of standards in the education, training and conduct of those offering legal services. It requires the Committee, in carrying out its functions, to have regard to:

(i) the practices and procedures of other member states of the European Community in relation to the provision of legal services, and

(ii) the desirability of equality of opportunity between persons seeking to practise any profession, pursue any career or take up any employment, in connection with the provision of legal services.

11. The Committee may make any recommendations it thinks appropriate on any matters which it is required to consider or to keep under review. In discharging its specific functions, the Committee must have regard to the need for the efficient provision of legal services to people who have special difficulties in making use of those services, in particular in expressing themselves or in understanding.

Specific Functions

12. The Act establishes a new basis for the grant of rights of audience and the right to conduct litigation. Hitherto these rights have been based partly on statute and partly on common law. The Act preserves existing rights, but establishes a framework under which they are in future to be granted by authorised bodies to their members. The Committee is a central part of the framework set up by the Act to consider applications from professional and other bodies to be authorised, or to change the rights they grant or the regulations and rules which govern them.

13. The principle governing the Committee's work in this area (set out in section 17 of the Act and known as the 'general principle') is that the question whether persons should be granted advocacy or litigation rights in any court or proceedings should be determined only by reference to:

- whether they are qualified in accordance with the appropriate educational and training requirements;
- whether they are members of a professional or other body with rules of conduct which are appropriate in the interests of the proper and efficient administration of justice;
- whether the body has an appropriate mechanism for enforcing its rules of conduct, and is likely to enforce them; and
- (in the case of a body granting rights of audience) whether it has an appropriate rule preventing advocates from discriminating between clients.

14. The detailed procedure for dealing with applications from professional or other bodies is set out in Schedule 4 to the Act. The first step is for the Advisory Committee to advise the applicant body whether the qualification regulations and rules of conduct submitted as part of the application need to be amended in order better to comply with the general principle or further the statutory objective, or both. The final decision on an application rests with the Lord Chancellor and the four designated judges (the Lord Chief Justice, the Vice-Chancellor, the Master of the Rolls and the President of the Family Division), who receive advice from the Advisory Committee and from the Directory General of Fair Trading.

15. Once a professional or other body has become authorised to grant advocacy or litigation rights, any amendments to its qualification regulations or rules of conduct (insofar as they relate to advocacy or the conduct of litigation), and any alterations to the rights granted by the body in question, must be submitted for approval through the same procedure as an initial application for authorisation.

16. The Act confers on the Law Society and the General Council of the Bar the status of authorised bodies, and deems their qualification regulations and rules of conduct to have been approved in relation to the rights exercised by solicitors and barristers, at the time the provisions of the Act came into force.

17. The Committee has a general duty to keep under review the education and training of people who offer to provide legal services, and to give particular consideration to continuing education and training. The Committee is also specifically required by the Act to consider the initial practical training required for advocates and litigators, and in other

areas concerned with the provision of legal services.

18. The Committee is required to consider whether specialisation schemes should be established by any professional or other body in any particular area of legal services, to keep under review specialisation schemes maintained by these bodies, and to consider and advise on any proposal for a specialisation scheme referred to it by a professional or other body.

19. The Act contains provisions for bodies approved by the Lord Chancellor to permit their members to prepare for reward the papers on which to found or oppose an application for a grant of probate. Before deciding whether an application for approval should be granted, the Lord Chancellor must seek the advice of the Advisory Committee and of the President of the Family Division. These sections of the Act have not yet been brought into force.

Application for Authorisation

20. Any professional or other body that wishes to become an authorised body under section 29 of the Courts and Legal Services Act 1990, in order to be able to confer rights of audience or rights to litigate under sections 27 or 28 of the Act, must send to the Advisory Committee drafts of its proposed qualification regulations and rules of conduct for those members it proposes to allow to exercise those rights; and a statement of the rights it proposes to grant. The Committee should also be provided with any necessary explanatory material, and the Committee may ask for additional information.

21. The Committee then considers the application before advising the applicant of the extent to which (if at all) the draft regulations or rules should; in the Committee's opinion, be amended in order better to further the statutory objective, or comply with the general principle. This stage of the process may take some considerable time since it is the Committee's practice to carry out both written and oral consultation with bodies who have an interest in the application, and to undertake briefing visits in order to inform itself about the application.

22. Once the applicant has received advice from the Committee it will need to decide whether it wishes to proceed with its application for authorisation. If it does, then at that stage an application must be submitted to the Lord Chancellor for its qualification regulations and rules of conduct to be approved in relation to the proposed rights. The Lord Chancellor may ask for any additional information he requires. He then sends a copy of the application to the Advisory Committee, the four designated judges and the Director General of Fair Trading. The Committee and the Director General of Fair Trading then advise the Lord Chancellor on the application, and the Lord Chancellor sends the Committee's and the Director General's advice to the applicant. The applicant has 28 days to consider these and make representations. The Lord Chancellor considers the application, and sends his proposed view and the advice of the Committee and the Director General to the designated judges. The designated judges then consider their view and inform the Lord Chancellor of their decision. If the Lord Chancellor or any of the designated judges has refused to approve the application it will fail. The applicant is then informed of the result.

APPENDIX B

RESPONDENTS TO THE CONSULTATION PAPERS ON THE REVIEW OF LEGAL EDUCATION

1. THE INITIAL STAGE

ACADEMIC INDIVIDUALS AND INSTITUTIONS

Anglia Polytechnic University
Association of Law Teachers
University of Birmingham
University of Bristol
Brunel University
University of Buckingham
University of Cambridge
University of Central England
University of Central Lancashire (Centre for Professional Ethics)
Clinical Legal Education Organisation
Committee of Heads of University Law Schools
Common Professional Examination Board
Coventry University
De Montfort University
University of Essex
University of Exeter
University of Glamorgan
Inns of Court School of Law (teaching staff)
Keele University
King's College London
University of Leicester
University of Liverpool
Liverpool John Moores University
London School of Economics & Political Science
University of Manchester
University of Newcastle
Nottingham Trent University
University of Oxford
University of Reading
Queen's University of Belfast
School of Oriental and African Studies
University of Sheffield
Society of Public Teachers of Law
Socio-Legal Studies Association
University of Southampton
University College London
University of Westminster
Nigel Bastin (Manchester Metropolitan University)

Anthony Bradney (University of Leicester)
Professor J A Jolowicz (Trinity College, Cambridge)
Philip Jones (University of Sheffield)
Dr Julie Macfarlane (University of Windsor, Canada)
Professor Charles Sampford (Griffith University, Australia)
Andrew Sanders (Pembroke College, Oxford)
Jim Tunney (University of Abertay Dundee)
Professor Michael Zander (London School of Economics)

PROFESSION

Allen & Overy (Solicitors)
Association of District Judges
Association of Women Solicitors
BPP Law School
Cameron Markby Hewitt (Solicitors)
Chaffe Street (Solicitors)
Chairman of the Bar Council and Treasurers of the four Inns of Court
Chancery Bar Association
City of London Law Society
Clifford Chance (Solicitors)
College of Law (Guildford)
Commercial Bar Association
Council of Legal Education
Maureen Fitzgerald (Law Society of British Columbia)
Andrew Grantham (Barrister)
Raymond Henley (Senior Lecturer, The College of Law)
Holborn Law Society
Institute of Legal Executives
Justices' Clerks' Society
Law Society
Lawyers in Mind Limited
Legal Education and Training Group
Leeds Law Society
Linklaters and Paines (Solicitors)
London Common Law and Commercial Bar Association
Lovell White Durrant (Solicitors)
Metropolitan Stipendiary Magistrates' Legal Education Working Group
Nabarro Nathanson (Solicitors)
Norton Rose M5 Group
Sir Michael Ogden QC (Barrister)
Master of the Rolls
Slaughter and May (Solicitors)
Solicitors Family Law Association Training Committee
TSB Group
Martin Webster (Biddle & Co, Solicitors)
Wedlake Bell (Solicitors)

GOVERNMENT AND OTHER BODIES

British and Irish Association of Law Librarians
Director of Public Prosecutions (CPS) and Head of the Government Legal Service (GLS)
Foreign and Commonwealth Office
Higher Education Funding Council for Wales
Legal Aid Board
Lord Chancellor's Department
National Consumer Council
Office of Fair Trading

2. THE VOCATIONAL STAGE AND CONTINUING PROFESSIONAL DEVELOPMENT

PROFESSIONAL LEGAL INSTITUTIONS

Association of District Judges
Birmingham Law Society
Birmingham Trainee Solicitors' Society Ltd
The Chancery Bar Association
The City of London Law Society's Recruitment and Training Sub-Committee
The Commercial Bar Association
David Edward, Judge, European Court of Justice
Maureen Fitzgerald, The Law Society of British Columbia
The General Council of the Bar
(including the Inns of Court and the Council of Legal Education)
Group for Solicitors with Disabilities
The Law Society Professional Standards and Development Directorate
London Common Law and Commercial Bar Association
Manchester Law Society
Metropolitan Stipendiary Magistrates' Legal Education Working Group
Solicitors Family Law Association
South Eastern Circuit Bar Mess
Trainee Solicitors' Group

