

response to Law Society of Scotland
consultation on shaping the future of
legal education and training

February 2007

 **Scottish
Consumer Council**

Making all consumers matter

About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC's Chairman and Council members are appointed by the Secretary of State for Trade and Industry, in consultation with the First Minister. Martyn Evans, the SCC's Director, leads the staff team.

Please check our web site at www.scotconsumer.org.uk for news about our publications.

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The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS

Can consumers actually get the goods or services they need or want?

CHOICE

Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION

Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS

If something goes wrong, can it be put right?

SAFETY

Are standards as high as they can reasonably be?

FAIRNESS

Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION

If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

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Introduction

The Scottish Consumer Council welcomes the opportunity to comment on this important consultation by the Law Society of Scotland on the future shape of legal education and training in Scotland. The purpose of the Scottish Consumer Council is to make all consumers in Scotland matter. We do this by putting forward the consumer interest, particularly that of disadvantaged groups in society, and by working with those people who can make a difference to achieve beneficial change. Accordingly, we have an interest in the education and training of solicitors in Scotland, from the perspective of the consumers who need to use their services.

The consumers of services provided by solicitors in Scotland are entitled to have the assurance that those solicitors are trained to an adequate standard. At the same time, however, entry to the profession should not be unduly restrictive, as this could deny a sufficient range of choice of legal services to consumers.

While other providers of legal services have an important part to play in ensuring that consumers have access to justice, solicitors, whether in private practice or salaried, will always have a vital role in providing specialised legal services to the public. Most people in Scotland will use a solicitor at some point during their life. Various studies in recent years have consistently found that around 1 in 4 people in Scotland have experienced one or more 'justiciable problems' during the previous five years,¹ and for many a solicitor is their first point of contact. Meanwhile, almost two-thirds of the Scottish population are now owner-occupiers.² The majority of people are therefore likely to need the services of a conveyancing solicitor at some point: the available research suggests that between half and two-thirds of people who employ a solicitor use their services for this purpose.³

It is vital that the system of legal education and training is tailored to ensure that it best serves the interests of both consumers and the legal profession. While the present consultation is welcome, it will be necessary to monitor the system on an ongoing basis, to ensure that it continues to serve those interests as circumstances change over time.

¹ *Paths to Justice Scotland*, ibid found that 26% of people had a justiciable problem within the previous 5 years; *The Public Perspective on Accessing Legal Advice and Information*; Scottish Executive Central Research Unit, 2001 found a prevalence rate of 25%; *Community Legal Service: Assessing Need for Legal Advice in Scotland*; Scottish Executive Central Research Unit, 2004 found that the prevalence rate across four areas of Scotland varied between 28-32%.

² 66% of households in Scotland are now owner occupied. Source: *Scotland's People: Annual Report – Results from the 2005 Scottish Household Survey*, published August 2006.

³ *Report on General Public Opinion Survey*, prepared by System 3; Law Society of Scotland, October 1998; *Client Care: A report of a survey on the client care provided by solicitors in Scotland*; Scottish Consumer Council, 1995

The consultation process

We can see that there are attractions in the approach adopted by the Society to this consultation, which appears to be designed to encourage the maximum response from members of the legal profession. However, this method makes it difficult for outside organisations with an interest in the issues, such as the Scottish Consumer Council, to respond. We cannot easily complete an online questionnaire on the detailed questions, and we would be concerned if this method of consultation had the effect of dissuading other organisations or individuals with an interest from responding.

We note that the Society's website states that it would prefer to see organisations invest their resources in encouraging their members or those they represent to respond rather than to send in a single submission. This is not practicable for us; hence this general response to the consultation, which has been approved by the Council. We do not intend to respond to the detailed questions being consulted upon, but we do have a number of general points to make on the future education and training of solicitors, from the consumer perspective, as set out below.

We note that, following the consultation process, the Society intends to share the results with its 'key stakeholders' and ask for their views and comments on the emerging themes. We hope that the Society considers the Scottish Consumer Council to be a key stakeholder, and that we will be further consulted at that stage.

