

**STANDING COMMITTEE ON
LEGAL EDUCATION AND
TRAINING**

**COMPREHENSIVE REVIEW
OF LEGAL EDUCATION AND
TRAINING IN HONG KONG
Draft Report of the
Consultants**

October 2017

Foreword [not included in draft]

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I. INTRODUCTION

This is the interim version of the Consultants' Report on the Standing Committee on Legal Education and Training's (SCLET) Comprehensive Review of Legal Education and Training in Hong Kong. The conclusions and recommendations of this draft are **provisional**, and subject to further consideration and possibly revision. A final version of this report will be submitted to SCLET following further consultation and published in April 2018. Stakeholder responses to this draft are welcomed and encouraged.

The purpose of this introduction is to explain the background to the Review; to state the Terms of Reference for the Review and our interpretation of them; to provide an overview of the process and timetable of the Review, and briefly to summarize the organisation and argument of the sections that follow.

1.1 Background to the Review

This is the first substantial review of legal education and training in Hong Kong since the Redmond-Roper Report was published in 2001.¹ In 2013, SCLET resolved that it was time to undertake a further review in the context, chiefly, of

- Continuing expansion of legal education and training in Hong Kong, including the recognition of a third law school and the provision of graduate (JD) law degrees,
- Perceived concerns over access to the profession, and consistency in standards of education and training,
- Changes to the delivery of legal services and new demands on the profession, including the impacts of technology, globalization, and increasing integration of Hong Kong and Mainland legal markets

Funding for the Comprehensive Review was agreed with the Department of Justice, and all consultants were appointed by July 2015. The consultants initially appointed were:

- Mr Woo Kwok-Hing GBS, QC, (Chair) formerly Vice-President of the Court of Appeal of the High Court and a former chairman of the Electoral Affairs Commission;
- Professor Tony Smith, Professor of Law at the Victoria University of Wellington, New Zealand, and Honorary Bencher of the Middle Temple; a former Chairman of the Faculty of Law at the University of Cambridge, and a former Chair of the Committee of Heads of University of Law Schools (UK).
- Professor Julian Webb, Professor of Law and Director of the Legal Professions Research Network at the University of Melbourne, Australia, and Academic Bencher of the Inner Temple; formerly Professor and Director of the UK Centre for Legal Education at the University of Warwick.

¹ P. Redmond and C. Roper, *Legal Education and Training in Hong Kong: Preliminary Review. Report of the Consultants*. (Steering Committee on the Review of Legal Education and Training, August 2001). The history of Hong Kong legal education and the background to the Redmond-Roper Review is discussed more fully in section 2, following.

Following Mr Woo's resignation from the Review in October 2016, chairmanship of the group was taken over by Mr Anthony Rogers GBS, QC, Chairman of the Clearing and Settlement Systems Appeals Tribunal, Hong Kong, and former Vice-President of the Court of Appeal.

1.2 Terms of Reference

The terms of reference (TORs) established for the Review by SCLET are as follows:

- (1) To review critically the present system of legal education and training in Hong Kong including its strengths and weaknesses;
- (2) To advise on the requirements of a legal education and training system which is best capable of meeting the challenges of legal practice and the needs of Hong Kong society;
- (3) In the light of the findings in (1) and (2) above, to make recommendations, including making proposals to improve the existing system or introducing an alternative model of legal education and training system, to ensure that such improved or alternative system is best capable of meeting those challenges and needs;
- (4) To examine the present curricula of the various law programmes offered by the three universities and to make recommendations on such curricula to ensure that those entering the legal profession are best capable of meeting those challenges and needs;
- (5) To advise on the feasibility of setting up a mechanism for measuring the quality and standard of legal education and training in Hong Kong so as to ensure that those entering the legal profession receive the best legal training for the maintenance or improvement of professional standards;
- (6) To consider the current arrangements for the pre-qualification vocational training of trainee solicitors and pupils and to advise on the need (if any) and the ways to improve such vocational training.

Given the broad basis of the TORs, we make the following observations and clarifications regarding the scope of the Review undertaken:

- The reference to a 'legal education and training system' (TOR 2) has been construed narrowly in the light of the later TORs to refer to training for the profession of solicitor or barrister. Other forms of professional or paraprofessional legal education, and the subject of public legal education, though important in their own right, are deemed to fall outside the remit of this Review.
- The focus on 'pre-qualification' (TOR 6) education and training is taken to include workplace learning undertaken as part of the formal training contract or pupillage stages. Arrangements for continuing legal education/continuing professional development are thus outside the scope of the Review. We return to this point in the concluding section of the Report, and in our recommendations.

