



Core Values and Principles

Full details of the current proposals

1. Introduction

In July 2004 the Law Society of Scotland distributed a draft 'Foundation Document' to the profession and key stakeholders to seek their views on the future of legal education. The aim was to set out the principal goals and the specific objectives of the Law Society of Scotland in relation to the education and training of those intending to become practising Scottish solicitors.

The response to the original consultation on the 'Foundation Document' was inconclusive. However, it was felt that the fundamental concepts of the 'Foundation Document' remained sound, and a valid attempt to deal with many of the key 'drivers' in the field.

The Education and Training Committee therefore decided to progress with specific projects modelled on the underlying principles of the 'Foundation Document' and return to the profession and 'stakeholders' for their views, which could now be given in light of examples relating to each of the key stages of education. The current project is the result.

For the sake of completeness the original Foundation Document is attached. This is now a 'legacy' document, and it is likely that only some of the core concepts (those consulted on in the questionnaire) will be taken from this document and form the 'front piece' and introduction to any package of reform.

2. Project Contact

For further details of this project please contact:

Neil Alan Stevenson – Deputy Director (Education and Training)

Tel. 0131 226 7411

neilstevenson@lawscot.org.uk

A Foundation Document
proposed by
The Law Society of Scotland
for the
Future Development of
Professional Legal Education and Training in Scotland

LAWYERS OF THE FUTURE

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1 Introduction

The purpose of this document is to set out the principal goals and the specific objectives of the Law Society of Scotland in relation to the education and training of those intending to become practising Scottish solicitors. In doing so the Society recognises the fundamentally important functions fulfilled by lawyers in a democratic society. It also accepts that the particular requirements which society makes of lawyers have changed significantly over the last 25 years, and that the pace of change is unlikely to diminish.

"In a society founded on respect for the rule of law lawyers fulfil a special role. Their duties do not begin and end with the faithful performance of what they are instructed to do so far as the law permits. Lawyers must serve the interests of justice as well as those whose rights and liberties they are trusted to assert and defend and it is their duty not only to plead their clients' cause but also to be their adviser.

The function of lawyers therefore imposes on them a variety of legal and moral obligations..... towards :-

- (a) the clients;*
- (b) the courts and other authorities before whom the lawyers plead their clients' cause or act on their behalf;*
- (c) the public for whom the existence of a free and independent profession is an essential means of safeguarding human rights in face of the power of the state and other interests in society;*
- (d) the legal profession in general and each fellow member in particular."*

[From the Preamble to the Code of Conduct adopted in 1988 by the Conseil des Barreaux de la Communauté Européenne (CCBE)]

A modern society cannot function without a correspondingly modern and flexible legal system. A properly independent and competent judiciary and legal profession are essential to such a legal system. In order that lawyers may properly fulfil their special role in society, they must be educated and trained to the highest standards.

In Scotland responsibility for the education and training of lawyers lies principally with the professional bodies for both solicitors and advocates, although there are a number of stakeholders with a substantial interest in the success of the system.

2 The Law Society of Scotland is charged by statute with the responsibility for the process which leads to the admission of satisfactory applicants as solicitors in Scotland. In fulfilling this responsibility, the Society is empowered to make regulations for:

- practical training
- attendance at a course of legal education and
- the passing of examinations.

In addition the Society is expressly required to be satisfied that each applicant for admission is “a fit and proper person to be a solicitor” (Section 6 of the Solicitors (Scotland) Act 1980 as amended).

The Society believes that it is in the public interest to have a systematic, relevant and transparent scheme for legal education and training. We also believe that a coherent system is essential for the development of a modern legal profession. Accordingly we have agreed to publish this Foundation Document which explains our vision for the future of legal education and training in Scotland.

Fundamental Values Of The Legal Profession

3 In the process of doing so we recognise that there are certain fundamental values to which lawyers should be committed. These values underpin this document and are as follows:

3.1 Because the profession is dedicated to the service of clients, lawyers should be committed to:

- attaining and maintaining competence in their respective fields of practice
- representing and advising clients in a competent manner

3.2 Because the profession bears special responsibilities for serving the needs of the public in relation to the delivery of justice in society, lawyers should be committed to:

- promoting justice, fairness and ethics in daily practice
- maintaining the independence of the profession from government, business and the media
- serving the interests of justice as well as asserting and defending the rights and liberties of clients
- maintaining independence of advice by avoiding acting in situations where the interests of a client are compromised by interests of another person, whether client or associate of the solicitor, or the solicitor themselves

3.3 Because the profession bears a special responsibility to act collectively and individually in accordance with the public interest, lawyers should be committed to:

- the achievement of the highest standards of ethical practice
- instilling in new lawyers an appropriate level of competence and an appreciation of the importance of achieving high standards of ethical practice
- the protection of the public against the consequences of any failure on the part of members of the profession to act in a competent or ethical manner, or in upholding their professional standards.

- 3.4** Because lawyers are members of a learned profession, they should be committed to:
- increasing their knowledge and improving their skills
 - contributing to the development of the law and legal thinking in order to meet the needs of society
 - encouraging candidates of high ability to join the profession
- 3.5** Because the profession embraces openness and diversity, lawyers should be committed to:
- open access for all who aspire to enter the profession, regardless of, for example, race, religion, ethnicity, gender, sexual orientation, disability or socio-economic background
 - the elimination of any restrictions on career development based upon bias of any kind¹.

Fundamental Principles of Professional Legal Education

- 4** In order to facilitate the achievement of these values, the Society believes that the programme for professional legal education and training in Scotland ought to:
- 4.1 be a partnership among all those who have an interest in legal education** including the Scottish Executive and Parliament, the public, the legal profession, its clients, legal education providers, trainees and students - we should encourage collaboration and effective sharing of resources between stakeholders
- 4.2 adopt best educational practice in the field of professional education and training**, for example by insisting upon accreditation of providers at every stage, by facilitating deep learning, and the integration of knowledge and skills
- 4.3 take as its core educational concept the benchmark of competence in legal practice**
- 4.1 assess competence at several post-graduate stages (eg Diploma, traineeship, etc)** - such assessment should be valid, fair and reliable
- 4.2 be of a consistent quality across different providers, and fit for its purpose throughout Scotland** - the programme should be flexible to accommodate regional diversity but it requires to be

¹ The Society expressly acknowledges the debt it owes with regard to the formulation of the above values to the MacCrate Report, "Law Schools and the Profession: Narrowing the Gap", American Bar Association (July 1992).

designed to consistent benchmarks of quality at every stage in the process

- 4.3 foster the culture and values of the Scottish legal tradition** – recognising the fundamentally distinct nature of Scots law and the Scottish legal system, and its adherence to high ethical standards.

