

Assessing the “professional” in professional legal education in England and Wales

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In this paper I outline how professional codes of conduct, behaviours and ethical issues are taught and assessed in the post-graduate training of solicitors and barristers in England and Wales. My focus however is on solicitors and I touch on the perceived problems of the current system, and how these areas are being reviewed.

Currently, at undergraduate level in the UK, legal professional conduct and ethics are not compulsory topics, and are only rarely offered as options in a degree programme. It is at the compulsory professional stage of training that they receive more focus.

- **Beginning with solicitors** - As Maria Tighe outlined in her speech, students wishing to become solicitors take the Legal Practice Course (the LPC), where they are introduced to the Solicitors' Code of Conduct and its key provisions. The focus is very much on the rules of the code and particularly issues of client care, conflict of interest and confidentiality.

The current LPC written standards (which I refer to as the Standards) state as an aim of the course that the student should be able to “demonstrate knowledge of and identify the rules of professional conduct and issues of client care in the relationship between solicitor and client”. Students are introduced initially to the Code of Conduct in discrete sessions, but the emphasis in the teaching is on the “pervasive” nature. In other words, professional conduct problems arise in substantive subjects such as Business Law and Litigation. Such issues are not highlighted, but are “hidden” in scenarios, and students are expected recognise and address them.

The **assessment** of professional conduct on the LPC is as follows:

Students are assessed on a competent/non-competent basis, through both a stand-alone examination (40% of the overall mark) and a series of “planted” or “hidden” questions in the compulsory subject assessments (making up the other 60%). Students will be “competent” if they achieve 50% or more in the two assessments.

- **And now briefly on the training of barristers** - Students wishing to qualify as barristers must take the Bar Vocational Course (the BVC). Professional conduct is taught and

assessed in a similar pervasive way on this course as on the LPC. Details are set out in BVC Course Specifications.

These Specifications state, as part of the aims, ethos and principles of the BVC, that students should develop “the skills, knowledge and values to become an effective member of the Bar”; and that the course will “inculcate a professional and ethical approach to practice as a barrister”.

In terms of **assessment** on the BVC, professional ethics and conduct must be assessed again on a competent/non-competent basis as an element “hidden” within four skills assessments. In addition, BVC students must complete an evidence file to include demonstration of fulfilment of the course attendance requirements (the minimum is 90%).

Issues with the current system

I will now turn my attention to training of solicitors and issues with the current system. My concern about this element of training is that, although the overriding aim of the LPC is to prepare the students for practice, as far as professional conduct is concerned, students are in reality merely required to have knowledge of rules of the Code. A consequence of this, and I can speak from experience of teaching on the LPC, is that the learning and assessing of professional conduct under current requirements is very mechanistic – students merely learn the key conduct rules by rote, and how to spot the issues. They do the bare minimum to pass the assessments. This is not necessarily surprising however, as the LPC is a short intense course, with heavy content and a large number of assessments.

Yet it would seem appropriate, in view of the aim of the LPC to prepare them for practice, to raise at the very least students’ awareness of wider issues of professional responsibility, ethical dilemmas or what it means to be a professional in practice, beyond rules of the code, including how they may be expected to behave, to give them a more complete and contextual picture of what to expect in practice.

A reason for believing this stems from research I carried out in 2002 for the UKCLE into whether the LPC adequately prepares students for practice. While the answer overall to that question was “yes”, recurring comments from the law firms I interviewed were that trainees were inadequately prepared for the realities of professional life, and for example that they did not know always how to behave appropriately. The head of recruitment of one firm said “*I strongly do feel this: that law schools can contribute to the attitude that they come into the firm with...it is important if you like to understand what it means to be a solicitor of England and Wales, and somebody who is trusted with that responsibility*”.

Trainees interviewed also recognised that they would have welcomed being made more aware of professional and practice issues while on the LPC.

Further, there is a wealth of literature on teaching legal and professional ethics and professionalism at both undergraduate and vocational level calling for increased provision of these areas of study. A number of recent research projects both in the UK and abroad explore teaching of legal ethics and students' professional attitudes and values. These projects reflect the increase in importance I would suggest that is being placed on the study of professional ethics. An example of such a project is the international survey of legal ethics teaching by Nigel Duncan and Sara Chandler. I give the reference for this at the end.

What do I suggest can be done?

Before suggesting how I think improvements could be made, I will outline first existing efforts to increase student awareness of professional issues, and second, how the Solicitors Regulation Authority review of training may impact on the area.

- **Existing efforts**

LPC providers do encourage students to behave in a professional manner in role play and skills exercises for example, and to think about how they might deal with clients in different situations. The problem is that, because not all these aspects of the learning are "assessable", students rarely take them seriously or engage with them.