We have organised the substantive review and recommendations in this Report to align with the existing academic, vocational, and workplace training phases of the current system. Consequently, the

TORs are addressed in an integrated fashion throughout this Report, rather than sequentially, as most of them apply to more than one of the existing stages.

1.3 The Review Process

This Review has been conducted on the basis of a combination of extensive desk research and focused stakeholder consultation and interviews. Substantive work by the Consultants commenced in late August 2015, leading to the issue of a short consultation paper to stakeholders selected by SCLET, in October 2015.² Responses to the initial consultation paper were received between mid-November and the final deadline of 20th January 2016, though some extensions to that deadline were agreed.

All stakeholders were invited to attend a follow-up interview and discussion with the Consultants, if the stakeholders so wished. Interviews were conducted in Hong Kong during the week beginning 14th December 2015.³ The interviews were recorded with the consent of participants, and verbatim written transcripts produced. These transcripts were then reviewed by the Consultants and have been used in the process of preparing this Report. A summary of draft recommendations was submitted to SCLET in October 2017, shortly before completion of this interim report.

It should be noted that the raw number of responses was quite low: 19 initial responses out of a total of === stakeholders contacted. In accounting for the response rate, some respondents, either in writing or in interviews, have observed that the present Review had followed-on quite close behind the Hong Kong Law Society's own consultation on its proposals for a new entry examination. While the remit of the SCLET Review is wider, there was obvious overlap. It may be, therefore, that the low response rate reflected a degree of 'consultation fatigue', or an expectation that views already expressed to the Law Society consultation would either be reflected in a published report from the Society, or otherwise shared with the SCLET Consultants.

The Hong Kong Law Society's decision to progress with some form of common assessment has brought an added degree of complexity and uncertainty to this review process. Following the Society's announcement, on 6th January 2016, of its intention to proceed with planning for a 'Common Entrance Examination' (CEE) to the solicitors' profession, we wrote to all stakeholders offering them an opportunity to make further submissions specifically on the CEE. A further eight submissions were received. These were taken into consideration by the Consultants together with all relevant responses to the October Consultation Paper. Both sets of responses are reflected in section 6 of this Report.

In the wake of the January 2016 announcement, we invited the Law Society to share with us the outcomes of its 2013 CEE Consultation,⁴ however it declined to do so. Consequently, in May 2016, in an attempt to maintain transparency, and maximise the information before this review, we wrote again to all stakeholders. We advised them of the Society's decision, and invited them to submit copies to us of any responses they made to the Society's CEE consultation. However, only five stakeholders did so, and the request generated relatively little additional information.

² See Annexures 1 and 2 to the (final) report. Annex 1 contains a complete list of invited stakeholders. Annex 2 contains a list of responses actually received. The consultation paper was also posted publicly on the website of the Standing Committee on Legal Education and Training.

³ A full list of interview participants is also included in Annex 2 to the final report.

⁴ Discussed in section 6.2.2, following.

While the quantity of responses obtained is therefore relatively low, this does not make that data irrelevant. We acknowledge that all sides of the debates examined in this Report draw on the often substantial, and thoughtful experience of the participants involved, and we have sought to give the range of views expressed our fullest consideration.

At the same time, the relative lack of local data has obliged us to turn more substantially to desk research. A survey of books and journals was undertaken to review the literature on legal education and training in Hong Kong, and comparative research was conducted on other jurisdictions, and on relevant literature on best practices in higher education more generally.⁵ Comparative research was specifically undertaken on developments in the US, UK, Australian, New Zealand and Singaporean legal education and training systems. This information was initially written-up into a more extensive version of the current section 3, which served as a comparative working paper and guide for the consultants.

Finally, two specific concerns should be noted here. First, despite efforts to engage with both individual law firms and student associations, few responses have been obtained from either of those important stakeholder groups. We hope that this gap can still be addressed in the opportunity to respond to this draft Report.