5 Change

The revolution in business practice and communication experienced within the last 5 years as a result of the Internet and e-mail and the constitutional changes wrought by devolution over an even shorter period are obvious and compelling examples of the changing requirements, both of legal practice and of society. We are conscious that many intending lawyers who are undergoing their education and training at the time of the publication of this document are likely to be in practice in the 2040s. Accordingly one of our principal aims is to identify how best to prepare lawyers to cope with and manage all the changes which they will encounter during their careers over such a period. It would be unduly optimistic to expect to predict all the developments which may occur in the law of Scotland and its practice in future years. However, we do believe that many of the concepts and values of the Scottish legal tradition - its basis in legal principles, its commitment to the attainment of high ethical standards - are fundamental to its practice, and will continue to be so in the future. These elements will form the bedrock of legal education and training for the future, but it is also essential that the lawyers of tomorrow are helped to be adaptable to change, embracing new ideas and aspiring to learn throughout their professional lives.

6 Current structure

At present the great majority of those seeking to qualify as solicitor in Scotland require to undertake and complete the following:

- 6.1** an undergraduate Ordinary or Honours Degree in Law at an accredited Scottish university
- 6.2** a postgraduate Diploma in Legal Practice
- 6.3** a two-year period of professional training in the office of a training firm or organisation
- 6.4** during the period of training, a Professional Competence Course delivered by an accredited provider
- 6.5** an assessment of the trainee's achievements during the training period known as the Test of Professional Competence (TPC).

A small number of individuals enter the profession by a different route which demands a level of academic attainment, but does not require the completion of a law degree, and instead obliges the intransigent to undertake a

significantly longer period of in-office training. The other elements, namely the Diploma in Legal Practice, the Professional Competence Course and the assessment of the training period, also apply to this route into the profession.

Factors influencing the development of legal education and training

There is a variety of factors which influence the education and training of lawyers of the future, some are external and others are part of the process of legal education.

7 External Factors

The following influences have been identified in recent years:

- the growing diversity and complexity of practice settings and branches of the law
- the consequent growth of continuing education, distance learning and CPD
- the rapid development of information technology and electronic communication
- the impact of the Scottish Parliament and the application of the European Convention on Human Rights
- the increasing influence of European law
- criticism of the adversarial system of justice, and trends towards alternative means of dispute resolution
- the growth of public awareness of legal and consumer rights leading to a rise in the expectations of clients in particular, and the public in general.

8 The market for training places

From time to time concerns have been expressed about the numbers of applicants seeking to enter the profession, and some have sought to present this as a factor demanding the making of changes to the structure of the education and training process. Over the years there have been periods when there has been an over-supply of qualified graduates in relation to the number of training places available in firms, but these periods have tended not to be of long duration and in general terms a rough equivalence between aspirant graduates and available traineeships has been achieved. However, the recent growth in the number of universities offering a qualifying law degree (see paragraph 11 below) has again raised fears of a substantial over-supply of law graduates in comparison with a relatively static number of training places within the profession. Furthermore some members of the profession harbour fears

that some of the brightest and best law graduates are not entering the profession in Scotland, rather they are selecting careers in other jurisdictions or in other professions, where the perceived rewards are greater or more immediate. At the same time, difficulties are experienced by firms and organisations in some communities outside the cities in recruiting trainees and young lawyers. Whatever the market conditions at any point in time, the Society has resolved that any attempt to manipulate numbers entering the profession, by for example the use of quotas, is unacceptable. The focus must rather be on access to the profession from people from all social, cultural, and economic backgrounds, and on the quality of the educational and training processes. The issue of access is dealt with at greater length at paragraphs 17 and 18 below.

9 Internal Factors

In developing the current structure and content of the programme for qualification as a solicitor, the Society has drawn upon the valuable information and ideas contained in various learned reports and papers relating to legal education over many years², as well as the thinking of many other contributors. These influences will remain of relevance to future changes to both structure and content.

10 *The Market for Law Graduates*

For many years the principal gatekeepers to the legal profession in Scotland have been those Scottish universities who provide a qualifying law degree. However, these universities do much more than educate future practising lawyers. The expansion of higher education throughout the U.K. over the last 10 years, combined with the assumed low cost of the law degree, has contributed to the development of the LLB as a more

² Report of the Ormrod Committee, 1971
Memorandum of the Standing Committee on Legal Education in Scotland, 1974
Report of the Benson Committee, 1979
Report of the Royal Commission on Legal Services in Scotland, 1980 ("the Hughes Commission")
Garrick Report: The National Committee of Inquiry into Higher Education, Report of the Scottish Committee, ('Garrick Report'), 1997, at www.leeds.ac.uk/educol/ncihe/scottish
Dearing Report: The National Committee of Inquiry into Higher Education, ('Dearing Report'), 1997, at www.leeds.ac.uk/educol/ncihe/
First and Second Reports of the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC), at www.ukcle.ac.uk/resources/aclec
Subject Benchmarks for Law, Quality Assurance Agency, at www.qaa.ac.uk/crntwork/benchmark/law
Scottish Legal Education in the Twenty-First Century, Report of the Sub-Committee of the Joint Standing Committee on Legal Education in Scotland, April 2000
Law Society of Scotland Report on the Training of Solicitors July 1994
Law Society of Scotland Review of the Training of Solicitors Consultation Paper, Nov 1994
Law Society of Scotland Review of the Training of Solicitors Second Consultation Paper, Nov 1996

general education. Upwards of 40% of those who currently undertake the LLB enter professions or jobs other than law and it is anticipated that this proportion will rise in the future.

