

# Reforming Legal Education

## Lord Neuberger at the Lord Upjohn Lecture, Association of Law Teachers

15 November 2012

### (i) Introduction<sup>1</sup>

1. It is an honour, albeit something of a daunting honour, to have been asked to give the Lord Upjohn lecture, at this important time for legal education. It is two years since David Edmonds, who chairs the Legal Services Board (the LSB), delivered this lecture, which was, as he put it, based on a hypothesis. That hypothesis was simple: that the *'dialogue and interplay [between legal practice and education] isn't happening at the level it should.'* He went on to suggest that *'some people'* went further than this hypothesis and believed that the current framework for legal education and training was *'simply not fit for purpose'*<sup>2</sup>.
2. Since June 2011, the Legal Education and Training Review (the LETR) team, led by four Professors of legal education, has been testing that hypothesis<sup>3</sup>. Although perhaps partly inspired by those thoughts, the LETR was not established by the LSB. It was established as a joint venture by the 'professional regulators': the Solicitors Regulation Authority (SRA), Bar Standards Board (BSB) and the Chartered Institute of Legal Executives Professional Standards (IPS). These professional regulators, all of which can be said to sit under the LSB, are responsible for ensuring that legal education is 'fit for purpose'. In that connection, the LSB's role is essentially subsidiary: if asked, it must assist the

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<sup>1</sup> I wish to thank John Sorabji for all his help in preparing this lecture.

<sup>2</sup> D. Edmonds, *Training the lawyers of the future – a regulator's view*, (Lord Upjohn Lecture 2010) at 6 <[http://www.legalservicesboard.org.uk/news\\_publications/speeches\\_presentations/2010/de\\_lord\\_upjohn Lec.pdf](http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de_lord_upjohn Lec.pdf)>.

<sup>3</sup> See <<http://letr.org.uk/about/research-team/>>.

professional regulators in maintaining standards of legal education and training of lawyers<sup>4</sup>.

3. The LETR is due to report next month. When it does, the professional regulators will no doubt carefully scrutinise the quality and statistical reliability of its evidence, the soundness of its underpinning assumptions (including its understanding of the professional environment), and the validity of its conclusions. Having considered such matters, and made their consequent assessment of the validity of any resulting recommendations, the professional regulators will then have to decide on the next step in the review process.
4. I suggest that it may well make sense to institute a second phase to the review – a phase which is practical and professional, to complement the report’s initial, academic-based phase. One of the complaints made about previous reform efforts was that they have been too focused on professional experience, ignoring educational theory<sup>5</sup>. We should not now make the opposite mistake and proceed without taking into account practical, professional experience. It is, of course, true to say that the Review has carried out consultations, but it has necessarily done so from a single perspective. It must be right to combine the educative expertise, experience and theory with the professional expertise, experience and requirements.
5. Any such second phase should be the product of collaborative work by representatives of the professions, the judiciary, and consumer groups, including the Legal Services Consumer Panel and the Legal Ombudsman. They all have a direct interest in the

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<sup>4</sup> Legal Services Act 2007, s 4.

<sup>5</sup> LETR, *Draft Literature Review*, at [71] <<http://letr.org.uk/wp-content/uploads/2011/06/LR-chapter-2.pdf>>.

development of education and training, as well as being able to provide practical insights. The judiciary in particular brings both practical and principled insights. The judges have many years of accumulated legal practice, are quasi-consumers of legal services in court, represent the branch of the state which upholds and enforces the rule of law, and constitute the ultimate disciplinary appeal body of the legal profession. Consumer groups also offer fundamentally important insights, born of the need to secure good quality legal advice and assistance at proportionate cost, in a market place where an increasing number of business models are being developed by lawyers, as well as individuals who are not part of the regulated professions.