PRIVATE PRACTICE

Allen and Overy (Solicitors)
Chartered Institute of Patent Agents
Clifford Chance (Solicitors)
Freshfields (Solicitors)
Michael Hill QC and Marion Simmons QC (Barristers)
Richard King, Herbert Smith (Solicitors)
Legal Education and Training Group
Lovell White Durant (Solicitors)
Nabarro Nathanson (Solicitors)
The Norton Rose M5 Group (Solicitors)
Slaughter and May (Solicitors)
TSB Group plc, In-house Legal Service
Janice Webster, Consultant to Bell and Scott (Solicitors)
Peter Whitlock, retired solicitor
Robert Wright QC (Barrister)

PROFESSIONAL TRAINING PROVIDERS

Centre for Law and Business, University of Manchester
The College of Law
Professor David Cruickshank, Executive Director, The Continuing Professional Education Institute, Vancouver, Canada
Raymond Henley (Senior Lecturer, The College of Law)
Holborn Law Society
The Inns of Court School of Law
Institute of Professional Legal Studies, Queen's University of Belfast
Legal Network Television

ACADEMIC INDIVIDUALS AND INSTITUTIONS

Association of Law Teachers
University of Bristol
University of Cambridge
Department of Law, University of Central England
Committee of Heads of University Law Schools
Department of Law, University of Essex
Faculty of Law, University of Exeter
School of Law, Keele University
Faculty of Law, University of Leeds
Leeds Metropolitan University
The University of Liverpool
Law Department, The London School of Economics and Political Science
School of Law, Social Work and Social Policy, John Moores University
School of Law, University of Northumbria
University of Oxford
Queen Mary and Westfield College, University of London
Professor J Beatson (St John's College, Cambridge)
Anthony Beck
Dermot Feenan (Independent Scholar)
Richard Grimes (University of the South Pacific)
Andrew Hicks (University of Exeter)
Philip Jones (University of Sheffield)
Professor T Kojima (Chuo University)
Professor David Miers (Cardiff Law School)
Professor Joanna Shapland (Institute for the Study of the Legal Profession, University of Sheffield)
Professor A Sherr (Institute of Advanced Legal Studies)
The Society of Public Teachers of Law

PUBLIC/GOVERNMENT BODIES

Association of District Secretaries
Mr Justice Brooke, Chairman, The Law Commission
The Legal Aid Board
National Association of Citizens Advice Bureaux
Office of Fair Trading
Society of County Secretaries

APPENDIX C

AN OUTLINE OF DEVELOPMENTS IN LEGAL EDUCATION AND TRAINING SINCE THE REPORT OF THE COMMITTEE ON LEGAL EDUCATION (ORMROD 1971)

The Report of the Committee on Legal Education under the chairmanship of The Hon Mr Justice Ormrod (as he then was) was published in March 1971 (Cmnd 4595). The report included an extensive historical survey, placing legal education in a contemporary perspective. Both the Report of the Royal Commission on Legal Services (Cmnd 7648) published in October 1979 (the Benson Report), and the Report of the Committee on the Future of the Legal Profession (1988) under the chairmanship of Lady Marre provided some updating of the position when considering legal education. There have been substantial changes since then. This summary sets out some of the major changes in this period while providing an overview of legal education since the Ormrod Report.

The Ormrod Report (1971)

The Committee introduced the analysis of legal education into the academic stage, common to both branches of the profession, the vocational stage (described as the professional stage comprising both institutional training and in-training) and continuing education both of which were unique to each branch of the profession.

The Ormrod Committee recommended that Law should be a graduate profession and that "normally but not necessarily" the degree should be one in law. By a "law degree" they meant primarily one obtained after a three-year course of full-time study at a university in England and Wales or Northern Ireland, or a Council for National Academic Awards degree course at a polytechnic or college of higher education, or an approved institution preparing students for the external London LL.B degree, or after a four-year course, including one of the "sandwich type". There would be two special routes for those without such degrees. First, non-law graduates and some others could take a two-year conversion course covering eight subjects, five obligatory and three optional. Second, a mixed degree requiring study of law and another subject would be sufficient, provided that the course included eight law subjects, five mandatory and three optional.

The Committee thought that "the professional bodies ought not to specify the contents of the curriculum as a condition of recognition of a particular law degree". It urged the academic and professional bodies to agree that the aims of the academic stage were that the student should have "covered the basic core subjects and acquired a sound grasp of legal principles and sufficient knowledge of, and ability to handle, law and its sources so that he can discover for himself, with reasonable accuracy and without unreasonable expenditure of time and effort, the law which is relevant to any problem with which he is likely to be called upon to deal in his early years of practice". The five "core" subjects suggested by Ormrod were constitutional law, law of contract, law of tort, land law (including some elementary instruction in trusts), and criminal law.

The Ormrod Committee recommended that the vocational stage of training should be common to both solicitors and barristers, and should become part of an expanded university course. The extent to which common training could be achieved was viewed as dependent on the extent to which the vocational course would be regarded as a preparation for in-service training rather than as a replacement for it. Following a common final professional examination in-service training would be

provided for barristers through pupillage and for solicitors through a three year period of limited practice rights (replacing articles). Ormrod concluded that "the area of greatest potential growth in legal education is that of continuing education after qualification, both in the early years and throughout the professional career".

The Benson Report (1979)

Barristers

The Royal Commission on Legal Services found that many of the Ormrod recommendations had been implemented and in some cases anticipated by the Senate (of the Inns of Court). Developments included all-graduate entry (subject to particular cases being provided for through the common professional examination) and the institution of a vocational stage of training as a preparation for practice, with a specialist vocational course provided by the Inns of Court School of Law. The Senate had not accepted the integration of the academic and vocational stage courses within universities and polytechnics or the proposal for a common vocational stage for both branches of the profession.

From 1975 admission to one of the Inns of Court as a Bar student was restricted to law graduates, non-law graduates and exceptionally accepted mature students, removing the opportunity for admission by school leavers. The academic stage of education and training was satisfied by law graduates whose degree included subjects equivalent to six core subjects and by a one-year course for non-law graduates and a two-year course for mature students leading to the Common Professional Examination (CPE). The six core subjects were the five suggested by Ormrod, constitutional law becoming constitutional and administrative law, with equity and trusts being introduced as an additional core subject. The vocational stage was satisfied by a one-year vocational course leading to the Part II examination, or Bar Final. This was to be followed by a year in pupillage. In addition to the Bar Final examination the student would have to keep terms at one of the Inns of Court, dining at the Inn on at least 36 occasions (of which only 12 might be deferred) to qualify for Call to the Bar.

Courses for both the academic and vocational stage had been offered by the Inns of Court School of Law operated under the auspices of the Council of Legal Education. A revised vocational course was offered at the ICSL from October 1978. Courses supporting the academic stage were subsequently transferred to academic institutions.

Solicitors

The Council of the Law Society had not implemented the Ormrod Report proposals to the same extent as the Senate. The funding of a new vocational course was cited as problematic while a survey of the profession in 1974 elicited substantial opposition to the replacement rather than improvement of the system of articles. The Law Society had also decided to defer implementation of arrangements for all-graduate entry beyond its originally intended introduction in 1980.

The Benson Report charted the new education and training arrangements for solicitors as established by Qualifying Regulations which came into force on 1 June 1979. At the academic stage these included new arrangements for the one-year Common Professional Examination for non-law graduates (two-years for mature students) The new Law Society Finals Course was introduced as a preparation for practice, to be provided at the College of Law, and seven approved polytechnics: Birmingham, Bristol, City of London, Leeds, Manchester, Newcastle and Trent.

In addition to these changes the Law Society made new arrangements intended to improve articles. An extensive report by a Law Society Working Party on Articles established in 1977 included recommendations to introduce laid down opportunities for experience by articled clerks of three legal topics from an approved list and specified training in legal skills and workplace based procedures.

General arrangements

In its review the Benson Report concluded that arrangements for law degrees were generally in keeping with the academic stage envisaged by Ormrod, and saw the restriction of topics covered in the graduate CPE to the six core subjects (as compared with Ormrod's recommendation for eight subjects) as reasonable in order to enable the course to be completed in a year. It recommended that matters be kept under review.

On the vocational stage the Benson Report reviewed a range of advantages to common vocational education prior to specialised in-service training. It saw the existence of separate arrangements as a substantial barrier to common arrangements but went on to recommend simply "that on any future occasion when the present systems of training are being reviewed, the opportunity should be taken to assimilate them into a single system of vocational training".

Other recommendations of the Benson Report included support for the teaching of social welfare law and company law at one or both stages of education, and a range of suggestions for the review and improvement of the Inn's dining arrangements. The report recommended numerous system improvements to enhance in-service training through both articles and pupillage. The Committee's views on articles went beyond the Law Society's developments and an outline alternative model was set out, replacing articles by a two-year vocational course including a period of placement work experience.

The Report suggested that programmes of continuing education should be developed further by both branches of the profession and that the introduction of an obligatory system, already being discussed by the Law Society, should be kept under review.