- 11** In recent years the number of teaching institutions accredited by the Society to provide qualifying law degrees has increased significantly. Where there were for many years five such institutions, there are now nine. On one hand, this development may be seen as increasing substantially the prospect of the law degree becoming a general academic qualification for the great majority of students undertaking the course, with a minority having any opportunity to enter the practice of law. On the other hand, it may also be seen as a step towards greater access to the profession for students to whom the traditional seats of legal learning in Scotland may have been closed.

12 *Changes in approaches to teaching and learning*

These developments are taking place against a backdrop of significant change in the higher education sector in general. Universities are being encouraged to abandon what has been described as “surface” or “rote learning”, frequently associated with traditional lectures and examinations, in favour of “deep learning”, designed to foster understanding, creativity, and an ability to analyse material critically. At the same time the Society has come to challenge the philosophy of “coverage” which asserts that new lawyers should not be permitted to practise unless and until they have demonstrated knowledge of the key provisions of numerous branches of Scots law. The “coverage” philosophy is seen as encouraging passive, unreflective learning, while discouraging analysis, reasoned argument, or independent research.

- 13** The Society accepts that the “coverage” approach may have been encouraged by the number and content of the subjects which are required as a pre-requisite of admission to practice. The fact that exemptions are granted for passes in university examinations which correspond to the professional examination syllabus has meant that these professional subjects have occupied a substantial part of the curriculum of the LLB. This may have contributed to a professional focus in the degree which is undesirably narrow (although this is not accepted by all academics or practitioners). Accordingly the Society will seek to encourage universities to provide LLB degrees which reduce the emphasis on “coverage” and are designed to foster “deep learning”.

- 14** The turning tide of opinion against “coverage” has coincided with an increased focus on the learning of skills. The Society, encouraged by the thinking of bodies such as the Joint Standing Committee on Legal Education in Scotland and the Quality Assurance Agency, wish to see the enhancement of generic, transferable, personal skills at the undergraduate level, such as communication, reasoning and analysis,

problem-solving, teamwork and information technology. At the same time the Society has emphasised the importance of skills training throughout the three years between the gaining of a law degree and the grant of a full Practising Certificate.

15 *Skills Training*

In order to give effect to its commitment to enhance the quality of professional legal education and training through an emphasis on skills training the Society has made over recent years a number of changes to the structure and content of postgraduate training, resulting in the current arrangements which are summarised in Paragraph 5 above. The latest iteration of the Diploma which was introduced in October 2000, places a major emphasis on skills training. The Society also made considerable changes to the obligations imposed upon those firms and organisations who provide in-office training for two years following the Diploma. Again, the focus is on skills, and the trainee's progress is monitored by the Society, using logbooks completed by the trainee as a guide. Approximately halfway through the training period, the trainee attends a Professional Competence Course which develops new skills and values, as well as reinforcing many general skills, and building on practice area-specific skills acquired during the previous months of traineeship. Further work is to be undertaken by the Society in relation to the assessment of the success or otherwise of the traineeship. Because the quality of the training provided by the training firm or organisation is critical to the success of the traineeship and to the performance of the trainee, it is essential to identify appropriate methods for this assessment which will avoid the risk of the trainee being in some way penalised for shortcomings in the quality or consistency of the training provided. At the same time, the Society considers that the quality of the overall training experience can best be ensured by compliance with training guidelines which should apply to any firm or organisation seeking to engage trainees.

16 *Different Providers*

The Professional Competence Course is delivered by a variety of providers. It is not offered by all the law schools which provide the Diploma in Legal Practice. In-house providers such as large firms have been accredited, as well as external providers including local societies or associations of practitioners. The accreditation process is stringent, and the performance of the courses is monitored. This more open approach to the teaching of practical skills may carry over into future thinking about the delivery of other elements of post-graduate legal training.

17 *Access*

The Society is convinced that access to the profession must be as open as possible to people from all backgrounds. The issues of diversity which impact upon entry to the profession include relating to gender, ethnic

background and socio-economic factors. So far as gender is concerned, the majority of those entering the profession are female (as has been the case now for several years), and the opportunity to work part-time is widely available to those who desire it. The LLB is now available in a number of part-time, flexible formats for students. In a similar fashion, the professional legal educational programme ought to be as flexible as possible in order to accommodate students who have family, work or other commitments.

The expansion of higher education has encouraged many who traditionally would have been prevented by economic or social circumstances from entering the legal profession to choose law as a degree and as a career. Unfortunately, the replacement of grants with student loans may have created a disincentive in recent years to some aspirant lawyers. The Scottish Executive's acceptance of the recommendations of the Cubie Report³ is to be welcomed. Nevertheless student debt still remains in many cases at unacceptably high levels and this does provide a disincentive to those from lower socio-economic categories. A recent report on minority and social diversity in legal education commissioned by the Scottish Executive pointed out that in terms of social class composition, Scottish law students are 'disproportionately drawn from higher socio-economic groups - although only slightly more so than the sector as a whole'.⁴ This underlines the great importance of the retention of grants for the Diploma. We believe that any threat to remove or further reduce the availability of student grants for this course would have a seriously damaging impact upon open access to the legal profession.

- 18** We believe it is in the public interest that the profile of the legal profession should reflect in general terms the ethnic makeup of Scottish society. The same report quoted from above has shown that, as far as ethnic diversity is concerned, while intake into law courses is worse than in other professions such as medicine and dentistry, 'the performance of law courses is close to the average for the sector as a whole — in other words, it is likely that minority ethnic students are actually slightly *over*-represented relative to size of the minority ethnic working population.' As the authors of the report point out, a significant factor here may be the 'distinctive character of Scottish law degrees', which may be perceived as less transferable to other areas of the UK and other countries than other equivalent professional qualifications.