Secondly, it must also be acknowledged that the CEE proposal has been controversial, and has, therefore, tended to dominate much of the discussion. Consequently there is a risk (of which we have been aware and against which we have sought to guard), that the CEE 'issue' has skewed responses and distracted attention from other matters of importance. Again, we anticipate that the occasion to comment on this draft will provide an opportunity to redress any imbalance that may be found.

1.4 Structure of the Report

The substantive report is divided into a further seven sections. Sections two and three primarily provide a context and foundation for the substantive discussions that are contained in sections four to seven. We recognise that different parts of our audience will have their own focus, and primary interests; rather than organise this report more thematically, we have therefore opted, so far as possible, to structure the substantive sections around each of the key stages of education and training. Given the overall length of the report, we hope this has the merit of aiding readability and keeping each section relatively self-contained.

Section two places the current legal education and training system and its regulatory framework within their historical and policy context. It traces the system's development from its colonial roots to its current emanation as a mature and independent system which occupies an important location in the global market for legal services. It emphasises two important facets of the system, for the purposes of this report. Firstly, it notes the development since the 2001 Redmond-Roper Report of an element of competition between the Law Schools that was not present when the decision to entrust the vocational stage to HKU was first made. It argues that, whilst in principle, competition between the three schools ought to be a force for good, in practice, it has also left room for misunderstandings and suspicions of the kind that are currently circulating in Hong Kong and which appear to be an animating force in the current CEE debate. It proposes the establishment of a single School or Institute of Professional Legal Studies to address the problems, if these coordination problems cannot be resolved

⁵ Completed referencing and a full bibliography will be submitted in the final Report

by other means. Secondly, the section also discusses the existing arrangements for oversight of the system, including the rationale for and powers of the Standing Committee on Legal Education and Training (SCLET), and highlights several weaknesses in these arrangements that are picked up again later in the report.

Section 3 turns attention away from Hong Kong, to examine educational developments in a range of comparator (common law) jurisdictions, namely: Australia, England and Wales, New Zealand, Singapore, Scotland, and the USA. It seeks to explore the ways in which systems have responded to increased complexity in both the education and training and practice environments, and highlights the growing sophistication of models of professional competence. By reviewing recent (post-1992) education and training review processes in these jurisdictions, it highlights four key themes: the increasing emphasis internationally on outcomes and competency standards as a basis for assuring quality and consistency of learning; a corresponding move away from a narrow focus on content regulation, whilst highlighting the need for systems to adapt to changing needs in professional knowledge, skills and attributes; the expansion and greater variation of learning, teaching and assessment approaches (which also have consequences for standardisation of courses), and growing concerns over access to the profession in the context of increased graduate numbers. It also notes the extent to which past reviews have often struggled with some of the larger questions of legal education and training system design: the problem of defining legal competence itself; how best to build a continuum of learning from the initial stage to the final (vocational) stage of training; the extent to which the law degree prepares the substantial number of students who do not enter the legal profession for *their* future careers; the need for regulation and standardisation of workplace learning, and the importance of regulating and quality assuring the (educationally) neglected subject of continuing professional development.

Section four focusses on the academic stage of legal education. It begins by examining the developments that have occurred since Redmond Roper, including, in particular, the offering of the Juris Doctor (JD) degree, and the change from a three year to a four year LLB degree from the 2004-5 academic year. It notes that the admission requirements at all three universities are high by comparison with the other university subjects offered, suggesting that those selected are of a high academic calibre. The numbers of applications for the LLB tend to be relatively small by international standards, but these are now augmented by entrants with non-Law degrees through the JD route. The quality of academic legal education is high, and the Annual Reports received by SCLET present a picture of a system whose participants are acutely conscious of their role in meeting “challenges of legal practice and the needs of Hong Kong society” and responsive to those changing needs. We see no strong case for increasing the relatively light touch approach to regulation that is currently adopted, and question whether there might be some scope for adjustment in subject coverage. In this context we note that one area considered by Redmond Roper concerns the inculcation of ethical values in legal education. It is noted also that an international trend in this area is the development of undergraduate courses in Legal Ethics and we consider whether there is room in the undergraduate syllabus to develop an appreciation of ethical principles and values. We report concerns regarding overlap of substantive legal knowledge requirements across the academic and PCLL stages. It is suggested that this borderline should be kept under constant review by the universities, so that unnecessary duplication is avoided. Finally, there is some debate (but limited evidence) regarding potential structural disadvantage facing JD students in the recruitment process, on the basis that they have less study of law than their undergraduate counterparts at the time internship decisions are

made. We invite the law schools and the profession to explore the scope and impact of this problem (to see if it is significant) and to investigate measures, if any, to ameliorate it.