The Marre Report (1988)

The period to 1988 saw a continuation of the growth of higher education which had characterised the period prior to Ormrod. The growth in provision of law degree courses saw a related growth in numbers of entrants to the profession. Pressures grew for more courses to provide the Law Society's Final Course. The results of this pressure became evident after the Marre Committee reported, with the opening of a fifth branch of the College of Law at York in 1989 (the others being at Chester, Guildford, and London), and the opening of new Final Courses subsequently at Leicester Polytechnic and the Polytechnic of Wales.

The Bar had established some ten years earlier a Diploma in Law course at City University and the Polytechnic of Central London, providing an alternative to the Common Professional Examination. The CPE Board was reconstituted in 1988 reflecting the increasing demand from institutions to be able to provide the course and an aim to try to ensure that there was a common academic stage.

The period also saw questions arising about the appropriateness of the vocational courses for both the Law Society's Final Course and the Bar Final Course. These were to lead to major changes.

For the Bar it was decided in 1987/88 to develop a new course to commence in 1989. The Council of Legal Education commissioned an empirical study of what young barristers do as a key input to the development of the new course of vocational training emphasising the practical skills which barristers need in their pupillage and first years in practice. There have been subsequent related cohort studies as the Bar Vocational Course developed from September 1989.

In 1985 the Law Society introduced local monitoring panels to assist in the improvement of arrangements for articles. The Bar was also active, developing a more structured system of pupillage to include registration arrangements and certification.

From August 1985 the Law Society required solicitors in the first three years after admission to attend a system of continuing education and training on a mandatory basis. The scheme was phased into place, all stages being completed for the first time in 1987/88.

The Report

The Marre Report expressed concerns about perceived inadequacies in the academic stage experience of students entering the vocational stage, referring to the need for better development of students' intellectual and analytical powers, written and oral communication skills, and abilities in legal research. The Committee had concluded that the concept of core subjects should be retained and that consideration be given to teaching trusts and land law as a composite subject. The Committee endorsed the decision already taken by the profession to establish a reconstituted CPE Board providing a common route for non-law graduates. Taking into account the rapid growth of the College of Law and the Inns of Court School of Law and wider concerns about the funding of higher education the Committee concluded that the academic stage and the vocational stage should not be combined to form a four-year university or polytechnic course.

On the vocational stage the Marre Committee gave detailed consideration to the proposal for common vocational training, and while recognising that there were arguments in favour, the majority indicated that it was considered imprudent to make any positive recommendation without having evidence about a possible scheme and its implications. It was recommended that a Joint Legal Education Council (proposed to replace the former Lord Chancellor's Advisory Committee on Legal Education) should give the highest priority to investigating the possibility of a common system of vocational training. The Committee endorsed the revision of the Bar's vocational course and recommended that the Law Society should consider criticisms of the Solicitor's Final Course in its review of arrangements in progress.

The Marre Report reviewed in-service training confirming that there was no practical alternative to pupillage, or better method of practical training for solicitors than articles. The monitoring system for articles introduced by the Law Society in 1985/6 was seen as effective, and the Bar was encouraged to implement as soon as possible a central system of monitoring to influence the content and quality of pupillage.

The Committee commended the direction of developments in continuing education, with a mandatory scheme for young entrants implemented by the Law Society and proposed by the Bar. The development of recognised specialisation schemes was encouraged, without reliance solely on recognition by examination.

Subsequent Developments

The Courts and Legal Services Act 1990

The Act followed a Green Paper on "The Work and Organisation of the Legal Profession" (Cmnd 570) of January 1989, and a White Paper "Legal Services: A Framework for the Future" (Cmnd 740) of July 1989. The Green Paper devoted a chapter and an annex to legal education. In addition to consideration of the growth of specialisation the Paper raised questions about the appropriateness of tuition at the academic stage reflecting the increasing importance of financial regulation and of the European Community. In the case of the vocational stage it was made clear that "The Government agrees with the views expressed in the Ormrod, Benson and Marre reports that there are strong arguments in favour of a common system of vocational training to cover the whole legal profession".

The 1990 Act established the present Lord Chancellor's Advisory Committee on Legal Education and Conduct. The former Advisory Committee had been established as a result of recommendations by the Ormrod Report, and had been the subject of proposals for change by both the Benson and Marre Reports.

Developments at the Academic Stage

Following a review by representatives of the professions and academic bodies in a working group set up by the former Advisory Committee, requirements on degree course providers relating to assessment, teaching hours and examining were relaxed by a Joint Announcement of the Council of Legal Education and the Law Society in May 1990. New course outlines for the six core subjects were agreed.

Further consultations were initiated by the Law Society in 1992, leading to extensive discussions about proposals to move away from narrowly defined core subjects. A Joint Announcement was subsequently adopted by the Law Society and the Council of Legal Education and approved by the Lord Chancellor and designated judges under the statutory framework in December 1994. The major changes were the inclusion of the foundations of EU law as a compulsory subject, revision of the syllabus relating to equity and trusts, broader definitions of "foundations of law" and a requirement to address legal research. The changes were to apply to qualifying law degrees from the Autumn of 1995. Corresponding changes, including a requirement to undertake one other area of legal study, were agreed to apply to the CPE from the Autumn 1996.

Developments at the Vocational Stage

The new Bar Vocational Course was introduced from September 1989. The course was repeatedly oversubscribed with acute pressures on admissions arrangements at the Inns of Court School of Law. The course continued to be developed and refined, while arrangements for students were the subject of specialist consideration in the Barrow Report (1994) to assure equality of opportunity. Intake numbers at the ICSL were increased on an exceptional basis to help meet demand for places. In 1994 the Bar Council initiated consultation on possible arrangements to validate provision of the course at centres in addition to the ICSL. Subject to all necessary procedures being completed and approval being granted under the statutory framework, the BVC will be validated at universities and private sector providers, including the ICSL, from September 1997.

Subject to approval under the statutory framework, the regulatory functions of the Council of Legal Education have been transferred to the General Council of the Bar which has established a Department of Education and Training with effect from 1 January 1996.

The Bar has continued to review and develop arrangements for pupillage, the most recent proposals being put forward in 1995 by a Working Group under the chairmanship of The Hon Mr Justice Hooper. The Bar has also discussed extensively schemes of continuing education and training for barristers, including in the second report of the Bar Council's Working Party on Continuing Education and Training (under the joint chairmanship of the Hon. Mr Justice Potter and Richard Southwell QC) proposals for the introduction of a scheme of compulsory continuing training. Scheme proposals have been further developed but have yet to be submitted for consideration under the approval procedures laid down by Schedule 4 of the Courts and Legal Services Act 1990.

The Law Society review of legal education, initiated in 1988, led to wide debate about provision at the vocational stage. This resulted in the issuing of a further consultation paper, "Training Tomorrow's Solicitors"(1990). The paper proposed the replacement of the Solicitors' Final Course by a Legal Practice Course either to stand alone or to be incorporated into an extended law degree. The course was proposed to develop practical skills training as well as knowledge of substantive law. It was also proposed that articles should be replaced by training contracts at approved establishments including further course provision on professional skills for the equivalent of one month.

Following consultation the Council of the Law Society approved a new scheme in May 1990. This endorsed the introduction of the new Legal Practice Course from September 1993. Exempting law degrees were to be possible (leading to the four-year exempting degree at the University of Northumbria). The new training scheme retained the route to admission through Fellowship of the Institute of Legal Executives, and also retained the CPE route for mature students.

Solicitor Advocates

The Law Society has established a training scheme for solicitors in private practice to secure rights of audience in the higher courts subject to them meeting specified experience, education and training requirements. Solicitor advocates have rights of audience in the higher courts, dealing with either civil or criminal cases, or both. Since the scheme was implemented the Law Society has awarded rights of audience in the higher courts to 381 solicitors, not all of whom are practising. The Law Society is the provider of the training courses.

FILEX Advocates

The Institute of Legal Executives has received the advice of the Lord Chancellor's Advisory Committee in support of its application to secure extended rights of audience for its Fellows, subject to them meeting specified experience, education and training requirements, including advocacy skills training appropriate to the context in which the rights of audience would be exercised. Subject to the approval of the application by the Lord Chancellor and the designated judges, the new training courses would be offered by validated providers.

APPENDIX D

ANNOUNCEMENT ON FULL-TIME QUALIFYING LAW DEGREES

ISSUED JOINTLY BY THE LAW SOCIETY AND THE COUNCIL OF LEGAL EDUCATION, JANUARY 1995

The following Joint Announcement has received approval under the Courts and Legal Services Act 1990. It is effective for law degree courses commencing in the academic year 1995/96.

Introduction

In the past, the Council of Legal Education and the Law Society imposed certain requirements about core subject teaching which had to be satisfied if a degree was to be accepted as a qualifying law degree. Compliance with model syllabuses was required, and methods of assessment and minimum teaching hours specified. These requirements were reviewed between 1987 and 1990 by representatives of the professions and academic bodies in a working group set up by the Lord Chancellor's Advisory Committee on Legal Education. The 1990 announcement made it clear that the central features of the compulsory core would need to be reviewed periodically. Following a consultation exercise in Summer/Autumn 1992 by the Law Society the requirements have been further reviewed by representatives of the professions and academic bodies.