19 Requirements for entry

The Society has a manifest responsibility - expressly stated in the first section of its governing statute - to promote the interests of the public in relation to the legal profession. The Society approaches this major responsibility by addressing two major issues:

³ *The Independent Committee of Inquiry into Student Finance*, published 21 December 1999

⁴ Simon Anderson, Lorraine Murray, Paul Maharg, *Minority and Social Diversity in Legal Education*, Scottish Executive Social Research, 2003

- ensuring that those who wish to enter the profession have satisfactorily demonstrated that they possess defined levels of knowledge, values, skills, and abilities. The possession of such knowledge, values, skills and abilities, will usually be demonstrated by the holding of a qualifying law degree
- securing that applicants will undergo training in the professional vocational skills and values necessary to serve effectively the needs of the public or organisations who require the services of a solicitor to advise, represent, assist, or protect them. These professional skills and values are developed during the post-graduate elements of training mentioned in paragraph 15. The desirability of all members of the legal profession demonstrating the possession of such knowledge and skills is recognised in most jurisdictions across the world, although the methods of achieving the same will differ depending upon the particular circumstances prevailing in one country as opposed to the next.

20 The balance between unlimited access and the public interest

The challenge for the Society is to enhance the quality of the education and training received by those who seek to enter the profession, so as to best serve the needs of the public, without placing undue burdens on applicants which may prove to inhibit entry. Accordingly, when considering the educational and training requirements placed upon applicants for membership, the profession must at all times maintain an appropriate balance between, on one hand, promotion of the public interest through the quality of the education and training undertaken, and, on the other, the maintenance of open access to those from all backgrounds and circumstances. Any requirements made of aspirant lawyers must be proportionate in their effect – particularly if those requirements are economic ones.

21 The costs and funding of training

The Society believes that its requirements for admission to membership achieve this appropriate and reasonable balance. Nevertheless, we recognise that, in enhancing the quality of training in professional skills, some additional cost will be incurred. Much of this cost is met by those firms and organisations who provide traineeships, but a number of trainees face part of the cost themselves. While such costs may be reasonable given the quality of training received, the Society considers that it is appropriate for a proportion of the financial burden to be borne by each of the principal stakeholders involved. In other words, part of the overall cost should be borne by the trainee, part by the training firm or organisation, and part by the Scottish Executive (recognising the importance of the training of lawyers to the rule of law and the interests of justice which are the responsibilities of government). It may be that part should come from the legal profession as a whole. The Society's view is strengthened by the knowledge that only a small proportion of the

practising profession provides in-office training, and therefore meets any of the costs associated with training the lawyers of the future.

22 Utilisation of teaching resources

We recognise that Scotland is a relatively small country. Accordingly its providers of legal education encounter certain challenges in relation to resources – for example, there are quite small numbers of students at some university law schools, and only a limited number of practitioners throughout Scotland who are both (a) highly regarded in their area of practice and as teachers and (b) willing to devote substantial time to teaching in the Diploma. We advocate the potential advantages of greater collaboration between universities and the professional bodies with a view to making the best resources of both practical and teaching expertise available to all law students throughout Scotland.

23 The general practising certificate

Once qualified, solicitors have a general licence to practice, subject to regulatory supervision and control by their professional body. Any solicitor is deemed qualified to carry out any item of work for any client who chooses to instruct him or her. The reality is that the practice of law is becoming increasingly complex and specialised, and relatively few practitioners would profess to provide a general service across numerous areas of practice. Lawyers have accepted that the tenets of good client care and risk management dictate that they should not undertake work for any client in an area of practice of which they do not possess adequate knowledge or experience. We believe that the various elements of the education and training of lawyers – both before and after qualification – may facilitate the continuation of the present system of general licences or practising certificates. For example the Professional Competence Course requires the trainee to learn and demonstrate understanding of “core” areas which are common to all legal practitioners, as well as “elective” topics which will depend upon the particular (perhaps specialist) experience of the trainee. There is also no doubt that the regulation and enforcement of any system of specialist certificates would be more difficult to achieve. Concerns have been expressed that the issue of specialist certificates to lawyers depending upon their specific types of practice might lead to the fragmentation of the legal profession, and that this might undermine the ability of the profession to preserve its independence – thus potentially damaging the public interest.

24 Post-qualification training

We are committed to the concept of life-long learning for lawyers. Professional education does not come to an end when a lawyer is admitted to practice. Because changes in law and society are so frequent, there is

a compelling need for lawyers to keep up-to-date with new developments. The Society has made a professional requirement of its members to complete a number of hours each year of ongoing education and training, known as Continuing Professional Development (CPD). This is in tune with developments in other professions, and reflects the importance which is placed on the maintenance and enhancement of competence throughout one's practising career.

25 Free movement of legal services

By virtue of the Establishment Directive (No. 98/5/EC) of the European Parliament and Council, a lawyer qualified in a member state of the Union may, subject to certain conditions, practice the law of a different host state within the Union without having to undergo any test to qualify in the host state. The principal requirement is practice for a period of three years in the host state. The Directive has been given formal legal effect by the Scottish Parliament. Mobility of qualification between the three jurisdictions within the U.K. (namely (a) England and Wales, (b) Northern Ireland and (c) Scotland) is not subject to the Directive, but we recognise the common sense of similar provisions being adopted for intra-UK transfers. This requires reciprocity between the respective professional bodies of all three jurisdictions. In seeking to achieve such reciprocity within the UK, the fundamentally distinct nature of Scots law and the Scottish legal system must be respected.

The Competence Framework

26 Introduction

The following sections will set out the competence framework of the Society in relation to professional legal education and training in Scotland. As well as setting general aims for the professional education programme, this framework will provide effective quality assurance across the different elements of the programme. It will also provide a yardstick against which to measure the relative success or failure in the future of the various elements of the processes currently employed to educate and train tomorrow's lawyers. In the past, there have been considerable changes to the structure and content of legal education and training in Scotland. These developments were brought about as a result of changing circumstances within Scottish society and within the practice of law. It is to be expected that circumstances may change again in the future dictating that the current framework may require modification or replacement. However we consider that, for the foreseeable future, the competence framework will remain a constant and reliable standard.