**(ii) A preliminary call for open minds**

6. I should emphasise that, in my view, it remains an open question whether the hypothesis that the present system is not fit for purpose is anything other than assertion, whether it is made generally or in respect of aspects of the system. There is real reason for doubting whether there is that much wrong. UK lawyers enjoy a high worldwide reputation. Places on our university law degrees, at both undergraduate and postgraduate level, are highly sought after. Research and publications of academics in our universities are of high value and enjoy international recognition. Our courts and our substantive law are prized throughout the world – not only by those who seek to litigate in our courts, but also by those who seek our judges and lawyers out to assist them in the development of their laws and justice systems. Some of these points may largely apply to the more financially rewarding end of the profession. Nonetheless, they do firmly shift the onus on to those asserting education and training is unfit for purpose.

7. However, the main issue is not whether the legal education and training system can in any way be described as not fit for purpose: it is what reforms should sensibly be made. It would be absurdly complacent to pretend that there are no improvements to be made to the system. But if we can properly marry the educational, professional, judicial and consumer perspectives, we are far more likely to identify in what way they could be improved and the nature of any appropriate improvement.
8. I cannot share the view which David Edmonds was reported in *The Guardian* as expressing in March this year, namely that he would be ‘*extremely disappointed*’ if the LETR only made minor recommendations<sup>6</sup>. That suggests a conclusion that major reform is both necessary and proportionate, reached in the absence of any evidence and analysis. But surely we should wait for the evidence, the analysis of that evidence, and the conclusions drawn from that analysis, before we start talking of disappointment or the nature of the appropriate recommendations. We should all be surely approaching the Review and its outcome with an open mind. So, at best, Mr Edmonds’s statement should be taken as a hypothesis not a conclusion, and perhaps that is what it was meant to be.

**(iii) A little parable**

9. Before, I consider some issues which might well be relevant to any consideration of the LETR’s report, with a view to testing the hypothesis rather than advancing any premature conclusion, let us take a short detour to Bruges. In *The Undercover Economist*, Tim Harford recounts the development of that city from the end of the 9<sup>th</sup> century. Having

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<sup>6</sup> D. Edmonds cited in N. Rose, *Forget Tesco Law, this legal education review will transform the legal market*, (*The Guardian*, 19 March 2012) <<http://www.guardian.co.uk/law/2012/mar/19/review-legal-education-change-market>>.

been a small city in the Zwin estuary, Bruges grew into the capital of Flanders and the centre of the Hanseatic League.

10. Prosperity brought with it the development of the diamond-cutting industry, and the creation of nascent stock exchanges in the taverns owned by the Van der Beurs family, from which it is suggested the modern continental Bourses take their name today<sup>7</sup>. Innovation brought with it further prosperity, which continued unabated for nearly six hundred years. But then, as Harford explains,

*‘. . . something strange began to happen. The Zwin began to silt up. The great ships could no longer reach the docks of Bruges. The Hanseatic League moved up the coast to Antwerp. Bruges quickly and literally became a backwater. So lifeless did it become that it was nicknamed ‘Bruges-La-Morte’. Today it is a quaint museum piece . . .’*<sup>8</sup>

The success of Bruges stemmed from one feature: the Zwin, and the burghers of Bruges either forgot their city’s *raison d’être*, or they simply failed to protect it.

11. The first question for the professional regulators, when considering the reform of legal education, is this: what is the legal profession’s *raison d’être*? Before we embark on reform, we need to be clear what that purpose is. And that also requires us to have in the forefront of our minds the *raison d’être* for the legal profession. If we are not clear about these issues, we are no better than the burghers of Bruges. We may in fact be worse: they did nothing to stop the river silting up. We may end up actually silting up the river if we embark on misguided reform.

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<sup>7</sup> T. Harford, *The Undercover Economist*, (Abacus) (2006) at 203 – 204.

<sup>8</sup> T. Harford, *ibid* at 204.