Section five addresses the development of the PCLL since the Redmond-Roper Report. In the first part of this section, we establish the framework for the discussion, by exploring the regulatory structure governing the PCLL, noting the extent to which the regulatory arrangements create a relatively decentralised and 'light touch' system of regulation. We then look critically at the existing course design, its operation and its various components, focussing primarily on the three main topics of concern that have been raised in consultation: number control and access to the profession; admission policies and systems, and standards and quality assurance. We conclude that a range of steps should be taken to increase access to the PCLL, and enhance the transparency of the admission process. The report then focusses on a range of issues that reflect on the adequacy of standards and quality assurance processes on the PCLL. Overall, the report accepts that the PCLL is fundamentally robust in its design, well-taught, and mostly respected and supported by teachers and practitioners. However, it identifies some matters of concern, notably: that the course benchmarks are somewhat outdated and, in the case of the Law Society benchmark, under-specified; that there is some marked variation in contact hours and the extent of small group teaching; that there is a case for improved external monitoring, and some scope to review and update the range of professional skills and attributes developed by the PCLL. These conclusions are reflected in the recommendations made.

If the recommendation for a separate School of Professional Legal Studies is acted upon, this will resolve many of the issues that have animated the 'Common Entrance Examination' (CEE) debate. If it is not, then these matters fall to be resolved by other means. These means are discussed in section six. The section examines the Law Society's rationale for introducing the CEE, and notes the difficulty stakeholders are encountering in engaging with the Law Society in the current process. It explores, comparatively, the benefits and risks of centralised and distributed assessment regimes, drawing significantly on recent UK developments, and discusses the regulatory grounds that the Hong Kong Law Society has for intervention. We conclude that an adequate case has not been publicly made out for a CEE. While there may be some basis to the quality enhancement justification for a CEE, the Society's arguments in respect of access to the profession seem weak, and do not properly account for risks of supply control and potential conflicts of interest. We also take the view that there have been several important (albeit limited) deficiencies in the process of implementation so far. The section identifies a number of design issues that need to be addressed if a limited form of centralised assessment were to be introduced, and concludes by making a range of process recommendations that should be adopted if such an assessment regime is to satisfy norms of effective educational design.

In section seven we turn our attention to training requirements for those undertaking periods of supervised practice (under a training contract or pupillage) and for those overseas lawyers seeking admission in Hong Kong. The section explores the case for retention (or otherwise) of the existing periods of training; it considers whether the level of regulatory prescription and oversight in place is appropriate to this stage of training, and whether there should be any final assessment of competence before formal admission to the profession, and the forms it might take. The section concludes that there is no strong case for significantly adjusting the periods of training under a training contract or pupillage. Nor does it find a sufficiently unproblematic assessment mechanism for a final assessment of competence as such. It nonetheless highlights concerns with quality assurance and consistency at

this final stage of training. Consequently, it focusses its recommendations on prescribing a set of relatively narrow, generic, competencies which can provide a framework for in-house evaluation during the period of supervised practice, and on enhancing supervision and monitoring arrangements. The section then looks separately at the examination requirements for overseas lawyers seeking admission to practice in Hong Kong. It concludes that neither the Law Society (OLQE) nor Bar (BQE) assessment processes offer an assessment of professional competence that is comparable to that required of domestically-trained lawyers seeking admission, and accordingly makes recommendations for their redesign.

We conclude in section eight by returning to the terms of reference for this review, and making some further recommendations in respect of regulatory structures and future steps, including enhancing SCLET's contribution to quality assurance, and outlining a case for further review work to briefly address two matters outside of our remit, namely, whether some investigation should be made of the case for limited licensing of paralegal services, and some regulatory redesign of the continuing professional development framework. The section concludes by summarising the full set of recommendations made in this report.

1.5 Acknowledgments

We express our considerable thanks to everyone who has contributed to this report, and particularly those members of the university law schools and the legal profession who took the time to respond so thoughtfully to our consultation paper and subsequent enquiries. We also acknowledge the assistance of Ms Vivien Lee, in her capacity as Secretary to SCLET and Ms Lillian Tsui who undertook the considerable burden of recording and transcribing the interviews conducted in Hong Kong in December 2015.