27 Professional Competence: the background to its introduction

There are a number of definitions of what constitutes professional competence. In general, it describes the professional standards that

apply to the work of a lawyer, and has both a technical and an ethical dimension. Competence requires mastery of a recognised body of academic knowledge and skills, and the application of these in complex areas of work. It also involves a commitment to larger public interest than the good of the profession. However, it would be to misunderstand the complexity of professional competence itself to characterise it as merely the application of academic knowledge and skills to the field of practice. Professional practice involves much more. It has its own body of knowledge and ways of dealing with difficult issues. Sound judgment, which involves the merging of theory with a sense of fact patterns and a knowledge of situated practice, is essential to practice, and requires the development of a set of skills and knowledge that are recognisably different from those of the academy. It also involves an awareness of the community of practice within a profession, a sense of what constitutes good practice in a particular situation, and a highly-developed awareness of the ethical dimensions within which action is taken. All of this requires to be taken into account when professional competence is being defined.

28 Definition of competence

For our purposes we define competence in professional legal practice as *the distinguishing but minimum performance standards characteristic of the performance of a novice legal professional*. We shall consider what these are in the next six paragraphs, and how they may be regarded as a partnership of interests. These standards will of course vary according to the stages of the educational process. Whatever they are, though, they are defined according to the needs of the stakeholders in the educational process, *ie* clients, the general public, the legal profession, students and trainees, educational providers, and the Society. We shall outline the interests of each stakeholder below.

29 Clients

Clients expect levels of conduct, care and skilled performance that are embodied in professional statements produced by the Society. In addition to these statements, there has for some time been developing a body of theory which analyses the role of the lawyer, and which advocates adherence to higher societal goals and more rigorous client-centred approaches. All this should be applied within the professional education programme in order to help students and trainees develop an ethical approach to legal practice.

30 General public

The expectations of the general public are important in defining what is professional legal competence. Although they may be unable to determine what competent legal performance is, the public has expectations regarding the level of quality of service. The design and implementation of competence standards should take account of these

expectations, so as to ensure that law's educational practices complement what is regarded as best practice in representation of the public interest. In this regard, it is important that the Scottish Parliament takes seriously the role of legal education within the legal system, and we welcome such interest as is shown by inquiries into practice by the Justice One Committee Inquiry.

31 Legal profession

The profession is concerned with quality of competent lawyering. This will involve the Society in analysing the types of tasks to be undertaken by trainees and levels of performance appropriate to each task. It will also include a statement of the attitudes and ethical actions and values that are essential to the Scottish legal profession. The standards of trainee competence must be defined in terms acceptable to the profession in which the trainee is learning those standards. In addition, these standards must be part of an ongoing set of standards appropriate to different stages and careers within the profession.

32 Students and trainees

Students and trainees have the right to expect a training programme that educates them to take their place in the legal profession. It should be one that gives them confidence in their own abilities as novices in legal practice. In more detail, it should:

- give them an awareness of their individual strengths, and areas for improvement
- enable them to work effectively as a member of a team, to understand their respective roles and responsibilities within a team, and to contribute fully to the achievement of the team's aims
- introduce them effectively to the legal profession, not simply through the tasks they perform and the practitioners who tutor and train them, but also through information about the make-up and structure of the profession, and the different career opportunities and challenges they may select or encounter
- enable them to respond to feedback and develop analysis of legal practice around them, so that they become active members of the legal profession
- train students and trainees to cope not only with routine tasks, but with ill-structured tasks and unpredictable situations
- enable them to perform with reasonable confidence the skill sets outlined in course documentation, to understand deeply the ethical structures of legal practice, and to comprehend procedural contexts of different areas of law
- be based upon a broad view of vocational training that treats students as thoughtful and discriminating, and which enables them to further their own careers in the legal community.

If these points describe what students and trainees have a right to expect in the programme of professional legal education, they also stand as core tasks to which students and trainees should commit themselves, and undertake to perform throughout the programme.

33 Educational providers

The interests of educational providers of the professional education programme are of course tied intimately to those of students and trainees. We encourage providers to ensure that knowledge is integrated with skills and attitudes. Competences should not be reduced to a set of observable skills only. The professional-client relationship should lie at the heart of teaching, where clients are constructed as human beings with their own needs, anxieties and business affairs, rather than as the object of merely technical skills or objectives. Providers should liaise with the profession to ensure that students have a practical understanding of legal work, and ensure that the profession (particularly training firms) understand what is taught and learned on the Diploma. Providers should be encouraged to develop programmes of study and practice-based workshops where students and trainees develop complex competences based upon transactional learning, and where quality, not quantity, of learning is central. In this respect providers should be less concerned to 'cover the curriculum' and more concerned to create innovative and imaginative opportunities for trainees to learn the integration of knowledge, skills and attitudes important to their careers.

In turn, providers should be supported by liaison with the profession and the Society, both of whom should understand the financial requirements of a high-quality professional educational system, with its skills-based teaching and learning, small-group teaching, focused assessments and the like.

34 Law Society of Scotland

The Society is concerned to promote the values of an ethical and independent legal profession, and to ensure that these values are embodied in professional legal education. The interests of the Society lie also in its responsibility for the success of the programme to all other parties. This leadership role is a crucial one. Whereas in previous decades the universities (*via* the LLB Degree and the Diploma) and the profession (by signing off trainees) were the gatekeepers of the profession, the Society now seeks to develop a partnership between the various interested parties so as to draw upon the strengths of each, and answer the needs of each. Thus, the Society owes a duty to the general public to ensure the quality of service arising out of the programme. On behalf of students and trainees it seeks to ensure the quality of education and training, and also that the costs of the programme are shared proportionately amongst the partners in the programme. It must account to the profession for the standard of trainees as legal service employees.

It ought to ensure that the curriculum design of the programme is innovative, valid, practical and challenging. In this respect, the Society takes account of best contemporary educational theory and practice in the design of professional legal education, and on the basis of this has constructed and review course guidelines for all providers. These guidelines should be developed with the needs and resources of providers in mind, and are part of an ongoing accreditation and monitoring role that applies to every aspect of the programme. If the Society is to play its role in the professional education partnership, it must ensure the quality not only of trainees, but of the programme and its educational and training partners.

Characteristics of competence

35 If competence-based education is to be the standard by which trainees are trained throughout the training programme, then there are a number of qualities regarding it that must be stated at the outset. The statement of them is the responsibility of the Society who will work in partnership with providers and training firms to ensure that they are embedded within the programme.