Competition in the provision of legal services

We believe that greater competition in the provision of legal services is in the interests of consumers, provided adequate safeguards are put in place. We have welcomed the imminent implementation of Sections 25-29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, which will allow professional bodies to apply for rights to conduct litigation and rights of audience in the Scottish courts to non-lawyers. We also consider that there is a need to look at new ways of delivering legal services, such as allowing lawyers to go into partnership with other non-legal professionals like surveyors and accountants, and allowing solicitors employed by companies to give advice to members of the public. We think that greater competition will help to drive more imaginative approaches to the ways in which legal services can be offered.

Ensuring access into the profession

The Scottish Consumer Council was represented on the Research Working Group on the Legal Services Market in Scotland, which published its final report in May 2006.⁴ In relation to the education and training of solicitors, we support

⁴ Report by the Research Working Group on the Legal Services Market in Scotland, Scottish Executive, May 2006

the view expressed by the Office of Fair Trading (OFT) in that report. The OFT stated that, where decisions were taken in relation to qualification or training requirements, it was important that those requirements should be transparent, proportionate, non-discriminatory and based on objective standards.

The OFT believed that there had been no systematic examination of whether that was the case in Scotland, or whether the current training and education system systematically ensured that a supply of appropriately trained professionals was available to cover all areas of law.⁵ We therefore welcome the present consultation, and we hope that these issues will be taken fully into account by the Law Society of Scotland throughout the consultation process.

We would not wish to see the introduction of any reforms which may have the result, whether intended or unintended, of restricting entry to the profession. We believe that so long as appropriate standards of competence are maintained, the consumer can only benefit from the fact that many people wish to offer legal services. This should lead to healthy competition and a more imaginative approach in the ways in which legal services are delivered.

In particular, we would be concerned at any suggestion, which we believe has been made in the past, that a place on the proposed Stage 1 Professional Education and Competence course should be conditional on having a training contract already in place.

Similarly, while we recognise the importance of ensuring that training is of good quality, we would not wish to see a situation where it is made too difficult for firms, particularly smaller firms, which are willing to offer traineeships, to meet the required accreditation and supervision criteria. This could have the unintended effect of restricting the numbers of traineeships available, which would not be in the interests of either consumers or the legal profession as a whole.

We would also suggest that consideration should be given to introducing new ways for people to qualify as a solicitor, as the profession continues to attract graduates with a broader range of backgrounds and experiences than in the past. These might include work-based learning within environments other than solicitors' firms, such as advice agencies, law centres or public organisations, as an alternative to a traditional traineeship.

We are aware that the Legal Services Review Board in England and Wales has recently consulted on piloting a new framework for work-based learning as a route to qualification for individuals not working in an accredited organization or under a formal training agreement.⁶ This was prompted by a number of factors, such as a lack of traditional training contract places to accommodate the

⁵ See Note 1- at paragraph 4.55

⁶ *A new framework for work based learning: consultation paper*, Legal Services Review Board, Education & Training Unit, August 2006

numbers of Legal Practice Course graduates, a lack of flexibility in the current time-based approach to the training contract, and a lack of flexibility in recognizing relevant individual experience obtained outwith the formal training contract. These factors have led to concerns that the current requirement for trainees to enter into a formal training agreement may act as a barrier to qualification for some individuals.

We would suggest that similar issues may require to be addressed in Scotland, and that the Society should be considering the introduction of this type of work-based learning for intending solicitors north of the border.

Unmet legal need

If the interests of consumers are to be adequately served, it is important that sufficient solicitors are trained to provide services across all areas of legal practice where there is a demand for their services. We have previously expressed concern at the lack of solicitors who provide legal services in the area of social welfare law, including debt, housing, employment and consumer issues. Past research suggests, for example, that only a minority of solicitors deal with welfare benefits issues.⁷

However, non-legally qualified advisers also make a significant contribution to the provision of legal advice, assistance and in some cases, representation, across a wide range of subject areas, often those areas in which there are few solicitors providing a service. We believe that the best approach to providing legal services in the future should retain the best of what exists at present: a mixture of public, voluntary and private provision, but without any gaps in the safety net.