1.6 Conflicts of interest

The Consultants declare that they are aware of no personal or professional conflicts arising out of the conduct of this Review. For the avoidance of doubt, it is reported here that some administrative and secretarial support for the Review has been provided by the Hong Kong Law Society (which also provides the SCLET secretariat), primarily in terms of organizing and supporting the study visit by the Consultants, and arranging and accommodating the interviews that took place in December 2015. No members of the Law Society, its staff, or members or staff of any other stakeholder body have been party to the Consultants' deliberations, or had advanced notice of the contents of this Report.

2. THE EXISTING STRUCTURE OF LEGAL EDUCATION AND TRAINING AND THE REGULATORY FRAMEWORK IN HONG KONG: INCLUDING A REVIEW OF THE HISTORICAL DEVELOPMENT OF UNIVERSITY AND PROFESSIONAL LEGAL EDUCATION IN HONG KONG¹

Introduction

A review of the history of legal education in Hong Kong helps to demonstrate that, from a somewhat belated start, there has been development at a rapid rate, and especially in the years since the last Comprehensive Review, the Redmond Roper Report, which was undertaken sixteen years ago. Many of the changes that have occurred were effected in response to that Report. More significantly, an element of competition between the provider institutions has developed since that Report. The consultants are disposed to think that this is not in itself at all a bad thing. It is certainly arguable that the quality of the legal education on offer is higher as a result. But it is arguable that the existing regulatory structure is not adequate to deal with some of the conflicts that have arisen within the Hong Kong system

2.1. Expansion of legal education provision in Hong Kong since the Redmond Roper Report²

New elements have been progressively introduced into the educational picture, including the fact that the length of the LL.B. degree was extended from three years to four, which began in the 2004/2005 academic year. Another striking example of change was the decision by the City University to offer the Juris Doctor (JD) degree in 2004. The purpose of that initiative was to enable those with non-law university degrees to proceed to a qualification in law more rapidly than would be the case with those who study Law as an undergraduate degree. The other Universities followed suit not long afterwards.³ Reforms to the Postgraduate Certificate of Laws (PCLL) programme were introduced, with an enhanced concentration on the development of skills.

¹ This section of the Report is indebted to an introduction by Professor D.M. Emrys Evans to the book, R. Wacks (ed), *The Future of Legal Education and the Legal Profession in Hong Kong: Papers Presented at a Conference Held by the Faculty of Law, University of Hong Kong to Commemorate Twenty Years of Law Teaching* (1989). See also the same author's introduction to *Legal Education in Hong Kong: Reports of the 1966 and 1969 Working Parties on Legal Education*, published by the HKUP (1974). The remainder of that important volume consists of the Reports of the two 1960's Working Parties, the significance of which is discussed in the text below at 2.5.3. A long Appendix D, "Memorandum on the Creation of a Statutory Board", led to the creation of the Advisory Committee on Legal Education. See further below at 2.13. Professor Evans was the first Head of the Hong Kong University Law Department and the first Dean, when the Faculty was established in 1984.

² Commissioned in 1999, *Legal Education and Training in Hong Kong: Preliminary Review*, August 2001 (referred to hereinafter as Redmond Roper). Its authors were Professor Paul Redmond, Dean of the Faculty of Law at the University of New South Wales, and Christopher Roper, Director of the College of Law Alliance, England and Wales and Australia. The word "Preliminary" was included in the title because it was initially envisaged that there was to be a second stage, although this was subsequently cancelled. Several of those who provided responses to the Questionnaire circulated as part of the current inquiry made the point that many of the insights contained in the Redmond Roper Report remain valid to the current situation.

³ At the CUHK from the date of its establishment in 2006. The JD degree is stated in the SCLET *Annual Report 2006-7* at p. 76 to have been "created as a direct response to the recommendation of the Redmond-Roper Report, 16.4 at p. 271". The HKU accepted its first students on a JD programme in September 2009.

Since the Redmond Roper Inquiry reported, a third university provider, the Chinese University of Hong Kong, has been brought in to the mix,⁴ and many of the changes suggested in the Redmond Roper Report were subsequently implemented,⁵ considerably altering the legal education and training landscape.