However, law firms themselves can have a greater impact on student attitudes where LPC providers for example have arrangements to take the firms' prospective trainees. Such firms give students "pep" talks at the beginning of the course outlining how they expect them to work and behave, emphasising that the LPC is a professional course, preparing them for life in practice and that they are expected to treat it as such.

Further, students who have access to law clinic programmes will encounter real professional issues. While studying for the LPC, such students benefit from dealing under close supervision with real cases, and thus have the opportunity to experience a taste of practice and what that entails. Unfortunately such programmes are available only to a relatively small number of students.

- **What of the SRA review?**

It would certainly seem that the Solicitors Regulation Authority is placing more focus on wider professional issues in the training process than previously. As discussed by Maria Tighe, the SRA has been developing sets of learning outcomes for the different stages of training, as well as a set to encompass the whole process (the Day One Outcomes).

The current draft Day One Outcomes contain a section headed "*Professional values, behaviours, attitudes and ethics*" that states that the newly qualified solicitor will have, for example, "*Knowledge of the values and principles upon which the rules of professional*

conduct have been developed” and “The ability to behave professionally and with integrity;... and respond appropriately and effectively ... in dealings with clients, colleagues and others....”

These are to be welcomed, but as the Day One Outcomes cover the whole training process, it is unclear if these particular outcomes apply to specific stages of the training process. A separate set of outcomes has been drafted for the LPC, which state in relation to professional conduct and regulation that *“students should be able to identify and act in accordance with the core duties of professional conduct and professional ethics which are relevant to the course”*.

These draft LPC outcomes then give further detail of what will be expected, but still tend to focus on the rules of the code of conduct. There is nothing that apparently addresses professional ethics or behaviours as alluded to in the Day One Outcomes. There are however indications in other parts of the new LPC outcomes that something more than mere knowledge of the code is to be required. In the preamble to the core practice areas, the outcomes speak of students progressing transactions in a manner that uses *“...behaviours appropriate to each client”*, as well as being able to *“recognise and act within the rules of professional conduct”*. In Interviewing and Advising for example, students should be able to establish a professional relationship, while being sensitive to issues of *“culture, diversity and disability”*.

In addition, the SRA guidance on class contact time stresses that the requirement for this *“reflects the need for students to interact so that they can develop communication and teamwork skills, the ability to relate to other professionals and the behavioural attributes arising from professional conduct and ethics.”*

What do I suggest? Although I acknowledge that the best setting in which trainees will learn about practice, professional behaviour and face ethical dilemmas is in practice itself, more connections could be made within the LPC between the conduct rules, the wider aspects of being a professional and elements of skills training.

In fact, certain aspects of *“professional life”* are already addressed in the current Standards for skills elements of the LPC, and have been built on in the new LPC outcomes as mentioned before. I would suggest that consideration of these aspects, as well as the guidance on class contact, should be made more explicit in classes, together with more reference to the behaviour and integrity expected of a solicitor. This latter quality is expressed in the latest version (July 2007) of the Code of Conduct for Solicitors as underpinning their conduct. The Code emphasises at the outset more explicitly and concisely than before the core duties underpinning the role of a solicitor, including justice, integrity, independence, the best interests of clients, standard of service and public confidence. These (and I quote)

“define the values which should shape ... professional character and be displayed in ... professional behaviour”. Personal integrity for example “is central to [the] role as the client’s trusted advisor and must characterise all ... professional dealings...” .

It is to be hoped that the combination of the overall Day One Outcomes and the new LPC standards will result in better development of broad professional issues. Added to this is the new Code giving the underpinning principles mentioned above greater prominence. At present the new LPC outcomes on professional conduct do not appear to address the change in focus of the new code. I trust that those developing both the day one and LPC outcomes will take account of these changes, and make them a more integral part of the education and training process.

Finally, what is not clear yet from the SRA review is how these elements will be assessed. I would suggest encouraging a greater reflective element in assessment which would allow students to develop and value more the professional and ethical elements of their learning.

Conclusion

Such is the current position on teaching and assessing professional ethics and conduct in England and Wales. I would mention that the Bar is embarking on a training review, which we await with interest.

I am very interested to know what the position is in other European jurisdictions. What level of emphasis is placed in the training process on these issues? Do please let me know. For example, new lawyers in France take the *serment* which emphasises *les valeurs fondamentales* underpinning the profession? But are they taught as *fondamentales*? What part do they play in the education and training process?

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Some useful links and resources

SRA website - <http://www.sra.org.uk/home.page>

SRA training review pages - <http://www.sra.org.uk/consultations.page>

BSB website - <http://www.barstandardsboard.org.uk>

"Hitting the Ground Running? Does the Legal Practice Course prepare students adequately for practice?" Research report - <http://www.ukcle.ac.uk/research/ukcle/fancourt.html>

UKCLE website – www.ukcle.ac.uk

A report on Sara and Nigel's work can be found in (2006) 9 *Legal Ethics* p. 160