36 *Competences should be stated for every stage of the training process, and should be derived from practice.*

This process will involve:

- definition of areas of substantive and procedural law and skills as part of the core, and others as having the status of elective only
- the level of complexity and sophistication of performance within competences.

The Society will oversee the process of creating for each of the four elements of the training programme a document set that will state the appropriate competences. The competences will be composed of learning outcomes that will state the threshold standards to which the competences should be performed.

37 *Competences are more than learning outcomes*

Learning outcomes are useful lists of skills or knowledge components. However, learning outcomes break down the holistic and contextual nature of a skill into component parts that are not representative of how the skill is performed in practice. For example interviewing can be broken down into separate components or learning outcomes – gesture, voice tone, eye contact, note-taking, forms of questions, and so forth. It is useful to focus on these at a basic level of skill development, but at a higher level, students and trainees need to learn how to perform the skill holistically, and within a sophisticated, practical context. While learning outcomes have a place in helping learners and teachers alike, to

understand the structure of a class or course, they can be inappropriate for professional education, for two reasons:

- Trainees often need to find their own route to what might be regarded even as novice performance in the integration of skills and knowledge.
- In skills-based learning, students and trainees can sometimes learn a diverse range of skills that were not intended to be part of the class. Such 'divergent learning' can often be useful but can be inhibited if the class is focused too closely on a structure of learning outcomes.

38 *Competences required to be updated to map the existing activities carried out by members of the profession.*

A professional education structure should adapt through time to accommodate changing activities, values, cultures and attitudes within the profession. As the profession expects its membership to update its skills and knowledge regularly *via* CPD, so the educational standards inherent in competence-based education must be constantly matched to current activities undertaken by the profession to ensure validity in teaching and assessment.

39 *Competences require to take account of tacit knowledge.*

In the context of professional education, tacit knowledge could be described as the informal body of knowledge that is learned about a professional procedure. It involves thinking about and remembering what the procedure consists of, how it is carried out (procedural knowledge), who is involved, how long it ought to take, examples of good and bad practice, and so forth. It is an essential component of professional learning, and should be given its due place in teaching and assessment strategies.

40 *Competences in law are transferable.*

A number of recent HE reports have developed concepts of transferability of skills across disciplines. Within law it is certainly the case that there is considerable transferability from the LLB to the professional training programme. In feedback obtained by universities, students often comment on whether particular subjects in the Diploma are familiar to them or not from their undergraduate study. These comments make clear what educationalists have been saying for some time, namely that one of the most significant indicators of performance is prior understanding of the skill, procedure or knowledge to be learned.⁵ The Report from the Joint Standing Committee on legal education makes it clear that there should be transferability of knowledge and skills between the two halves of legal education. However we believe that at present more could be done to achieve a better transfer of knowledge and skills into the professional training programme. Ways in which this could be achieved will be addressed in more detail at paragraph 41 below.

41 While transferability of knowledge and some skills is essential to the professional training programme and is possible, two points must be made regarding the concept of transferability from the LLB to the programme. First, it remains the case that much that is learned in the traditional undergraduate degree is consigned to storage before the Diploma and traineeship, and rarely accessed thereafter. There are four reasons for this:

- intellectual performance in later undergraduate years, particularly in Honours, is of an order and type rarely needed in the first years of traineeship and assistantship.
- academic knowledge, particularly in early undergraduate years, is compartmentalised in order to induct students into the discipline. Professional thinking often requires students and trainees to cross these boundaries.
- academic knowledge and skills are seldom directly related to the practical legal concerns of traineeship, and are not oriented to professional legal work routines⁶.

There are two ways in which legal education could be made more transferable:

- the intellectual strengths of the undergraduate degree could be used more within the Diploma. For example the substantial body of research into the legal profession not only in Scotland but in other jurisdictions can be made part of the course
- aspects of professional legal skills could be embedded within the undergraduate curriculum, particularly those that are transferable to

⁵ See for example Jerome Bruner, *The Culture of Education*, Cambridge, Mass., 1996

⁶ See Michael Eraut, *Developing Professional Knowledge and Competence*, Routledge Falmer, 1994

other professions and employments. In this sense we strongly support the proposals for a more liberal, skills-based LLB contained in *Scottish Legal Education in the Twenty-First Century*.

42 Secondly, (and this is borne out by much student comment and feedback to date), students require to learn anew the knowledge and skills that they have learned in the academic domain. This is not related to law alone, but is the case with most professional curricula that are split between academic and professional programmes of study. As a result, there is a need to focus students strongly in the early stages of the professional programme upon the structures of professional knowledge, skills and attitudes. If the early stage of the professional programme were to consist of yet another academic course of law, this time largely procedural, the result would be frustrating for everyone involved in the process.

43 *Competences should be developed within a spiral curriculum.*

Most models of competence education take a linear approach to learning, where students move from simple to more complex tasks. There is a place for such learning, particularly in the early stages of the 'performative' skills of interviewing, negotiation and advocacy. Nevertheless, simple-to-complex models of competence development do not represent well the multi-layered quality of professional learning in this context. In a three-year programme of study involving a number of different modes of study, assessment and work-place learning, it is appropriate to consider how competences will be developed across the range of learning environments, activities and tasks. The curriculum is best designed as an ascending spiral, in which learning tasks are encountered in more realistic environments, and in more contextual complexity through time (see *Figure 1* for an example). This requires that general levels of performance should be set for the Diploma in Legal Practice as the initial course of the programme, and indicated for other areas of the programme.