**(iv) The purpose of education and training according to the LETR**

12. What then is the purpose of legal education and training? The LETR suggested an answer to that question,

*‘The primary objective of the Review is to ensure that England and Wales has a legal education and training system which advances the regulatory objectives contained in the Legal Services Act 2007, and particularly the need to protect and promote the interests of consumers and to ensure an independent, strong, diverse and effective legal profession.’<sup>9</sup>*

13. I am afraid that that is not a good start. It is true that legal education and training should be consistent with the regulatory objectives specified in the 2007 Act. But those objectives also include improving access to justice, promoting competition in the provision of legal activities, increasing public understanding of the citizen’s legal rights and duties, and promoting and maintaining adherence to the professional principles, which include acting in the best interests of clients, and independence in the interests of justice<sup>10</sup>. It is worrying that the Review decided to describe its fundamental aim as directed to only two of the regulatory objectives, the interests of consumers, and a diverse and effective legal profession.

14. By singling out two of the regulatory objectives in this way, the Review team may well have provided themselves with a deformed theodolite through which to survey the field. Its report into the case for reform may therefore be unbalanced or worse. Any proper assessment of the case for reform must primarily take account of what I would suggest are the two fundamental regulatory objectives specified in the 2007 Act<sup>11</sup>: the need to

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<sup>9</sup> <<http://letr.org.uk/about/what-is-letr/>>.

<sup>10</sup> Legal Services Act 2007 ss 1(1) - (3).

<sup>11</sup> Legal Services Act 2007 s 1(1).

protect and promote the public interest, and the need to support the constitutional principle of the rule of law.

15. Parliament did not specify an order of precedence amongst the regulatory objectives, but it is clear that the two objectives singled out by the LETR are a significant aspect, but nonetheless only an aspect, of the two fundamental objectives. Improving access to justice and promotion of competition, serve both to protect and promote the public interest and to support the rule of law. Like the other statutory objectives, they thereby support the two fundamental objectives. In other words, there are the two fundamental objectives, and there are the other objectives (including the two singled out by the LETR) which facilitate the achievement of the fundamental objectives. And they are limited by the fundamental objectives: promoting competition, diversity, and consumer interest are only valid aims to the extent that they are compatible with protecting and promoting the public interest and with the rule of law.

**(v) What is the purpose of legal education and training?**

16. This leads me directly to the question of the purpose of the legal profession. A vibrant, independent legal profession is an essential element of any democratic society committed to the rule of law. It is not merely another form of business, solely aimed at maximising profit whilst providing a competitive service to consumers. I am far from suggesting that lawyers ought not seek to maximise their profits, or ought not provide a competitive service. What I am saying is that lawyers also owe overriding specific duties to the court and to society, duties which go beyond the maximisation of profit and which may require lawyers to act to their own detriment, and to that of their clients.

17. The duty to the court, to conduct litigation honestly and strictly in accordance with the rules of court, may well require a lawyer to act to his or her clients' detriment. The duty to disclose to the court, and one's opponent, a document or an authority which goes against one's case is hardly in one's client's best interests. It is however firmly in the public interest. It is essential if we are properly committed to the rule of law, rather than the rule of unscrupulous lawyers who wish to win at all costs.
18. Asking and answering the question whether legal education and training is fit for purpose, or the more measured question of how it could be improved, must begin with an assessment of whether it properly equips those entering the profession with the knowledge, skills, integrity and sense of independence which will enable them to play their proper role in maintaining the rule of law. It is within that overarching framework that other considerations, such as those in the facilitative regulatory objectives, gain their value and meaning.
19. This point was not lost on the Carnegie Foundation for the Advancement of Teaching, when, in 2007, it published the results of a two year study into legal education in the United States, which included a number of recommendations for the reform of legal education<sup>12</sup>. In a short summary at the start of the report, the authors make the following point,

*'The profession of law is fundamental to the flourishing of American democracy [one could omit the word 'American']. Today, however, critics of the legal profession, both from within and without, have pointed to a great profession suffering from varying degrees of confusion and demoralisation.'*<sup>13</sup>

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<sup>12</sup> W. Sullivan, A Colby, J. Welch Wegner, L. Bond, L. Shulman, *Educating Lawyers – Preparation for the Profession of Law*, (2007) (Wiley).