This 'complex mixed model' of provision has many strengths in reaching a great variety of people and addressing their advice needs. We hope that the forthcoming introduction of salaried solicitors employed by the Scottish Legal Aid Board, following the recent passage of the Legal Profession and Legal Aid (Scotland) Bill, will help to address the gaps where specialist legal expertise is required to address unmet legal need.

It appears that at present there is a lack of interest or enthusiasm among many law students and graduates to work within social welfare law and related areas of work. While we believe that some universities do cover some of these areas, this lack of interest may be due at least in part to the fact that these subjects are not included within the Society's current examination syllabus. As we observed 10 years ago when responding to the Society's 1996 review of the training of solicitors, there continues to be an emphasis on the traditional 'core' or 'professional' subjects, such as property law, trusts and commercial law.

⁷ In 1995, only 25% of principals in legal firms (partners and sole practitioners) dealt with welfare benefits and social security rights: *Specialism in Private Legal Practice: the Provision and Use of Specialist Resource by Solicitors in Scotland*; Karen Kerner, Scottish Office Central Research Unit, 1995

There is a danger that focusing on these traditional areas of law, while excluding areas where there is a clear need such as welfare law, consumer law and housing law, could result in a profession which is not sufficiently informed about the areas of law where many of the legal problems affecting individuals occur.

We would not wish to see too many compulsory elements within the proposed Legal Foundation Programme or Professional Education and Training (Stage 1), as it is important that any widening of the syllabus should not be to the detriment of quality or efficient learning. That said, the Society should be conscious of the need to ensure that legal training is not too narrowly focused. The introduction of work-based learning, as suggested above, may assist in ensuring that there are increased numbers of solicitors with knowledge of, and experience in, areas of law where there is currently unmet need.

New ways of delivering legal services

As we stated in the introduction to this response, it is important that the system of legal education and training best serves the interests of both consumers and the legal profession. We believe that the current syllabus may ill-equip the future profession for the changes which are taking place in the ways in which legal services are provided. The present law degree may be good preparation for a career in traditional private practice, but things are changing fast, and new models of delivery are becoming the norm.

General practice is less prevalent than in the past, with increasing specialisation within the profession. A significant proportion of the profession now works 'in-house', whether for public authorities, companies or other organisations. The public defender service is expanding, while some solicitors choose to work in law centres, and a small number of solicitors are already directly employed by the Scottish Legal Aid Board to deliver a number of innovative projects. The forthcoming changes following the passage of the Legal Profession and Legal Aid (Scotland) Bill mean that further solicitors will be employed by the Board in the future to deliver publicly funded legal assistance on civil matters.

We believe that it is important that ways are found of encouraging students to consider a career in publicly funded legal assistance. The universities have an important role here, in offering relevant subjects, and in ensuring that students are aware of the existence of such opportunities and the potential advantages of this type of work. Again, the introduction of new ways of work-based learning resulting in qualification as a solicitor would be helpful in this area.

It is also important that law students are encouraged to consider other career options aside from going into the solicitor or advocate professions. While we are aware that the Society does publish information for law graduates on other possible disciplines, there may also be other avenues more directly related to legal work. In the context of the proposed reforms in publicly funded legal assistance, for example, we would envisage the possibility of a 'new breed' of

legally qualified non-solicitor advisers, such as some of the in-court advisers already in post.

Alternative dispute resolution

We would also like to see greater emphasis within the legal education system on the importance of alternative dispute resolution methods. The recent final report of the Civil Justice Advisory Group chaired by Lord Coulsfield noted clear agreement among stakeholders that the system should encourage the resolution of disputes at the earliest stage possible. The report acknowledged that the courts will always be central to the civil justice system, but concluded that they should be viewed as a last resort, should other less formal means of dispute resolution prove unsuccessful.⁸ Solicitors, some of whom will in time also become sheriffs, will be crucial in changing the adversarial culture within the civil justice system. It is therefore important that mediation and other forms of ADR are presented to law students as serious alternatives to court. Such an approach should gradually help to change the present adversarial culture within the profession to a culture that is more positive and consensual.