The discussions have centred on the major developments in the law and in legal education since May 1990. As a result, while the professional bodies continue to reserve the right to refuse to recognise degrees when they are not satisfied with the course content or methods of assessment, certain changes, which are described in this statement, are now being made. The standard of the appropriate resources needed to support a qualifying law degree will be the subject of further discussions between the professional bodies and the representatives of the university law schools.

This Joint Announcement will be subject to review by the Law Society and the Council of Legal Education in the light of the conclusions of the review by the Lord Chancellor's Advisory Committee on Legal Education and Conduct of the initial stage of legal education.

That review will be undertaken by 1998, with a view to the professional bodies deciding by the end of July 1998 whether an application should be made under the terms of s. 29(4) Courts & Legal Services Act 1990 to amend the Joint Announcement to take account of the conclusions of the Advisory Committee's review, and both bodies fully expect that such an application will be made.

Statement of the Foundations of Legal Knowledge

The course outlines for the six core subjects will be replaced by the attached statements of the

seven foundations of legal knowledge which have been produced following discussions with the representative bodies of university law teachers and heads of university law schools. They arise from the fact that all prospective solicitors and barristers need a common grounding in these seven law foundations and because the vocational courses build on the students' knowledge of these foundations and must therefore be able to presuppose certain levels of familiarity, knowledge, awareness and appreciation. The foundations of the new academic stage core also provide the basis for continuing legal education and professional development by providing solicitors and barristers with the necessary knowledge to enable them to break into new areas of law.

Nevertheless, we recognise that law degree teaching, not least in relation to the foundations which typically dominate the first two years of degree courses, must serve many other objectives, and that in a limited time it is not easy to fulfil all these objectives. Certainly we do not wish to frustrate or impede the proper teaching of law at the first degree level and we recognise the validity of a variety of approaches to any subject - whether comparative, jurisprudential, historical, emphasising policy and reform, contextual teaching, interdisciplinary (for example, economic analysis of contract or tort) or clinical - to take just some examples. We would not want to see the intellectual richness of law school teaching diluted or these different scholarly approaches inhibited; nor do we want to see curricular developments obstructed or discouraged.

We must nevertheless be able to expect a coverage of certain central and essential features of the foundations for those students coming to the vocational courses. These features need to be reviewed periodically. Otherwise students may not receive a coherent introduction to the fundamental concepts and the social context which shapes the way in which law develops and is practised. In addition students should receive a sound grounding in the basic techniques of legal research, statute and case law analysis and the development of written and oral communication skills in a legal context. Provided an institution is able to show that the teaching and assessment of the foundations satisfies these conditions, we are willing to offer recognition.

The statement makes no attempt to lay down a detailed syllabus; nor should the statement be taken as constituting a full course. We anticipate that students will in addition, wherever possible, be encouraged to study at least one optional area of law to enable them to apply the knowledge and principles introduced in the foundations to a new area of legal study. The foundations together constitute the minimum areas of knowledge, understanding and intellectual skills, leaving it to individual institutions and teachers to determine the precise shape and content of their own courses. It is not necessary for the foundations to be taught under any particular title or in a single course. Indeed, there is value in encouraging students to work across traditional subject boundaries.

The foundations of law outlined on subsequent pages of this statement provide the minimum legal knowledge and intellectual skills for completing the academic stage of legal education for the legal profession in England and Wales. In addition to the foundation subjects a qualifying law degree must contain study of basic legal research skills. These skills do not necessarily form a separate subject but are skills to be imparted in the learning of the law.

Assessment and Teaching Hours

The 1990 announcement relaxed the previous requirements so far as assessment and examining are concerned; the only requirements continue to be that the professional bodies are satisfied that each foundation will be properly assessed. The methods of assessment will be for each institution to decide. We recognise the value of employing a variety of methods of assessment where resources allow, rather than relying solely on one method such as written unseen examinations.

Since 1990 the minimum teaching hours have no longer been specified. In future the requirement of a qualifying law degree (whether a single honours degree in law, a joint honours degree, or a mixed honours degree) will be that

(i) study of the legal subjects must include study of the seven (7) foundation subjects and must occupy not less than one half (1/2) of a student's work-load in a three (3) year degree course and three eighths (3/8) in a four (4) year degree course; and

(ii) study of the seven (7) foundation subjects must occupy not less than seven eighteenths (7/18) of a student's workload in a three (3) year degree course and seven twenty-fourths (7/24) of a student's workload in a four year degree course.

Expressed in modular terms, which will frequently be the case, this will amount to nine (9) modules in an eighteen (18) module three (3) year degree course. Each of the foundation subjects must occupy not less than one sixth (1/6) of a student's total work-load in a normal academic year. This will represent one (1) module in an eighteen (18) module three (3) year degree course. Consequently, the study of the foundation subjects will constitute seven (7) modules and there will then be a minimum of two (2) modules available for optional law subjects, making the minimum nine (9) modules indicated above. The requirement of nine (9) modules for the new academic stage core subjects will also apply to a four (4) year degree course of twenty-four (24) modules in order for qualifying law degree status to be granted.

The recognition of two (2) year full-time senior status law degrees, two (2) year full-time intensive study law degrees, and four (4) to six (6) year part-time law degrees as qualifying law degrees will be decided by discussion between individual universities and the professional bodies using as a basis the requirements for a three (3) year full-time qualifying law degree.

In assessing whether a course scheme allots sufficient time to the study of the foundation subjects, time spent on studying the foundation subjects within optional law subjects will not normally be the taken into account. However, an institution wishing to use options to any extent to cover the foundation subjects will be expected to identify to us and to students the "pathways" which contribute to a qualifying law degree. This notification must be given to students before they embark on their degree studies, and will need to demonstrate that the courses are structured in such a way that, whatever options are chosen, all students will receive appropriate instruction in all the foundation subject areas.

There will be no fixed requirement for the teaching of the legal research skills outlined.

The Law Society and the Bar will exercise their discretion in relation to the recognition of qualifying law degrees, in particular so far as calibration of modules is concerned, in a positive, practical and flexible way which involves the minimum of disruption for law schools.

Although all law schools will be required to introduce EC law as a compulsory area of study for students beginning their courses in 1995, the new calibration requirements will be introduced only as law schools apply to the professional bodies for approval of new or amended courses or are subject to quinquennial review.

QUALIFYING LAW DEGREES

THE FOUNDATIONS OF LEGAL KNOWLEDGE

INTRODUCTION

The objective of identifying the foundations of legal knowledge is to ensure that all students who intend to qualify as professional lawyers will have demonstrated:-

(i) an understanding of the fundamental doctrines and principles which underpin the law of England and Wales;

(ii) a basic knowledge of the sources of that law, and how it is made and developed; of the institutions within which that law is administered and the personnel who practice that law;

(iii) an appreciation of the social and other pressures that shape the development of the law of England and Wales;

(iv) the intellectual and practical skills needed to research the law on specific matters and to analyse both statute and case law, to apply it to the solution of legal problems and to communicate - both in writing and orally - the results of such work; and

(v) the ability to reflect on the fundamental social concepts such as justice, liberty and rights, and the contribution that the law makes to the advancement of those principles.

The seven Foundation Subjects are:

OBLIGATIONS I

The foundations governing the formation and enforceability of contracts, together with their performance and discharge, including the remedies available to parties and the doctrine of privity. An outline of the law of restitution.

OBLIGATIONS II

The foundations of tortious liability (including vicarious and joint liability) and the remedies in respect of torts (including damages). There should be a sufficient study of the major torts (such as negligence, nuisance, intentional interference with the person and defamation) to exemplify the application of the general principles and the defences, and to familiarise the student with the principal torts and their constituent elements.

FOUNDATIONS OF CRIMINAL LAW

The general foundations of criminal liability and a sufficient study of the major offences (such as homicide, non-fatal offences against the person and theft) to exemplify the application of the general principles and familiarise the student with the principal offences and their constituent elements.

FOUNDATIONS OF EQUITY AND THE LAW OF TRUSTS

The relationship between Equity and Common Law. The trust as used for family or commercial or for public charitable purposes. Express, resulting and constructive trusts of property. Trustees' powers and obligations. Nature and scope of fiduciary obligations. Nature and scope of equitable rights and equitable remedies, especially tracing, Mareva injunctions, Anton Piller Orders, specific performance, imposition of personal liability to account as constructive trustee, estoppel entitlements to property or compensation, the developing principle of unconscionability.

THE FOUNDATIONS OF THE LAW OF THE EUROPEAN UNION

The political institutions and processes of the European Communities. The European Court of Justice and its jurisdiction. Sources and general principles of the Law of the European Union. The relationship between the Law of the European Union and National Law. An introduction to the main areas of the substantive law of the European Union.

FOUNDATIONS OF PROPERTY LAW

The foundation concepts of land law, the relationship between the common law and equitable rights, the scope, nature and effect of estates and interests in land. An introduction to the strict settlement, trusts for sale and co-ownership and (in essentials) the relationship of landlord and tenant. An introduction to registered conveyancing.