<sup>13</sup> W. Sullivan, A Colby, J. Welch Wegner, L. Bond, L. Shulman, *Educating Lawyers – Preparation for the Profession of Law: Summary and Recommendations*, (2007) (The Carnegie Foundation for the Advancement of Teaching) at 3 <[http://www.carnegiefoundation.org/sites/default/files/publications/elibrary\\_pdf\\_632.pdf](http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf)>.



20. The profession of law is fundamental to democracy, because it is through good quality legal advice and good quality legal representation that citizens can effectively enforce their private rights in courts and tribunals, can gain a proper understanding of their rights and duties, can order their affairs lawfully, and can hold the powerful executive to account. The starting point for any review of legal education and training is how it can best equip those who enter the profession to fulfil this role. If we exclusively focus on promoting consumer interests, on the development of law as a trade, by treating the provision of legal services as any old commodity, we cast aside its fundamental role and purpose, its *raison d'être*, and we undermine the rule of law and our democracy.
21. The Carnegie Foundation report is particularly in point given that some people suggest we might well adopt a US-style approach to legal education here. There is, of course, the fundamental point, borne out by many misconceived reforms in many fields, that it is unwise for us to adopt a system which has developed in a legal, social, and political culture which, whilst similar to ours in some ways, is profoundly different in others. But it is even more unwise to be advocating the adoption of a foreign system which is being operated by people who are seeking to reform it in the light of its serious weaknesses.
22. To return to Bruges, if, and I emphasise the 'if', the Zwin is silting up, it is because legal education and training has lost sight of the fact that it is intended to produce professionals who have the necessary knowledge, skills, integrity and independence to serve the rule of law. I now want to turn to some of the issues on which the professional regulators may want to focus when they consider the LETR's report.

## (vi) Three forms of Apprenticeship

23. The Carnegie Foundation report suggests that there are ‘*three conceptual apprenticeships*<sup>14</sup>, involved in legal education. They are,

*‘the cognitive apprenticeship that relates to ways of thinking in the context of relevant subject matter*

*the apprenticeship of skills and practice that relates to developing an ability to do or produce what professionals in a given field must do or produce, and to act in a way that those professionals must act*

*an apprenticeship of professional identity and values that concerns an emerging professional’s capacity to navigate the relationship between his or her personal and professional values and ways of being in the world*<sup>15</sup>.

This seems to me to be an unexceptionable, if perhaps rather analytical and particulate, approach which is equally valid for our legal system. After all, the profession of law can be said to be taught in England and Wales through the same three conceptual stages.

24. The cognitive apprenticeship is undergone when aspiring solicitors or barristers are undergoing their university degree or Graduate Diploma in Law, or, in the case of legal executives, whilst they are doing their CILEX Diploma. The cognitive apprenticeship is further refined at the same time as the apprenticeship of skills and practice, at the LPC, BPTC, or CILEX Diploma stages. Although the first two forms are not then discarded, the third form of apprenticeship is honed through a solicitor’s training contract, a barrister’s pupillage, and the legal executive’s employment.

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<sup>14</sup> For a short discussion see J. Welch Wegner, *The Carnegie Foundation’s Educating Lawyers: Four Questions for Bar Examiners*, (The Bar Examiner, June 2011) at 14

<[http://law.ubalt.edu/academics/pdfs/Carnegie%20Report%20article\\_final.pdf](http://law.ubalt.edu/academics/pdfs/Carnegie%20Report%20article_final.pdf)>.

<sup>15</sup> *Ibid.*

25. If either of the first two aspects of apprenticeship, degree and qualification, would benefit from change, which they very probably could to some extent, I would take a lot of persuading that root and branch reform is needed. It seems to me that such reform is normally expensive, disruptive, morale-undermining, and, courtesy of the law of unintended consequences, productive of a host of unexpected problems. The present system is one which produces many high quality lawyers, and radical reform may pose a threat to that. Accordingly, in the absence of very clear and cogent evidence of widespread and deep-rooted inadequacy in the present system, radical reform, as opposed to appropriate, targeted reform, should be avoided.