While we understand that most of the universities currently include some discussion of mediation in their curriculum, the extent and nature of the coverage varies. At present, ADR is not contained within the Society's examination syllabus. While there is some brief discussion of mediation on the Diploma in Legal Practice course, this is within the context of civil court practice, rather than as a subject in its own right. There is therefore a need for a greater focus on ADR methods in relation to both the proposed Legal Foundation Programme and Professional Education and Training (Stage 1). We note in this context that while both civil and criminal litigation feature in the list of proposed compulsory topics for the latter, there is no reference to ADR, and we would suggest that there should be.

Client care and communication skills

Finally, we believe that it is important to move towards more skills-based study, rather than concentrating largely on 'black letter law', particularly within the proposed Legal Foundation Programme. While the current Diploma and Professional Competence Course do place an emphasis on client-oriented skills such as communication, case management and negotiation, real-life experience as part of the legal foundation programme would be invaluable. This might be achieved through students participating in legal clinics, for example, or volunteering within citizens' advice bureaux or other advice agencies.

It is very important that client care skills continue to be a central part of solicitors' training, and we consider that client care and communication skills should be compulsory as part of the proposed Stage 1 Professional Education and

⁸ *The Civil Justice System in Scotland - a case for review?: the final report of the Civil Justice Advisory Group*, published by the Scottish Consumer Council, November 2005.

Training. Good oral and written communication skills are of particular importance for solicitors. While the available evidence is that there are consistently high satisfaction rates among solicitors' clients,⁹ there is always room for improvement. There is evidence from our research on the experience of recent home buyers, for example, that some solicitors could do better in explaining various aspects of the conveyancing process to clients, and in advising them on their legal rights and obligations.¹⁰

We do not believe that in the majority of cases solicitors are actually neglecting to advise clients about issues such as burdens and maintenance responsibilities. It may be, however, that the information is not being presented to the client in a readily understandable way. Information which may appear perfectly clear to the solicitor may not always seem that way to the client. We know that people are intimidated and confused by the law and the legal system, while missives and title deeds are written in complex legal language, which many people may not readily understand. It is therefore important that solicitors are trained to explain legal terms in easily understandable language to their clients.

The Law Society of Scotland's own research shows that the key factors which influence people's choice of solicitor are a good reputation and personal recommendation by friends or family members.¹¹ It is therefore in the interests of solicitors, as well as their clients, that they provide a good quality professional service that meets the needs of their clients. Moreover, if solicitors provide good quality services to their clients, they are less likely to receive complaints about those services. It is therefore important that throughout the various stages of legal education and training, a strong emphasis is placed on the importance of client care.

⁹ *Home Truths: a report on research into the experiences of recent house buyers in Scotland*; Scottish Consumer Council, 2000; *Report on General Public Opinion Survey*, prepared by System 3; Law Society of Scotland, October 1998; *Client Care: A report of a survey on the client care provided by solicitors in Scotland*; Scottish Consumer Council, 1995

¹⁰ *Home Truths: a report on research into the experiences of recent house buyers in Scotland*; Scottish Consumer Council, 2000: only 50% of buyers said their solicitor gave them advice about the various types of survey available, while more than 4 in 10 said their solicitor had not done so. Only 54% of respondents said their solicitor informed them about restrictions on what they could do with the property, while only 52% of those who had bought a flat said their solicitor explained to them the rights and responsibilities involved. Only 57% of those who had bought flats said their solicitor had explained the arrangements for organising common repairs and maintenance of the block under the title deeds; 39% said s/he had not done so.¹⁰

¹¹ *Report on General Public Opinion Survey*, prepared by System 3; Law Society of Scotland, October 1998