FOUNDATIONS OF PUBLIC LAW

The basic features and characteristics of the constitution. Constitutional Law should cover the main institutions of government (Parliament, Executive and courts) in the United Kingdom and the European Union; Civil Liberties and the European Court of Human Rights; the sources of law and the law making processes.

Administrative Law should cover administrative powers and their control, especially by judicial means (including judicial review).

The criteria for LEGAL RESEARCH are:

The ability to analyse a problem involving a question or questions of law, and through research to provide a solution to it. This involves the ability

(i) to identify and find relevant legal sources and materials;

(ii) to extract the essential points from those legal sources and materials;

(iii) to apply the law to the facts of the problem so as to produce satisfactory answers to the questions posed; and

(iv) to communicate the reasons for those answers, making use of legal sources and materials.

APPENDIX E

PRESENT ARRANGEMENTS FOR LEGAL EDUCATION AND TRAINING

Education and Training of Solicitors and Barristers in England and Wales: The Three Stage Structure

Solicitors

The present arrangements for the training of solicitors are set down in the Training Regulations 1990 of the Law Society. These established a new training scheme following a wide-ranging review undertaken by the Law Society in 1988/89.

Those wishing to qualify to practise as solicitors must complete:

- the academic stage of training;

- the vocational stage of training.

Once qualified, the training of solicitors must comply with a scheme of continuing professional development. Solicitors are able also to pursue specialisation and qualification for rights of audience in higher courts.

1 The Academic Stage

The academic stage of training may be completed by attending a university or other higher education institution and obtaining a qualifying law degree. Under the terms of the Joint Announcement (with the Council of Legal Education) detailed at Appendix D a qualifying law degree will have provided appropriately for seven foundations of legal knowledge:

Constitutional and Administrative Law;
Law of Contract;
Law of Tort;
Criminal Law;
Land Law;
Equity and Trusts;
Law of the European Union.

The academic stage may also be satisfied by graduates without a qualifying law degree subject to satisfactory completion of a postgraduate law conversion course - the Common Professional Examination (CPE) or Diploma in Law.

For those without a degree an alternative route satisfying the academic stage is progression as a legal executive. A Fellow who has taken the Institute's examinations covering the seven foundations of legal knowledge (and one other substantive law paper) and has been employed within the legal profession for at least five years may be exempted from the CPE and may proceed

to the vocational stage of training.

In the case of Justices' Clerks' Assistants admission to the CPE is permitted following 5 years in the Magistrates' Court Service and completion of the Diploma in Magisterial Law.

2 The Vocational Stage

The vocational stage of education and training comprises:

- the Legal Practice Course (LPC) (see below);
- the Training Contract;
- the Professional Skills Course (PSC) (see below) to be completed during the Training Contract.

The Training Contract is in a prescribed form, establishing a contractual relationship between the Trainee Solicitor and the authorised Training Establishment which will appoint a Training Principal and follow a Training Code. The Training Contract is for two years full-time or an equivalent period part-time. During this period the Trainee Solicitor is to be provided with opportunities under the guidance of a Supervisor to practise a range of skills and gain training and experience in at least three English legal topics, including both contentious and non-contentious work.

Following successful completion of the LPC, the Training Contract and the PSC, the Trainee Solicitor may apply for Admission to the Roll.

3 Continuing Professional Development

The current Law Society Scheme for Continuing Professional Development (CPD) established under the Training Regulations 1990 is being implemented on a phased basis. It will apply to all solicitors from 1 November 1998. It applies at present to solicitors admitted on or after 1 November 1982.

The Scheme requires solicitors to undertake:

- one hour of CPD for each whole month in legal practice or employment between admission and the next first day of November;
- 16 hours of CPD in each of the next three complete years in legal practice or employment;
- 48 hours of CPD in each subsequent three year period;
- such CPD courses as the Law society may prescribe during the first three years following admission. These are the Practice Development Course 1 (covering communication and work management) and the Best Practice Management Course in the third year following admission.

Barristers

The present arrangements for the training of barristers are governed by the training regulations within the Consolidated Regulations (CR) of the Four Inns of Court.

Those wishing to qualify and practise as barristers must complete:

- the academic stage of training;
- the vocational stage of training.

There is at present no regulated framework for the continuing professional development of practising barristers. The General Council of the Bar and the Inns of Court have been formulating a scheme.

1 The Academic Stage

The academic stage of training may be completed by obtaining a qualifying law degree, defined by the terms of the Joint Announcement (with the Law Society) as set out at Appendix D. For graduates without a qualifying law degree and non-graduate mature students exceptionally accepted by the Four Inns of Court, this stage may be completed by undertaking the Common Professional Examination or obtaining a Diploma in Law approved by the Common Professional Examination Board.

2 The Vocational Stage

The vocational stage of training for intending practitioners comprises:

- the Bar Vocational Course (BVC) (see below);
- pupillage.

Successful completion of the Bar Vocational Course is the basis for Call to the Bar by an Inn of Court, conferring the title of Barrister at Law.

Following successful completion of the Bar Vocational Course a person wishing to enter independent practice as a barrister is required normally to undertake pupillage for a period of at least twelve months in the chambers of one or more pupil masters/mistresses. Satisfactory completion of the first six months of pupillage entitles the person to a provisional practising certificate. Following successful completion of a practising period of pupillage over a further six months the barrister is entitled to a final practising certificate.

A pupil may serve the non-practising six months and up to three months of the practising six months without having been called to the Bar. The non-practising period is normally to be undertaken on a continuous basis in chambers unless the Joint Regulations Committee (JRC) of the General Council of the Bar makes an exception. Alternative modes of serving the practising period of pupillage are set out by CR(46) and are subject to the prior approval of the Masters of the Bench.

Pupils are subject to requirements to undertake such further training as the General Council of the Bar requires. This at present includes further training in advocacy, provided by the Inns or Circuits, and a two-day course on "Advice to Counsel" provided by the Council for Legal Education and the General Council of the Bar.

Subject to the Code of Conduct which prevents a newly qualified barrister from practising on his/her own for a period of three years or on tasks "which he knows or ought to know he is not competent to handle", the final practising certificate allows the barrister to supply legal services unsupervised in any Court and in any area of law.

An Outline of the Courses Followed at the Vocational Stage

A The Legal Practice Course

The Legal Practice Course (LPC) was introduced from September 1993. The Law Society's Legal Practice Course Board validates a variety of institutions which teach and assess the course which is available in a one-year full-time and two-year part-time mode, subject to the arrangements at each institution. The aims of the course are:

(i) to prepare students for practice - in effect the first day of the training contract;

(ii) to provide a foundation for subsequent practice.

The curriculum for the LPC is arranged as follows:

1 Compulsory Areas

Each of the four compulsory areas contains substantive law, procedure and practical skills work:

* Conveyancing;
* Wills, Probate and Administration;
* Business Law and Practice;
* Litigation and Advocacy, including both civil and criminal procedure.

2 Optional Areas

Two optional areas must be selected relating to private client work and/or corporate client work.

The range of subjects available within the options will vary between institutions, and are subject to the approval of the Legal Practice Course Board. Examples of optional subjects are Employment Law, Family Law, Commercial Property, Corporate Finance, Housing Law.

3 Pervasive Areas

The following topics are taught and assessed throughout the compulsory areas in view of their general significance:

* Professional Conduct;
* The Financial Services Act 1986 (including Investment Business Rules).

European Union Law and Revenue Law were treated initially as pervasive topics, but have since been incorporated within the compulsory areas.

4 Practical Skills

The following practical skills are developed on the course:

* Legal Research;
* Writing and Drafting;
* Interviewing and Advising;
* Negotiation;
* Advocacy;

Written standards are laid down for the compulsory areas, pervasive areas, and skills. In outline, skills development aims to enable a student to demonstrate a basic ability in the use of the skills needed to provide effective performance of tasks and transactions in their substantive context, the ability to explain the principles and criteria that underpin good performance and the ability to apply the skills in a variety of settings.

Assessment comprises a mixture of written examinations, course work and skills assessment. Particular arrangements vary between institutions under arrangements approved by the Legal Practice Course Board. The Law Society also appoints external examiners.

A four-year course at the University of Northumbria provides an exempting law degree, successful completion of which allows students to proceed direct to a Training Contract.

Validated institutions are subject to monitoring, which includes regular visits by panels of practitioners and academics.

The Law Society is to undertake a consultative review of the operation of the LPC during 1996 with a view to any required changes being operable from September 1997.

B Professional Skills Course

The Professional Skills Course was introduced by the Law Society from September 1994. The course must be completed prior to admission to the roll of solicitors and is undertaken after completion of the Legal Practice Course, normally during the training contract.

The Professional Skills Course aims to build on the foundations laid in the Legal Practice Course, providing formal instruction in practical issues alongside practical experience of the training contract.