**(vii) A common non-university route into the profession?**

26. Serious thought may have to be given to the relationship between the manner in which CILEX carries out its apprenticeship and entry into the profession as a whole. CILEX qualification already provides a non-university route into qualification, and, for some, into the solicitors' profession. The cognitive, skills and practice apprenticeships experienced by CILEX fellows are roughly equivalent to the university degree, LPC, training contract route of entry to the solicitors' profession. CILEX fellows can already, following further training, qualify as advocates who can appear in a number of courts and tribunals.

27. It seems to me that a possible reform might be to develop the existing relationship between solicitors and legal executives and to extend that relationship to the Bar. Greater co-operation between the SRA and IPS could further facilitate the use of CILEX qualification as a route to qualification as a solicitor. Equally, IPS and the BSB could properly develop a similar qualification route via CILEX qualification to the Bar. The

CILEX model of qualification as a solicitor could with some thought form the basis of a distinctive route not just to CILEX qualification in its own right, but to entry into the other two branches of the profession.

28. This is a step which the profession could possibly take to achieve greater diversity in a world where university education is becoming increasingly expensive. It may soon (if it does not already) cost in the region of £100,000 (if one includes living expenses) to qualify as a solicitor or barrister through the university route to qualification<sup>16</sup>. Increased cost of the university route is likely to pose a real danger to the promotion of diversity in the profession; a less diverse profession is an impoverished one, one less able to reflect and support a flourishing democracy committed to the rule of law. While the professional regulators plainly cannot ameliorate any adverse effects which might stem from increasing university tuition fees or compensate for any inequalities which arise through the education system, they can ensure that there is an effective, straightforward route to qualification into the three branches of the profession for non-graduates. There is more than one way to secure high quality cognitive, skills and practice apprenticeships and ensure that the excellence for which our legal profession is known is maintained, and enhanced, in the years to come. Building on the present CILEX route into the profession appears to me to be a good model.

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<sup>16</sup> Assuming a three year law degree, with tuition fees of £9,000 per year, a one year LPC or BPTC at £15,000, and in those cases where a non-law degree requires a GDL to be undertaken, another £15,000. Figures approximate and exclude living expenses.

**(viii) Knowledge and skills**

29. There could be a number of simple and effective improvements which could be considered to the first two forms of apprenticeship – the cognitive apprenticeship, and the apprenticeship of skills and practice.
30. It may well be worth considering reform of the content of qualifying law degrees, and of the GDL, which is itself a key means of facilitating diversity within the profession as it enables non-law graduates and those who seek career changes to enter the profession. As the law and society develop, so should legal education and training. Strong arguments can be made for adding civil procedure and human rights law to the list of core subjects on any qualifying law degree. Others may be able to stake their claim. A principled reconsideration of the core subjects is perhaps overdue. In any such reconsideration, it would be important not to cram too much into the qualifying law degree. Any subjects considered core will have to go into an already overcrowded GDL. Further, there is the risk of limiting the freedom of universities to develop their own academic interests outside the core subjects, such as in legal history, jurisprudence, or Roman law, to name but a few.
31. It is also important that we do not lose sight of the need to ensure that the knowledge component of the university route through apprenticeship is not diluted. That said, it seems to me that both university and non-university legal education should develop what may be characterised as professional skills to a fuller degree than currently. I have in mind topics such as professional ethics, client dealing, understanding how institutions (such as the police and prisons) work and how to deal with them, and understanding business and finance. I believe that there is real scope for the development of such skills

programmes as part of a law degree, similar to the clinical training already found in many existing degree courses.