2.1.1 The development of market competition for legal education in Hong Kong

It should perhaps be acknowledged that one of the (probably unintended) consequences of these developments has been, in effect, the creation of a highly competitive market in legal education. There is inevitably, as a result, a degree of business competition amongst the universities. Those three institutions now compete: for the best staff and students, for example, in such areas as the extent to which they can offer exciting student experiences through a wide range of degrees in addition to the LL.B., LL.M., J.D. and PCLL.⁶ In addition to offering excellent facilities locally, all three universities have established collaborative arrangements with international universities⁷ with a view to broadening and enhancing the student experience.

2.1.2 Quality assurance mechanisms

The terms of reference require the consultants “to advise on the feasibility of setting up a mechanism for measuring the quality and standard of legal education and training in Hong Kong so as to ensure that those entering the legal profession receive the best legal training for the maintenance or improvement of legal standards”. The developments identified in the preceding paragraph make it more difficult to devise such a mechanism. It is in any event open to question whether a single “mechanism” could be devised to measure the quality and standard of any potentially diverse system of legal education. Rather, it is likely that checks are made at the various stages of the education process, including: the selection of the students for entrance in to the system, whether at undergraduate stage, or at the Juris Doctor stage, or for those who qualify through the overseas examination system. It is particularly important that those who are chosen to undertake the PCLL should be properly equipped academically and motivated professionally to undertake the further training that is required.

Some concern was expressed to us that there was some disparity and inequality of treatment as between the three providers at this stage.⁸ One check that is in place is to be found in the Annual Reports to SCLET prepared by the individual universities. These provide figures as to the numbers of entrants, their progression rates and the numbers of government funded places that are available in

⁴ The possibility of there being a new Law Faculty at the Chinese University of Hong Kong was on the horizon when Redmond Roper was deliberating. See the first *Annual Report* of SCLET, Annexure A, para 5(d), p. 4.

⁵ The Report included a recommendation that a supervisory body should be established, and the Standing Committee on Legal Education and Training, a Committee of the Legislative Council was instituted as a result. The Report had suggested that a Law Qualifying Council, modelled upon a number of Australasian jurisdictions should be established, but that proposal was not adopted. See further Section 8 of this report.

⁶ HKU, for example, offers, at undergraduate level, four double degrees in conjunction with other Faculties: a Bachelor of Business Administration (Law), a Bachelor of Social Sciences in Government and Laws, a Bachelor of Engineering in Civil Engineering (Law) and a Bachelor of Arts (Literary Studies) and Bachelor of Laws (B.A. and LL.B.).

⁷ HKU offers joint programmes with University College London, and King’s College, London; CUHK accounts as part of its exchange programmes for undergraduate students the universities of Sheffield (UK), Peking, Tsinghua, East China University of Political Science and Law and the College of Law at the National Taiwan University. The City University identifies no fewer than 37 Institutions and Organisations with which the School of law has collaborative arrangements, in North America, Europe, Asia and Australia.

⁸ See the discussion at sections 5.1 and 5.4 of this Report.

each year. The Annual Reports regularly demonstrate that the numbers of applicants for places on the PCLL far outweigh the numbers of candidates admitted, and that must afford some degree of quality control. It is, at the moment, not entirely easy to see that this operates as a mechanism of the kind demanded. Members of the practising professions are involved to varying degrees at each of the universities in both the teaching and the examining processes, but there does not appear to be a systematised use that would enable accurate comparisons to be made between the three providers.⁹

2.1.3 University “rankings”

An addition to the element of local competition that performs some evaluative function is to be found in the relatively recently developed phenomenon of university and faculty “rankings”, which purport to measure institutions against one another, both internationally, and in regional and subject sectors.¹⁰ Insofar as those who commissioned the present report are seeking reassurance that Hong Kong is continuing to offer a legal education of the highest possible quality,¹¹ the consultants take the view that, the quality of legal education offered in Hong Kong is very high, and the available figures strongly support that conclusion.¹²

2.1.4 The impact of research assessment exercises

A rather different comparative measure arises from the adoption by the Hong Kong government of the international practice of assessing universities and Faculties in terms of their research output¹³ as a measure of their quality, a practice which has spread world-wide.¹⁴ An exercise of this kind was conducted in Hong Kong in 2014, the results of which are to be found in the following table:

Table 2.1 Research rankings of Hong Kong law schools

Institution	No eligible staff	4 star	3 star	2 Star	1 star	unclassified
City U	22	7%	27%	31%	20%	15%
CUHK	26	15%	49%	26%	10%	0%
HKU	56	9%	37%	34%	17%	3%

⁹ See further discussion in Section 5, following.