The course is divided into five modules each of which is subject to written standards. Modules are as follows:-

1. **Personal Work Management**

This module is intended to help develop orderly approaches to work, building on experience in the Legal Practice Course. It addresses various aspects of written and oral communication, the development and implementation of systems and procedures, methods of work organisation, and the practical use of information technology. The module involves three days of tuition of which one may be distance learning.

2. Accounts

This module addresses the processes involved in maintaining financial records, the Solicitors' Accounts Rules, the principles of accounting and interpreting basic business accounts.

The module may involve direct tuition, distance learning, or a combination of the two methods for a duration of six days.

This module is formally assessed by a written paper.

3. Advocacy and Oral Communication Skills

This module aims to develop competence to exercise the rights of audience available to solicitors on admission and to improve oral communication skills to meet the needs of all parties to triers of fact and law. Negotiation skills, and the ethics of advocacy are addressed to develop skills appropriate to criminal and civil courts, and other contexts in which contentious issues may be resolved.

The module involves at least five days, largely of direct tuition with substantial reliance on practical and role play exercises.

4. Investment Business

This module aims to develop understanding and appreciation of the implications of the Financial Services Act, the Solicitors' Investment Business Rules and the relevant practice rules, and the ability to identify the steps needed to undertake non-discrete investment business.

The module may be undertaken by direct tuition, distance learning or a combination of both methods over a period of two and a half days. It is formally assessed by a written paper.

5. Professional Conduct

Professional conduct is considered as a pervasive issue in all other modules. In addition this module provides an opportunity to consider and discuss case studies in the light of practical experience gained within the training contract. A full day of direct tuition is involved.

The Law Society does not lay down when the course must be undertaken within the training contract. Firms are advised that most of the modules should be undertaken after the trainee has had at least three months of experience in the firm.

The Law Society validates providers of modules for the Professional Skills Course and monitors provision in order to maintain consistent standards. There is a range of providers including in-house and consortium arrangements and validated commercial provision. Modes of delivery vary, including block periods of attendance of up to four weeks, individual modules with attendance grouped or dispersed through the calendar requiring direct tuition, and combinations of distance learning with direct tuition.

C The Bar Vocational Course

The Bar Vocational Course (BVC), which replaced the former Bar Finals Course, has been taught at the Inns of Court School of Law since 1989. The following outline of the course is based on the statement of course specification guidelines issued to potential applicants for validation to offer the BVC from September 1997.

1. Aims

The aim of the course is to enable students, building on their work at the academic stage of training, to acquire such skills, knowledge and attitudes as will:

(a) prepare them for the more specialised training to be given in pupillage;

(b) equip them to perform competently in matters in which they are likely to be briefed during the second six months of pupillage;

(c) lay the foundation for future practice, whether in chambers or as an employed barrister;

(d) emphasise the importance of being able to practise in a culturally diverse society,

communicate effectively with everyone involved in the legal process, and of recognising the role of other professionals and their expertise.

2. Standards of Competence

The main criterion for the evaluation of a proposed BVC is that a student who has successfully completed it should possess a framework of essential and transferable skills for competent practice in the first few years in private practice at the Bar. The BVC aims to produce people ready to undergo and take full advantage of the further training experiences offered by and during pupillage. It does not aim to produce as a finished product, a person capable of competently practising on his or her own account as a barrister. The standard of competence which is used as the standard for certification is readiness for pupillage.

3. Curriculum

The course will normally last within the region of 30 weeks of teaching. The prescribed content falls into three main elements:

(a) professional conduct, the requirements and observation of which must pervade the whole course;

(b) knowledge which the student is required to acquire and understand; and

(c) skills in which the student is expected to achieve competence.

It is estimated that generally 60% of the course is to be devoted to skills as compared with knowledge.

4. The Teaching Programme

Professional Conduct

Students are expected to display and develop a professional approach and acquire a sound working knowledge of the provisions of the Code of Conduct of the Bar of England and Wales. Teaching of professional conduct should extend beyond the Code. Professional conduct is not separately assessed but the criteria for every assessment on the course should incorporate a requirement for the proper observance of ethical standards.

Knowledge Areas

Three knowledge areas are addressed:

(a) Civil Litigation;

(b) Criminal Litigation;

(c) Evidence.

These knowledge areas are to be taught in a practical way taking into account how things happen in court and incorporating into practical training exercises on criminal matters a knowledge of sentencing.

The Skill Areas

There are three groupings of skills:

(a) Casework skills -

(i) Fact Management,

(ii) Legal Research;

(b) Written skills -

(i) Written Word Skills,

(ii) Opinion Writing,

(iii) Drafting;

(c) Interpersonal skills -

(i) Conference Skills,

(ii) Negotiation,

(iii) Advocacy.

Remedies and Practical Background

Remedies are to be taught in a practical context with students focusing on the skills involved in quantifying damages in personal injuries.

In addition there are five practical background subjects:

(a) Revenue Law;

(b) European Union Law;

(c) Accounts;

(d) Business Associations;

(e) Social Security Law.

Options

In addition to the prescribed content of the BVC, students are expected to chose two optional subjects from a minimum range of six options available.

The framework for the BVC includes assessment of both knowledge and formal skills. There are to be at least two external examiners for each course, appointed by the General Council of the Bar. The General Council of the Bar will evaluate the application of required standards by the institution providing the course on a continuing basis through regular monitoring and the prescribed use of external examiners.

APPENDIX F

SELECTED STATISTICS ON LEGAL EDUCATION AND TRAINING

TABLE 1

Acceptances for University First Degree Law Courses in England and Wales 1987 - 1994

	Home			Overseas			Total		
Year	Male	Female	Total	Male	Female	Total	Male	Female	Total
1987	2,108	2,262	4,370	389	369	758	2,497	2,631	5,128
1988	2,250	2,402	4,652	484	401	885	2,734	2,803	5,537
1989	2,325	2,623	4,948	557	424	982	2,882	3,048	5,930
1990	2,537	2,909	5,446	624	535	1,159	3,161	3,444	6,605
1991	2,884	3,209	6,093	615	573	1,188	3,499	3,782	7,281
1992	3,408	3,904	7,312	595	537	1,132	4,003	4,441	8,444
1993	3,596	4,136	7,732	718	722	1,440	4,314	4,858	9,172
1994	3,394	4,122	7,516	720	761	1,481	4,114	4,883	8,997

Source: Annual Statistical Reports, The Law Society.

TABLE 2

Numbers of Students Graduating in Law from Universities in England and Wales[104] 1985 to 1994

	Graduates from:			
Year of Graduation	Universities	Former Polytechnics	Total Graduates[105]	% Change
1985	3,079	1,580	4,659	-
1986	2,994	1,564	4,558	-2
1987	3,270	1,564	4,834	6
1988	3,489	1,740	5,229	8
1989	3,672	1,462	5,134	-2
1990	3,758	1,916	5,674	11
1991	3,570	2,084	5,654	-
1992	3,402	2,480	5,882	4
1993	3,588	2,381	5,969	1.5
1994	3,879	2,620	6,499	9

Source: Annual Statistical Report 1995, The Law Society

104 Figures for 1993 and 1994 exclude graduates in law from new universities in Wales for which no information was available.

105 These figures relate to single honours law degrees and do not include modular or joint honours degrees which may also allow graduates to proceed directly to study the Legal Practice Course and Bar Vocational Course.

TABLE 3

The Legal Practice Course

Year	Applicants (F/T)	Enrolments	First Time Passes	Total Passes (In Year)	Training Contracts Registered (in next year)
1993/94	10,729	5,792 (+439 P/T)	4691	5,382 ('94)	4,015 ('95)
1994/95	9,846	6,539 (+738 P/T)	4755	5,532 ('95)	-
1995/96	8,959	6,390 (+522 P/T)	-	-	-
1996/97	7,595	-	-	-	-

Source: Law Society

TABLE 4

Numbers of Training Contracts registered with the Law Society

TRAINING CONTRACTS	
Calendar Year	Number Registered
1993	3,733
1994	3,857
1995	4,015

Source: Law Society

TABLE 5

Bar Vocational Course

Academic Year	ICSL Applicants	ICSL Enrolments	Course Completions
1989/90	1,070	845	644
1990/91	1,075	899	695
1991/92	1,368	1,076	846
1992/93	1,655	1,040	874
1993/94	1,981	1,031	919
1994/95	2,400	1,027	883
1995/96	1,456	1,138	-
1996/97	1,549	-	-

Source: General Council of the Bar
Council of Legal Education

TABLE 6

Pupillage and Tenancy

Year from 1 October to 30 September	Numbers commencing pupillage for:		Numbers obtaining tenancy
	First Six Month Period	Second Six Month Period	
1990/91	914	626	395
1991/92	731	698	497
1992/93	785	766	505
1993/94	764	767	517
1994/95	657	764	509

Source: General Council of the Bar

APPENDIX G

STUDENT FINANCE - SOURCES OF SUPPORT

1. Eligibility

Eligibility for financial support from public funding is summarised in the table set out below. Further details of the main sources of public financial support are provided in subsequent sections.