32. Skills-training through applied practical work is not uncommon in university degrees in other subjects, and there is no reason why the professional regulators could not work with the universities to develop a practical skills curriculum to complement the academic core subjects of a law degree. Such courses would not only begin to develop the practical skills which would then be honed during the LPC and BPTC at an earlier stage. Enabling the skills courses on the vocational courses to be pitched at a higher level, might better prepare trainees as they enter their pupillage and training contracts. They would also complement the academic subjects, enhancing students' ability to analyse the law, discern and apply and its principles.
33. The introduction of mandatory skills requirements in each year of an undergraduate degree would bring more practising lawyers into the university. Greater collaboration between academia and practice would benefit course design and delivery, as it would foster the exchange of ideas between the academic and practical aspects of law. Teaching wider skills also would enable law students to gain valuable experience through taking part in clinical education programmes. In the first year these could be virtual programmes, such as those developed by Professor Maharg, who is one of the LETR review team, for the Diploma in Legal Practice (the Scottish equivalent to the LPC) offered by Strathclyde University<sup>17</sup>. In the second and third years these could, under appropriate supervision, be clinical programmes which provide pro bono advice to members of the public, similar to those which are already in place on the vocational

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<sup>17</sup> See R. Susskind, *Briefing Paper – Provocations and Perspectives*, (October 2012) at 20 <<http://letr.org.uk/wp-content/uploads/2012/10/Susskind-LETR-final-Oct-2012.pdf>>.

courses and in some universities. Such programmes could also usefully help students to become familiar with the practical reality of the court system, procedural law, and ADR. It could also begin to teach law through developing negotiation skills, drafting skills, and practical problem-solving skills, whilst embedding legal research skills.

34. The third benefit which could flow from the development of greater skills training takes me to the third aspect of apprenticeship: of professional identity and values.

**(ix) Professional identity and values**

35. An important aspect of university education is to develop students as individuals during the course of their studies. If a compulsory skills component, along the lines I have suggested, were to be introduced into all qualifying law degrees, we could start to develop the professional identity of lawyers of the future at a much earlier stage than we do now. Equally, it would broaden the experiences of those students who do not aspire to enter the profession. Through a compulsory skills element we could teach professional ethics and the values which inform the profession. First, the teaching of skills through clinical programmes would enable students to appreciate their clients' concerns, the impact of their professional decisions, and the ethical challenges which will arise in practice. Secondly, the provision of pro bono assistance through such programmes would give a practical, direct, insight into the public value of legal work. Thirdly, the students would thereby gain an early appreciation of professional values. In the brave new world of alternative business structures, where enhancing shareholder value may not naturally or always coincide with the professional's duty to the court, or the public interest, and outcome-focused regulation, these aspects will be increasingly important.

36. Professional ethics should not stop there. Through introducing ethics teaching in universities we can then improve the way in which it is taught on the vocational courses. All this would provide a strong mechanism to instil professional values into aspiring lawyers. Rather than being taught at entry level courses at that second stage, ethics training could be carried out at a higher level. Further, if clinical programmes are undertaken at university, clinical programmes on the vocational course – which might usefully be mandatory – could be carried out at a higher level, involving more complex, albeit still supervised, work.

**(x) Diversity**

37. Professional identity also includes valuing diversity. No discussion of the legal profession, or almost any other profession, function or calling, can be complete without considering this important topic. Legal education and training, and indeed entry into the legal profession, has much to be happy about so far as women are concerned and not that much to be unhappy about with regard to ethnic minorities. The problem there, of course, lies at the later stage, that of progression through the profession. The proportion of women and ethnic minorities decreases as one goes up the ladder, and the fact that the higher up the ladder one goes, the more one is looking at historic intakes, is nothing like a complete explanation. There is something, but I suspect a very limited amount, which legal education and training can do about this problem. In so far as it is attributable to societal or inherent factors, there is little one can expect specifically legal education and training to do about it. However, in so far as it is due to attitudes and cultures within chambers or law firms, it would be wholly right for the wider education and training which I am calling for to cover the topic with a view to changing things, within the bounds of propriety and practicality.