¹⁰ One such survey is conducted by Quacquarelli Symonds Ltd (QS). Although this is a commercial venture originally founded by students in 1988, and which began its world university rankings in 2004, it has become highly influential in matters such as student recruitment. The *Times Higher Education Supplement Survey* was also founded in 2004.

¹¹ See our terms of reference, set out in Section 1 above.

¹² The QS scores in 2016 were HKU 18th, CUHK 50th and City 51-100 (in the world). The only change in 2017 was that the CUHK went to 51-100. This is a remarkable achievement given that two of the Law Schools are only relatively recently established.

¹³ The link is made explicit in Section 162(4) of the New Zealand Education Act 1989, which provides, inter alia, that “universities have all the following characteristics..... their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge”.

¹⁴ Research Assessment Exercise (RAE) and Research Evaluation Framework (REF) in the United Kingdom, Performance Based Research Funding (PBRF) in New Zealand, and the equivalent Australian exercises. They are intended to ensure that the research element of university funding is spent efficiently and effectively, but their results are apt to be interpreted and used for rather different comparative purposes.

These tables should be interpreted with a certain amount of caution, but on the face of it, the Chinese University of HK performs best in the particular exercise.¹⁵

2.1.5 The implications for Hong Kong universities

It should perhaps be pointed out that the emphasis on research and the values underlying the development of the research assessment exercises can be somewhat at odds with the teaching and inculcation of practical professional skills. In acknowledging this tension, we intend neither to diminish the value of good vocational training, which should increasingly now be broadly understood to go beyond the inculcation of “skills” to include development of applied transactional knowledge, and understanding of the relational aspects of legal work, nor to suggest that vocational law teachers cannot also be researchers. Indeed, there is a continuum of research being undertaken, with some first-rate scholarship being conducted in the Hong Kong universities in the vocational area. But it may be said that some vocational stage teachers are not active in legal research. Depending upon how the national research assessment exercises are structured, this *may* have an adverse impact upon the employing institutions.

University based “research” for these purposes tends to be academically oriented, and the outcomes of such endeavours are defined or described in terms such as being “original, independent investigation undertaken to contribute to knowledge and understanding ...”, and “typically involves inquiry of an experimental or critical nature driven by hypotheses or intellectual positions, capable of rigorous assessment by experts in a given discipline.” This is not usually the aim of those whose primary task is to inculcate professional understanding, and this (in conjunction with other factors raised in this report) raises the question whether the suggestion of Redmond Roper that the vocational stage of legal training might be better situated in a free-standing educational institution should be revisited.¹⁶

2.1.6 Some structural difficulties within the existing system

It can be observed that, perhaps not surprisingly, the institutional changes and the general expansion of legal education provision has given rise to some tensions in the system. It is not clear that the present structure for its administration and regulation in Hong Kong is particularly well-suited to the very difficult tasks of proper stakeholder representation and change-management that resolving the resulting issues requires.¹⁷

A number of institutions and organisations clearly have a legitimate interest in the way in which legal education is conducted in Hong Kong. These include the legal profession, as represented by the judiciary, the Law Society and the Bar Association, the government, including the Chief Executive, and in particular through the Secretaries for Justice and Education, the universities, their staff, alumni, current and future students and the general Hong Kong public. Many of these are in fact represented on the Standing Committee on Legal Education and Training, although that is not a body on which the

¹⁵ This might be contrasted with the results of the QS surveys, which are described above, n.11.

¹⁶ This possibility, and alternative related suggestions are considered at greater length in section 5.2 of this Report.

