

6<sup>th</sup> February, 2009

MS/RMCL

Ms. Liz Campbell  
Director of Education & Training  
Law Society of Scotland  
LP1 Edinburgh 1

Dear Ms. Campbell,

**The Way Forward**  
**Consultation on Education and Training**

Our Society has been for some time considering a response to the above consultation and, while our consideration is far from complete, I would offer the following initial comments at this stage:-

- 1) The Law Society's previous paper, *Discussing the Detail*, has been adopted as part of the basis of the current paper. However, that previous paper was found to be completely unintelligible to at least most members of the legal profession but, again, hints at a much greater quantity of education and training without any apparent calculation as to how much this may cost or any clarification as to who shall be responsible for that cost.

It may be that it would assist the profession to consider the new proposals if the Law Society were to withdraw the previous paper altogether and put the whole new regime into a single, comprehensible paper for the profession to consider.

- 2) The new regime proposes a departure from the existing tradition of teaching law as a coherent and unified science based upon fundamental principles towards a delivery which addresses a group of isolated problem situations to be resolved. This is based on the stated argument that there is now too much law for students to learn in an under graduate degree. At first sight, however, this may be a major and fundamental fallacy arising from a confusion between legal principle and legal regulation. If these elements have been confused by our academic advisors then this confusion must be resolved before that advice is followed into any new regime.
- 3) The paper proposes a much more extensive programme of education and training than presently exists and implies that this will be paid for at least partly by the Law Society (i.e., the legal profession) and partly by individual law firms (the legal profession again) but there is absolutely no calculation anywhere even of the scale of costs that might be involved and it is difficult to support the paper until more information is available.

- 4) There is an indication that individual firms who wish to take on trainees shall require to go through a process of accreditation and to pay an accreditation fee (£1,500 ?) and it is quite possible that the profile required for successful accreditation, as well as the fee (the level of which for future years cannot be assumed), shall be a significant disincentive for smaller firms taking on trainees. Again, this requires wider deliberation and consideration.
- 5) Part of the case for the new proposals (page 24) is the prospect of the implementation of Alternative Business Structures, post Clementi. However, given that “alternative business structures” appear to have preceded to the demise of the banking industry (as we knew it) and to serious damage throughout the financial services industry, it is perhaps appropriate that the legal profession should examine the relationship between the change of the structure of the financial services industry and the calamitous events which followed those changes, before going down the road of Alternative Business Structures and making changes to the Education and Training regime which assume that the profession shall adopt broadly similar structural changes.
- 6) With regard to PEAT 2, it should be borne in mind that the existing PCC was created in response to criticism of the Diploma and the paper appears to recognise that the PCC, consisting of fifty four hours of structured learning, has failed to answer those criticisms and it is a little bit difficult to see any justification for the supposition that PEAT 2, consisting of sixty hours of structured learning and forty hours of additional study, is likely to fare any better. The paper does not present any arguments as to why PEAT 2 should dispense with any of the criticisms currently levelled against the PCC. Indeed, the paper points out that one of the difficulties of the PCC is the perception in which it is held by trainee solicitors and this appears to be the problem which requires to be addressed, rather than changing the title of the PCC and extending its duration.
- 7) When the Law Society legislated for the PCC, this was done at a time when the costs of the programme were unknown. This was, perhaps, a little insensitive, given that the liability for these costs landed upon the trainees themselves. In the vast majority of cases, however, the trainee firms paid those costs but this was done always as a concession because the trainees themselves were liable for the costs, and in some cases, had to pay those costs. The increased scope of PEAT 2 as compared with the PCC, simply means that this will be a more important issue. The questions arise as to how much the programme will cost and who shall be responsible for those costs and support for the paper may well be in doubt until these matters have been addressed.
- 8) We have had an opportunity to consider the response submitted by Dunfermline Bar Association and I attach a copy of that response and adopt the same as our Society’s response in respect of the CPD aspects of the new paper.

These issues are a matter of ongoing concern to many of our members and I would be obliged if you would let me know whether it is proposed to bring out a further paper, prior to consideration at AGM.

Yours sincerely,

**MICHAEL SHERIDAN**  
*Secretary*

Enc.