38. The big diversity problem for legal education and training is, of course, that those with more privileged social, educational and economic backgrounds are disproportionately represented in the universities, on the professional qualification courses, in pupillage and traineeships and as junior barristers and solicitors. The Milburn committee, of which I was a member, in its 2009 report, said that the professions should be doing more to encourage and include the less privileged<sup>18</sup>. I would make three points about that. First, I agree that the professions have that duty, and the legal profession, with its commitment to justice and the rule of law, has a particular duty. Secondly, the duty has to be circumscribed by practicality: solicitors and barristers are working in an increasingly challenging time nationally, following the 2007 Act, and internationally, in the light of increased globalisation of legal services, and even more in the present economic climate. Thirdly, the professions cannot and should not be the whipping boys and girls to whom the Government transfers the blame for the inherent inequalities and dysfunctionalities of society.

39. Having said that, any proposed reforms to the structures or contents of legal education and training must take into account the need to improve diversity, both in those actually undergoing the education and training, and in terms of the contents of the education and training they receive. I am not in a position to say in exactly what way education could be restructured so as to improve access for the underprivileged, but to the extent to which it can be done without reducing quality, it should be. Nor can I say precisely how one can inculcate a different approach to the practice of law, or the structure of firms or chambers,

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<sup>18</sup> *Unleashing Aspiration: The Final Report of the Panel on Fair Access to the Professions* <[www.cabinetoffice.gov.uk/media/227102/fair-access.pdf](http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf)>.

so as to improve diversity both at entry and in relation to progression, but, again, anything which can help achieve this should be part of any set of recommendations.

**(xi) The need for vocational training**

40. I turn now to the third stage of training, vocational training. As with the first two stages, in the absence of clear and convincing evidence suggesting something more radical is needed, an approach of targeted, of relatively discrete, focused reforms is likely to be the optimum approach to take to vocational training.

41. One must begin by acknowledging the reforms which followed the detailed, evidence-based review into what is now the BPTC and pupillage produced by Derek Wood QC. But they do not mean that we should close our minds to further reforms.

42. It is said by some that we should move to the US system where there is no pupillage or training contract requirement, which would have the benefit of enabling more students to move from the academic and vocational stages of training to practice. I cannot accept that such a reform could be consistent with maintaining quality standards within the profession, or even with maintaining the idea that the practice of law is a profession. Training and mentoring before an aspiring lawyer can practise independently are an essential means, not only to hone practical skills in the working environment, but they also serve to embed a professional ethos.

43. The best plumbers or electricians will not merely have gone on courses and got qualifications: they will have been apprentices. The same applies to lawyers. The best way to learn to be a good lawyer is by getting direct experience, that is by doing the job

oneself. But it is wholly unfair on clients, if one learns at their expense any more than is strictly necessary. Spending time first closely working with an experienced lawyer – watching and listening to him or her at work, benefitting from his or her experience – is essential.

44. For trainee advocates, this is important because of their direct and immediate introduction to court appearances on behalf of their clients as soon as they can practise. For trainee solicitors, the training contract also provides an ideal period to teach what are becoming ever more essential skills: managerial skills, marketing skills, and business advisory skills.

#### **(xii) Possible changes to vocational training**

45. Simmons & Simmons introduced an optional MBA course for their trainees in 2009. This is shortly to become a compulsory aspect of the LPC which its trainees are to undertake followed by further training during the training contract<sup>19</sup>. This seems to me to demonstrate two things.

46. First, that there is innovation within vocational training and that it is being driven by the market within the framework set by the SRA. Contrary to what some say, vocational training is developing consistently with the needs of the legal profession today and in the future, and it is doing so on a demand-led basis, subject to the rigorous demands of the regulatory framework set by the 2007 Act. The second thing this shows is that the skills taught before the training contract can be further developed during the training contract. If the Simmons & Simmons approach is adopted more widely, which may be a good idea,

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<sup>19</sup> See <<http://12b.thelawyer.com/simmons-to-put-all-trainees-through-bespoke-mba-course/1013114.article>>.

such skills could be taught as part of bespoke LPCs and then consolidated during the training contract.