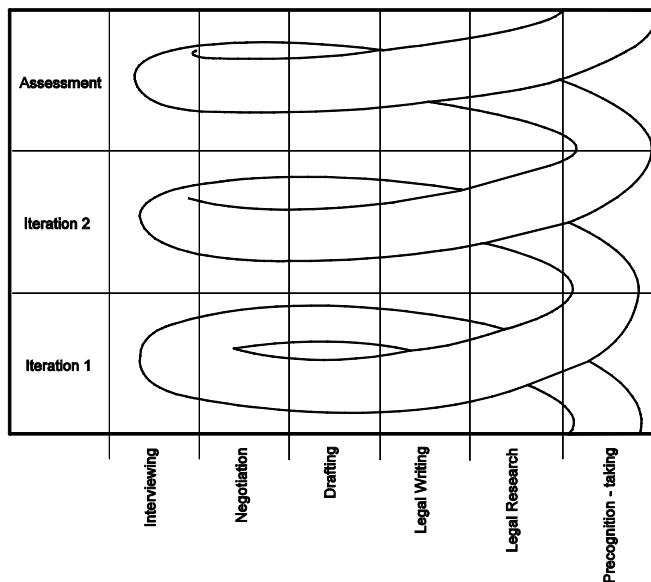


Figure 1: sample spiral skills curriculum

- 44** For a spiral curriculum to operate effectively, it is essential that the curriculum is viewed holistically. There needs to be integration of one learning environment with another so that students and trainees appreciate the professional training programme as a coherent, challenging and rewarding educational experience. Providers are therefore encouraged to reflect on what might be for them the best method of approach to a competence, bearing in mind local expertise and strengths.

General curriculum guidelines

- 45** Given these characteristics of competence, it will be helpful to outline how these characteristics are to be achieved in the curriculum of the programme.

46 Core & elective models

The structures of legal practice, traineeship and legal education change ever more swiftly. One way of coping with this is to adopt a model of a core curriculum, surrounded by elective choices. Students and trainees would all study and be assessed upon the core. They would choose electives according to their preferences, and the electives would represent either advanced study of aspects of the core, or new areas of practice law or skills not already in the core, and students would be assessed upon their choice of electives. This model is applicable to all teaching elements of the professional training programme.

47 Teaching & learning methods

At present, teaching in the professional education programme is carried out by practitioner-tutors and lecturers. There are many strengths to this system, and much of the success of the programme to date can be attributed to the practical experience and contextual knowledge that these tutors bring to classes. However, it is essential to ensure that tutors and lecturers are properly trained for the educational tasks they are required to undertake, and the Society expects providers to ensure that this training takes place at all levels of teaching in the programme.

48 Lectures are a useful and cost-effective method of instruction, but there is less need for them at the postgraduate stage of professional legal education. Instead, teaching should be carried out largely by tutorial or workshop. Where appropriate, providers should be encouraged to develop resource-based learning, open-learning, and distance-learning methods within the curriculum framework set out by the Society. Information and Communications Technology (ICT) is increasingly important both to legal practice and higher education, and should be used imaginatively within the professional training programme. In particular, providers are encouraged to develop open- and distance-learning materials that make use of multimedia and the communicational power of the internet. Providers will have their own strengths and areas of expertise within substantive subjects, and they should be encouraged to develop these within the curriculum framework.

49 The student and trainee learning experience lies at the heart of the programme, and teaching and resources should be aligned to ensure that this experience is meaningful, challenging and relevant. Learning should be both individual- and group-based. It should involve use of a variety of learning resources, and providers should ensure that student learning is aligned to assessment. Learning activities should be imaginatively designed, well-resourced and should support student learning.

50 Assessment methods

Assessment is an essential element of the professional education programme. Academic models of assessment are not appropriate to this stage of legal training, and therefore it is important that relevant and rigorous methods are used by training providers. The following give examples of assessment and comment on their appropriateness:

- *Traditional closed book examinations*
These forms of assessment are often practised in the undergraduate LLB. They can develop habits of uncritical memorisation of legal principle. We consider it unlikely that they are appropriate to the professional stage of legal education. Instead, we advocate the following forms of assessment.
- *Open book and case-based examinations*

These assessments mimic some of the features of professional practice, and therefore are more fitting assessments of the competences that are taught in the Diploma.

- *Coursework assessment*
This can take the form of specific pieces of work that are submitted during the course of the Diploma. While this is a valid and meaningful form of assessment, care must be taken that plagiarism is not practised by students.
- *Collaborative assessment*
Some forms of assessment actively promote collaboration between students; and this is certainly a practice to be encouraged. While all students concerned in a collaborative assessment may agree that all have contributed to the work, it is useful to have a more objective measure of this, too.
- *Knowledge-based assessment*
This form of assessment focuses purely on knowledge components. Examples include computer-aided assessment (CAA), multiple-choice assessment, objective questions, oral examinations and the like. This is a useful and often rigorous form of assessment, but care must be taken that it is balanced with more skills-based assessments in the curriculum.
- *Skills-based assessment*
This can take the form of written or oral work produced in role-play or simulation. This form of assessment, when accompanied by clear statement of standards and competences, can be very effective. For example, a student may be videotaped interviewing a client, and may then be asked to draft a letter on action, thus assessing interviewing and drafting skills in the same scenario.
- *Portfolio assessment*
A portfolio can consist of a number of pieces of work, on the same or different simulated scenarios, that are submitted by a student or a group of students. This is a valuable way of both contextualising student work within a scenario, and requiring students to reflect upon the work by commenting upon their performances.

Elements of the professional training programme

51 Having defined the interests and needs of all partners, as well as important issues in competence-based education and general curriculum guidelines, we must turn now to the elements of the programme themselves, and outline in more detail how competence-based structures for learning can be brought about. In summary, at the moment, the elements of the programme are as follows (see figure 2):

51.1 Diploma in Legal Practice

51.2 Traineeship

51.3 Professional Competence Course

51.4 Test of Professional Competence.

52 Diploma in Legal Practice

The Diploma presently lays the foundations for the professional education programme. Upon completing it, trainees should feel confident that they are prepared for their traineeships. In this sense the Diploma is an excellent opportunity to shift students' perception of the discipline of law as predominantly academic to one where law is perceived as a deeply social and practical profession, with skill-sets and ethical, commercial and intellectual structures of thought and values that distinguish it from other professions.

In so doing, providers need to consider how they will bridge the gap between classroom and professional life. Students' sense of professionalism is in part a product of their immersion in professional life and values. It is not possible for students and trainees to attain such complex and multi-layered understanding if providers adopt a 'transmission' model of legal knowledge, where programmes of study are 'delivered' to students. Nor is it possible if competence is understood merely as sets of 'tick-box' behaviours that students must imitate. Instead, providers must be encouraged to develop courses where students deepen their understanding of the many different aspects of professional life, based on simulation, case-study and situated learning. It is by developing competences within these contexts that students will practise skills in an intellectually challenging context; and where, through reflection and dialogue, they will develop effective communications, practical problem-solving, critical thinking, and an ethical approach to the practice of law. In addition providers, in co-operation with the Society, should provide plentiful opportunities for students to obtain information about the legal profession in Scotland, its structure and make-up and the privileges and challenges which membership brings.