Table 1 - Sources of Public Finance for Students: Eligibility

	Undergraduate Full-time	**Postgraduate Full-time**	**Part-time**
Mandatory Awards	most	PGCE* students only	PGCE* students only
Student Loans	all aged <50	PGCE* students only	PGCE* students only
Access Funds	all who have taken student loans	all	PGCE* students only
Social Security & Housing Benefit	students with children & the disabled	students with children & the disabled	those who study <21 hrs/wk and actively seek employment
Career Development Loans	All aged >18 on vocational courses no longer than two years and for which no alternative finance is available		

**PGCE = Postgraduate Certificate of Education*

Source: CVCP Briefing Note

2. Mandatory Awards

Mandatory awards are available to full-time students on designated courses subject to eligibility criteria primarily related to UK residents. Mandatory awards are restricted generally to first degree courses, the only exception being the Postgraduate Certificate of Education (PGCE).

A mandatory award consists of two elements: the payment of tuition fees, and the provision of a means-tested grant for maintenance.

The payment of tuition fees for students is not means-tested. Fees are paid directly by the student's home local education authority to the institution where the student is registered. The fees

represent a notional cost rather than the actual or full cost of the course. The level of fees payable is reviewed annually by the Department for Education and Employment. The maximum tuition fees payable through mandatory awards in 1996-97 are as follows:

Classroom-based courses	£ 750
Laboratory and Work-shop based courses	£ 1600
Clinical elements of Medical, Dental and Veterinary courses	£ 2800

Maintenance grants are means-tested and are payable directly to individual students. Personal circumstances such as age, disability, marital status, independence from parents or parental income will be taken into account in determining the amount of the grant awarded.

Table 2 sets out the maximum level of the basic maintenance grant for the period 1990/91 through to 1995/96.

Table 2	**90/91**	**91/92**	**92/93**	**93/94**	**94/95**	**95/96**
Students living away from their parents' home and studying:	£	£	£	£	£	£
- in London	2845	2845	2845	2845	2560	2340
- Elsewhere	2265	2265	2265	2265	2040	1885
Students living at their parents' home	1795	1795	1795	1795	1615	1530

Source: Department for Education and Employment

3. Student Loans

The Government's Student Loans Scheme was established under the Education (Student Loans) Act 1990. Loans are available to full-time students aged less than 50 and who meet residential criteria. Eligible students do not have to be in receipt of a maintenance grant in order to apply for a loan. Part-time students and postgraduate students (with the exception of those following the Postgraduate Certificate of Education course) are not eligible to student loans.

Access to loans is not means-tested and students can borrow any amount up to the maximum specified. Repayments are expected to commence from the April following graduation. Repayments can be made monthly for up to five years and may be deferred where the individual's total income does not exceed 85% of national average earnings. Rates of interest payable on the loan are determined by the inflation rate, representing a zero interest loan in real terms.

Table 3 sets out the maximum student loans available during the period 1990/91 to 1995/96 for a full year of study. Final year loans have a lower maximum as they exclude the summer period following completion of the course.

Table 3	90/91	91/92	92/93	93/94	94/95	95/96
Students living away from their parents' home and studying:	£	£	£	£	£	£
- in London	460	660	830	940	1375	1695
- Elsewhere	420	580	715	800	1150	1385
Students living at their parents' home	330	460	570	640	915	1065

Source: Department for Education and Employment

4. Access Funds

The Department for Education and Employment allocates to the Higher Education Funding Councils a specific financial provision for Access Funds. These are allocated by the Funding Councils to higher education institutions which are then responsible for their allocation to students. The Access Funds are intended to help meet the needs of students with particular financial difficulty. Applicants must have claimed already the full amount of any entitlement under the Student Loans Scheme. Students over the age of 50 who are not eligible for student loans are able to apply for support from Access Funds. Full-time undergraduate and postgraduate students may apply, as may part-time students on Postgraduate Certificate of Education courses.

5. Career Development Loans

A Career Development Loan is a deferred repayment bank loan, providing an individual with initial help to pay for vocational education or training. The scheme operates as a result of arrangements between the Department for Education and Employment and four major banks - Barclays, the Cooperative, the Clydesdale and the Royal Bank of Scotland. The Department for Education and Employment pays the interest on a Career Development Loan during the period of study or training and for one further month (extended to a further six months for those who are unemployed). A loan of between £200 and £8000 is available for a course of study of up to two years, covering up to 80% of course fees and other costs such as books, materials and related expenses including travel and childcare, but not including general living expenses. Following the period of interest rate payments by the Department for Education and Employment, the responsibility for repayment of the loan and interest transfers to the individual. The period for repayment is determined between the borrower and the lending bank which will have satisfied itself prior to making the loan about the appropriateness of the course of study chosen and the individual's prospect of success.

Subject to an application being endorsed by a Training and Enterprise Council, an individual can be eligible for a Career Development Loan even if in receipt of payments from an employer.

APPENDIX H

AN OUTLINE REVIEW OF THE MINIMUM LENGTH OF DEGREE AND PROFESSIONAL TRAINING REQUIRED IN SELECTED JURISDICTIONS

France
Germany
The Netherlands
Ireland
Northern Ireland
Scotland
Australia
Canada
United States of America

FRANCE

In France, the professions of *avocat* and *conseil juridique* were merged by the *loi* of 31 December 1990 and the *decret* of 27 November 1991.

Legal education commences with a four-year law degree (*maîtrise*), equivalent to an LL.M. Some students need five years to pass this examination. In parallel, since the *arrêté* of 26 December 1991, several diplomas have been recognised as equivalent to the *maîtrise en droit* for the purpose of access to the professional stage of training. In particular, these include the diplomas delivered by the Institutes of Political Science, Business and Management Schools (i.e. *grandes écoles de commerce*); foreign diplomas giving access to the legal profession; and others.

In addition to the *maîtrise*, candidates must also pass an entrance examination to the professional stage of training. This examination is based not on legal knowledge so much as on skills such as drafting and oral capacity. Specific teaching for the entrance examination is given locally by the *Instituts d'Études Judiciaires*. Some students take this as one full year of study; alternatively the courses may be taken concurrently with the *maîtrise*. Some students can be exempted from some of the tests if they already have a university degree of "professional education".

The professional training stage is organised locally by the *Centre Régional de Formation Professionnelle*, of which there are 33 around France. This phase begins with one year of theoretical and practical training, defined at the local level with the approval of the Minister of Justice and the Law Society (*Conseil National des Barreaux*). Theoretical courses deal with the structure and ethics of the *avocat* profession, written and oral skills. Two training *stages* (internships) with a total duration of three months have usually to be completed in a public or private body which may include, for example, an administrative institution, court, solicitor's firm, accountant's office, company legal department or equivalent experience taken abroad. At the end of the year, candidates must pass an examination awarding a certificate of aptitude for the profession of *avocat* (*Certificat d'aptitude à la Profession d'Avocat/CAPA*).

The *avocat-stagiaire* must then obtain a full-time training contract with a practising *avocat* before being permitted to take the professional oath. Over the two years of the training contract, the

avocat-stagiaire will also undertake theoretical courses organised by the *Centre Régional de Formation Professionnelle (CRSP)* after which, the candidate will be admitted to the *Grand Barreau*.

It is worth noting that the title of *Docteur en Droit (Ph.D.)* exempts a candidate from the entrance examination to the *Centre Régional de Formation Professionnelle* and he/she may proceed straight to the course preparing applicants for the *CAPA*.

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GERMANY

Students in Germany must go through the same two phase legal education whether they are to become higher civil servants, public prosecutors, *Rechtsanwälte* or *Notare*. There are certain regional variations to the pattern of legal training among the *Länders* but they are not very substantial.

The first phase of legal education prepares students for the first State examination (*erste Staatsexamen*). This may involve students in studies lasting from three and a half years to a decade. Law students in Germany used to take an average of six years to pass the first State examination. Recent reforms have however reduced this to an average of four years.

Law studies during this phase are divided into lectures, courses with homework and tests in three subjects: civil law, administrative law and criminal law. The cycle is repeated for each subject, once at a beginner level, once at an advanced level. Additionally, a period of three months must be spent gaining practical work experience in various types of public and private bodies, usually during vacations.

The first State examination consists of written and oral tests and homework in some *Länder*. A considerable number of candidates fail the first examination but they are permitted to repeat it once. After passing, the student assumes the position of *Referendar* (trainee). This is effectively a civil servant post paid by the government. The number of training places available is limited and students with poorer exam results are entered on a waiting list. In certain *Länder*, access to the practical training (*Vorbereitungsdienst*) may involve a wait of several months. This training period lasts for two years, recently cut down from two and a half years.

Referendare must go through four stages of training during this time, each lasting for at least three months and rotating between clerkships both with the State and private lawyers plus a subsequent period of four to six months in a priority sector selected by the trainee (sometimes abroad).

The second State examination (*Assesorexamen*) consists of written and oral papers at different stages of the training. Once a person has passed the second State examination, she/he is called an *Assessor* and she/he is then free to choose which legal profession and *Länder* from which to practise.