47. On a rather different tack, David Barnard has suggested a common start for all lawyers<sup>20</sup>.

His idea is that all would-be lawyers should undertake a common course and a common examination. They should then begin their careers as salaried employees in barristers' chambers, solicitor's offices, the CPS, in-house legal departments, and the new alternative business structures. At any time after three years as 'trainee lawyers', it should be open to any person who has got so far to take a course, leading to being called to the Bar. After spending three or more years in legal practice, the idea is that lawyers have a better idea of their skills and weaknesses, and will better understand their fitness for the Bar, based on their real experience and understanding.

48. Mr Barnard's suggestion is, in part, based on his view that the number of students paying to sit the BPTC, but who do not obtain pupillage, is a matter of a scandal. That is a view shared by others, but there is a contrary perspective. More, probably many more, students complete the BPTC than will obtain pupillage, but, provided that those students are aware of the realities they face, should we interfere with their personal autonomy? Further, we should not discount the likelihood that the BPTC will assist in obtaining other forms of employment.

49. That point apart, I see the attraction of Mr Barnard's proposal, but I wonder whether it is one of those seductive ideas, which has the attraction of simplicity and novelty, but which, when implemented, makes one realise, all too late, what a valuable system has

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<sup>20</sup> D. Barnard, 'Legal Education – A Common Start For Everybody', response to LETR Discussion paper 01/2012, <<http://letr.org.uk/wp-content/uploads/2012/11/D-Barnard-.pdf>>.

been lost, and how much more sensible it is to make small practical changes rather than grand gestures. I suspect that there may well be a strong case for more radical reform of the LPC, but that is no reason for subsuming into a new LPC the BPTC. First, the BPTC has been overhauled recently; secondly, if significant change is needed to the LPC, it strikes me as probably unwise to overload the change agenda with a substantial and unnecessary additional feature.

50. Finally on vocational training, I consider that the review should not seek, or appear to seek, to unify solicitors' and barristers' training as a means of achieving fusion of the two professions. Any open minded person can see that there are serious arguments for and against fusion of the two branches of the profession. However, if that is a suitable subject for discussion or a report, it should be discussed and reported on openly and fully as a separate topic. The fact that fusion may be thought by some to be a good idea does not justify the present review of legal education and training being used as a stalking horse for advancing it. Any attempt to use this review as a means of taking forward fusion would, I suspect, result in any proposals being discredited in many peoples' eyes, and understandably so.

### **(xiii) Conclusion**

51. I have only been able to touch upon some of the issues which might be relevant to the development of legal education and training over the coming years. Much more could be said, and it will be interesting to see what the LETR report adds to the debate. The professional regulators will need to scrutinise it carefully. And they should approach the scrutiny with the same open mind that should inform the minds of all its other readers, whether barristers, solicitors, CILEX fellows, lay people, the Bar Council, the Law

Society, or CILEX. And, having read it, I hope that the professional regulators will then draw on the views of those bodies and a wide-range of practitioners, judges and consumer groups.

52. In looking to reform, we should take great care not to undermine either the present generally high standard of entry into the profession and of those practising law in the UK, or the undoubted many good qualities of our legal education and training. No system is ideal. Improvements can always be made, not least in a changing environment, and our legal environment is certainly a changing one at present.

53. I return to Bruges. If there is evidence that the Zwin is silting up, we will need to take steps to remedy that problem. But, before doing so, we must have convincing evidence that it is indeed silting up. We must then properly identify the cause and an effective solution. I think it unlikely that evidence will uncover much silting up. Nevertheless it is likely that there are a number of targeted reforms which we can put in place to make Bruges a more attractive harbour – to improve legal education and training to increase standards and skills. Most importantly, I think there are steps we can take to reinvigorate the profession of law in the public interest and in the interest of ensuring that our democracy, in which the rule of law is so deeply embedded, continues to flourish.

54. Thank you.

DAVID NEUBERGER