To facilitate these aims, the Diploma should consist of a core and elective model, where postgraduates should be encouraged to learn independently, in groups, and using the resources of libraries, ICT and many other resources. Peer learning, groupwork, project work and other forms of work that encourage independence in learning and teamwork should be adopted. Under an outcomes-based accreditation and review procedures the Society will ensure that providers are engaging with the curriculum guidelines for the course, and interpreting the competence standards in ways that are compatible with the overall aims of the programme. At present the course is full-time only. The Society's outcomes-based approach will encourage and facilitate the construction of part-time alternatives to the full-time course, thus offering those students whose commitments to work or family disbar them from the Diploma a route into the profession.

53 Traineeship

The traineeship represents an investment of effort and resources by the profession to ensure the future well-being and strength of the profession. Just as the competence framework is essential in the more highly structured elements of the professional training programme, such as the Diploma, so it must also be applied to the traineeship. However, statements of what is expected of trainees and trainers during workplace training will require to be general, for there is considerable variation in the job specification of traineeships offered by legal service employers in both the public and private sectors, and within these sectors. It is clear that the quality of learning in the best traineeships is exceptionally high. It is also clear that considerable variation has existed in the past in the quality of training offered by legal service employers. It is neither credible nor responsible for the profession to demand high standards of its trainees and external providers of education, and not to seek the attainment of consistent standards by all trainers during such a major element of the programme as the period of workplace training. Accordingly the Society will enable employers to achieve consistency of quality by means of three initiatives:

- The quality of workplace supervision will be enhanced if there is a recognised programme of supervisor training provided to legal service employers, and the Society will both facilitate and require the provision of such training to those responsible for the supervision of trainees
- Trainees cannot develop the 'personal knowledge' of integration of skills knowledge and attitudes if they are not given the opportunity to solve problems, think through difficult ethical decisions, critically evaluate the options open to a client, or make written and oral representations to other professionals. Workplace competences must emphasise the quality of work in which trainees should play significant roles, under supervision. Such learning will be recorded in a document such as a training log or journal
- As part of its commitment to support the profession, the Society will provide a set of guidelines for training firms and other organisations. These guidelines will indicate the levels of appropriate training and supervision, give examples of good practice, and describe relevant employment issues and the monitoring of training to be carried out by the Society. Compliance with these guidelines will be a requirement for those firms and organisations who seek to engage trainees.

54 Professional Competence Course

In addition to benchmark competence standards for trainers, it is important to ensure that trainees have the opportunity to enhance their on-the-job training with what might be termed core skills and knowledge that they meet at some point during their traineeship. Even the best in-office training will benefit from being enhanced by an intensive course containing integrated knowledge- and skills-based professional education. This is the function of the PCC. The course is built around a core/elective

model. The core contains the primary set of competences applicable to the attitudes, knowledge and skills of all trainees. Electives give trainees the opportunity to advance their skills and knowledge in specific areas applicable to their current or future areas of practice.

55 There are two models for the course:

- the 'in-house' course model, where law firms may apply to be accredited to hold the PCC for their own trainees within their own firms
- the 'external provider' model – where institutions or training bodies may offer the course to trainees from different firms on the same course.

There are educational benefits and disadvantages to both models. In the 'in-house' model, trainees obtain a training that can be closely tied to their work patterns, to confidential information within the firm, and to the culture of the firm; but they do not learn beside trainees from other firms and have less opportunity to gain a broader knowledge of the profession. The external provider model offers collegiality, peer learning across firms, and points of view external to trainees' firms; but trainees' learning will not be tied as closely to their workplace learning as in the first model.

56 Test of Professional Competence

It is highly unlikely that all legal service employers will have the necessary educational experience or indeed time to assess competence across different workplaces, tasks, areas of law and the like. For competence-based assessment to function properly, it must be:

- fair
- reliable
- valid – *ie*, it must be workplace-based, or at least derive from practices embedded in the workplace

57 For this reason, we have determined that a common mode of assessment of competence should be held within the two-year professional traineeship, in which trainees will demonstrate their competence in the areas of law in which they have been working. This assessment should consist of:

- satisfactory completion of workplace learning in the previous two years
- a signing-off statement by the training supervisor, stating that the trainee is a fit and proper person in terms of the Act to enter the profession
- an assessment of work-place learning.

Achievement of all of these entitles trainees to be awarded a Full Practising Certificate.

58 Review of the current programme

Each element of the programme will have procedures for review within its accreditation and monitoring documentation. However the programme will require to be reviewed at regular intervals so as to ensure the effective integration of the individual parts. For this reason, the Society will review the programme regularly on the basis of feedback to be obtained from trainees, employers and education providers on the effectiveness of the programme as a whole; and in the light of this will alter any aspect of the structure as required.

Project development: project work completed and on-going

The following projects have been, or are in course of being, carried out:

No.	Description	Status
1.	Diploma providers to agree a common benchmark set of skills and knowledge for entry into the Diploma	On-going
2.	The Society sets competence standards for legal service employers offering traineeships, to ensure benchmark quality standards of training.	Completed
3.	Research & consultation with the profession over the structure and development of a Professional Competence Course	Completed
4.	If response to project 3 merits it, the setting up of a pilot PCC, feedback upon the course, and publication of feedback.	Completed
5.	If PCC proceeds after pilot PCC, the creation of provider documentation along the lines discussed above.	Completed
6.	Create assessment regulations for the TPC	Completed
7.	Create competences for entire programme	On-going
8.	Hold pilot TPC, obtain feedback, and publish feedback	Completed
9.	Review the Diploma in Legal Practice curriculum, and draw up a set of guidelines for providers on curriculum structures, maximum & minimum teaching hours, modes of teaching, learning & assessment	On-going

Figure 2: Professional Legal Education in Scotland