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THE NETHERLANDS

Legal education commences with a four-year law degree. The large majority of students will

however take four and a half or five years due to studies abroad, work commitments etc. A law degree is required for registration as *advocaat*, *Notaris* and *Rechtelijk ambtenaar* (judge), though the model varies slightly for each. The degree confers the title *Meester in de Rechten* (Mr). Once awarded, the graduate can apply to become a member of the *Orde van Advocaten*. This will be automatic if the candidate has fulfilled the necessary degree requirements.

Although *advocaaten* at this stage, graduates must undertake a post-admission phase during which they are not allowed to practise alone but only under the supervision of a *patroon*. Normally, this phase lasts for three years but can be longer for a part-time trainee or extended on an individual basis by decision of the Council of Supervision. It is also possible for the traineeship to be shortened at the request of the applicant, by the Council of Supervision with the approval of the General Council.

Concurrently with the traineeship, candidates must also pass the *beroepsopleiding* (professional training) examination. To prepare for this, trainees must undertake set periods devoted to theoretical learning and practical training days.

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IRELAND

Legal education commences with a three-year law degree (LLB). Professional legal education is then split between barristers and solicitors, following two different courses of training. However, it is possible to become a barrister or a solicitor as a non-law graduate and also without having law degree if, for example, a person has worked for at least seven years as a Law Clerk in a solicitor's office and provided that the candidate has passed the Irish Law Society's preliminary examination.

To become a solicitor, candidates must undertake a four stage professional course followed by an apprenticeship monitored by the Irish Law Society which requires experience in at least civil litigation, conveyancing and probate/administration of estates. The four elements of the admission programme include:

- three months in a solicitor's office
- a full-time legal practice course (known as the Professional Course) of 55 teaching days and five study days
- 18 months of full-time apprenticeship
- six weeks further attendance at an Advanced Course (sanctioned by the Final Examination).

Having completed these requirements, the apprentice is eligible for entry to the Roll of Solicitors.

To become a barrister, admission to the Honourable Society of the Kings Inns is required. A law degree is not necessary, but preferable, and only a first class or upper second class honours law degree will assure entry to the student. A student who does not hold an approved law degree must pursue a degree level course of study at the Kings Inns lasting four years.

A student who gains admission to the Barrister-at-Law degree course at the Kings Inns by virtue of holding an approved law degree or having reached the required level in the equivalent diploma

examination, must pursue a lecture based course of study for two years. Once the necessary examinations and dining requirements are fulfilled, candidates may be conferred with the title of Barrister-at-Law. Students wishing to practise however must follow this by becoming a member of the Law Library and enter pupillage for one year with a practising barrister of not less than five years' standing.

Both barristers and solicitors must have a knowledge of the Irish language.

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NORTHERN IRELAND

In Northern Ireland, joint training is provided to barristers and solicitors at the vocational stage. Vocational training is provided by the Institute of Professional Legal Studies which offers two courses: one for 20 Bar students and one for 70 solicitor students. Entrance to the Institute is acquired by passing an exam in the December prior to the year of training. Access to this stage may be by one of several routes including an acceptable degree in law or in another discipline (providing the candidate has attained a satisfactory level in defined legal subjects in the entrance examination) or by alternative routes in particular, that based on long professional experience, for example as a law clerk.

Once offered a place at the Institute, the vocational stage lasts for two years. For intending solicitors this includes:

- four months of work experience in a solicitor's office (September - January)
- 12 months at the Institute of Professional Legal Studies (January - December) returning to their offices in vacation periods
- eight months of work experience in solicitors' offices.

Once a student has passed all the relevant examinations and satisfied the Law Society that she/he has received proper training, the candidate may apply to be enrolled as a solicitor of the Supreme Court of Judicature in Northern Ireland and once enrolled apply for a Practising Certificate. Newly qualified solicitors are restricted from practising otherwise than as employees for a three year period. This can be reduced to two years by attendance at the Law Society's continuing legal education programme.

Bar students' training includes the following:

- one week of "work shadow" with their pupil masters in mid September
- 12 months vocational course at the Institute of Professional Legal Studies (overlapping for three months with the previous year's intake of solicitors and from January - June with the new intake).

Candidates are called to the Bar in September and commence pupillage for one year. During the second six months of pupillage they may undertake paid work.

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SCOTLAND

Legal qualification in Scotland consists of two parts: an academic training and a practical training. The academic training implies either a law degree (LLB) or passing of the Law Society examinations. (Candidates wishing to sit the Law Society's examinations must be in or find full-time employment as a pre-diploma trainee with a qualified solicitor practising in Scotland. The pre-diploma training contract lasts for three years during which the trainee should pass the Law Society's examinations.)

After completion of their degree or professional examinations, all entrants to the profession are required to take the Diploma in Legal Practice. This involves a one year full-time post-graduate course administered in each of Scotland's five universities.

Post-diploma practical training requires intending solicitors to undertake two years in-service training in an office; and intending advocates to do at least twelve months in a solicitor's office followed by nine months pupillage/devilling divided between civil business and criminal business. An intending solicitor does not need to take further examinations but an entrant to the Faculty of Advocates must pass additional examinations in evidence and procedure and professional responsibility. There is a rigorous advocacy training course.

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AUSTRALIA

The regime for entry into the legal profession is not completely uniform across all States. However, the admission bodies of each State and the universities have recently agreed on a standard curriculum for law degrees. Now, therefore, a law graduate of any State who has completed the requirements of professional training and been admitted to practise in that State, will gain reciprocal admission to practise in any other State in Australia.

It is generally necessary to have a university law degree in order to qualify in Australia. Two universities allow students to undertake a law degree direct from school, but this is very unusual. Most students already hold a first degree and proceed to a three year post-graduate law degree or undertake two degrees concurrently.

While law degree requirements are fairly similar between States, professional training differs to a much greater extent. **New South Wales**, for example, requires completion of a six months legal practice course with a further period of probation, during which candidates may only work as an employed solicitor. In **Western Australia**, the law graduate spends a year as an articled clerk and undertakes additional training courses. Admission to practise follows but during a further year, trainees practise on a restricted basis and must be employed and work under the supervision of a principal. In **South Australia**, admission to practise requires students to obtain a Graduate Certificate in Legal Practice (GCLP), or if places are not available on the GCLP course, to complete one year's articles. The GCLP course lasts for one semester and is a full-time programme of practical training in legal skills, civil and criminal procedure, professional conduct and office and trust accounting. It includes a six week period of structured placement within a legal office. After

admission to practice, the novice practitioner must fulfil further training. Practising certificates, issued by the Supreme Court, must be applied for and renewed within the first two years. Finally, in **Victoria**, two years of restricted practice must be completed before a novice becomes eligible for a full practising certificate. Solicitors must practise for one or more years before being eligible for sole practice.

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CANADA

Many differences exist in the educational and professional training of solicitors, mainly because of the federal structure and the influence of both common law and civil law culture. In **Quebec**, admission to the *École du Barreau du Quebec* requires the *Baccalauréat en Droit*, a three year university law degree. The *École du Barreau* provides professional training, divided into eight months of theoretical courses (legal topics and professional skills for which five examinations must be passed) followed by six months of *stage* in a solicitor's firm under supervision, in Quebec or abroad. On completion, the trainee takes an oath and is entitled to become a full practising solicitor or member of the Bar.

In **British Columbia**, a three year law degree (LLB) is required to gain access to the Professional Legal Training Course (PLTC) admission programme. The PLTC includes nine months of articles and ten weeks of courses.

In **Ontario**, an LLB obtained in three years gives access to training for admission to the Bar. This includes one month of courses, twelve months of articles (with exemption for solicitors of three years' experience from other Canadian jurisdictions) followed by four months of courses. Once completed and the examinations passed, the graduate is admitted to the Bar.

In **Alberta**, the requirements are much the same but include one year of articles and an additional two months of courses.

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UNITED STATES OF AMERICA

Admission to legal practice is governed by rules and regulations promulgated solely by a State's courts, legislatures and/or Bar Association. The general requirements for admission to the Bar are similar throughout the fifty States. An applicant must have good moral character, be a resident (or employed) in the State, graduated from an accredited/certified law school and pass a Bar examination. Thus, law school attendance as a condition of admission to the Bar is now virtually compulsory. Only a few States allow admission to the Bar by apprenticeship, that is, without any law school attendance. These include **Alaska**, **California**, **Maine**, **New York**, **Virginia**, **Vermont**, **Iowa**, and **Washington**. The American Bar Association recommends that law schools require at least two years in an accredited college and provide three years of law school study. Effectively, the college degree takes between three and four years and the post-graduate law degree itself, usually three years (up to a maximum of four).

State Bar examinations generally consist of two parts. The first part is a Multi State Bar Examination which tests knowledge in basic areas of the law. The second part is specifically focused on the law of the individual State. A number of States also require the Multi State

Professional Responsibility Examination which tests knowledge of professional ethics.

Upon admission to the Bar, an attorney must normally take an oath declaring his/her obligations to the court, State and country as an officer of the court; register with the court and receive a licence to practise. Some States waive the examination requirement for an attorney who is already a member of another Bar. In some States there is a requirement on practitioners to secure continuing legal education; in **New Jersey** for example, several courses each year are required for a period of three years.

APPENDIX I

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