¹⁷ The relevant Trainee Solicitor Rules, which are promulgated by the Law Society with the consent of the Chief Justice, allow the Law Society to impose the conditions upon which admission to practise as a solicitor in Hong Kong is permitted.

students have a voice.¹⁸ It will be apparent that these represent a wide range of viewpoints and interests, and it is acknowledged that the accommodation of the interests they represent is perhaps especially difficult if an agreed and satisfactory supervisory framework is not in place, and it is not clear that there is such an arrangement currently in place in Hong Kong.¹⁹

The Law Society's decision to exercise its powers and impose a Common Entrance Examination on all aspirants to practise as Solicitors in Hong Kong also highlights problems of regulation and effective stakeholder participation. This decision has considerable implications for the wider profession, for students, and for the current providers of legal education: the Universities, their Deans and senior management. It has had a significant impact upon the conduct of the present enquiry. Details of the proposals have been sketchy to the point of exiguousness, a feature of the process that has been criticised by multiple respondents to this review.²⁰ In the absence of any insight into the detail of what was being proposed by the Law Society, the abilities of the consultants to make recommendations have been significantly circumscribed.²¹

Several of the problems with the structure that were apparent at the time of the last review, and which were extensively discussed in section 16 of the Redmond Roper Report, are still in evidence. In particular, the consultants then referred to the fact that:

“... the Law Society and the Bar have certain powers which they have not exercised. They have power to pass regulations to require certain areas of knowledge or forms of training prior to admission subject, however, to the approval of the Chief Justice. It has been suggested to the consultants that intra and inter institutional discussion about a particular issue or possible reform takes place in a context where it is known that these bodies could exercise that power. They are potentially able to achieve certain ends by the subtle indication that they might use that power”.²²

Plainly, this imbalance has not been addressed by the limited authority granted to SCLET. We therefore return to this matter in Section 8 of our report.

2.2 The early history of legal education in Hong Kong

Developments in the universities were from the outset both supported and monitored by numerous public bodies and agencies. Successive governments had a clear interest in seeing that the colony and its burgeoning economy were supported by a legal profession of international standing and calibre. The University Grants Committee vetted and approved proposals, first to the introduction of legal education at Hong Kong University, and then to extend it, from 1998 at what is now the City University of Hong Kong, and most recently, from 2006, at the Chinese University of Hong Kong. The two branches of the practising profession were obviously major stakeholders, as were members of the judiciary.

¹⁸ The consultants would not wish to make any recommendations in this area, but would point to the experience of at least one jurisdiction, New Zealand, where members of New Zealand Law Students Association participate as of right in the deliberations of the Council of Legal Education.

¹⁹ See the discussion of the Standing Committee below at 2.14

²⁰ This is discussed in Section 6 of the Report.

²¹ Further, the present consultants were not at any stage, officially or unofficially, notified of the progress being made towards the implementation of that proposal, although they have been informed that it was not until 27 June 2017 that the Law Society brought to a meeting of the Standing Committee on Legal Education and Training and tabled an intended timetable.

²² At p.334.

A brief survey of the early history of legal education in Hong Kong reveals that some of the decisions taken early in the development of the legal education programme in Hong Kong continue to leave their mark on current practice. For example, the decision that the university²³ should be responsible for vocational training in addition to what is commonly referred to as the first or “academic stage”²⁴ of legal education created a template that has been repeated as further institutions have been added to meet Hong Kong’s inexorably increasing demand for legal services, and the lawyers to supply them. In the words of the Redmond-Roper Report, “the requirements of the PCLL, having once been set at the time of the HKU PCLL, are not specified in any rule made by any particular body”.²⁵ That has been rectified to some extent now that the professional bodies have prescribed a “course benchmark”, but the more detailed course prescriptions are still set out by the providers themselves.²⁶

2.3 The involvement of local universities in Hong Kong legal education

2.3.1 Early stirrings

The development of a home-grown system of legal education for Hong Kong has been - at first sight somewhat surprisingly²⁷ - a relatively recent phenomenon, beginning in earnest when the University of Hong Kong began to offer a LL.B. degree in 1964. The University of Hong Kong had dipped its toes in the water as early as 1924, when G.W. Keeton was appointed to a Readership in Law and Politics. In that capacity, he taught Jurisprudence and Political Science in the Faculty of Arts. Although he was keen to extend his sphere of influence more widely, the initiative did not develop as he had hoped, and it seems to have foundered when Professor Keeton returned to the UK in 1937.²⁸

2.3.2 Qualification overseas

In the years that followed, by far the majority of those engaged in legal practice in Hong Kong had qualified as Solicitors or Barristers in the United Kingdom and other commonwealth countries, in particular Australia, New Zealand and South Africa. So far as solicitors were concerned, the education could be undertaken from Hong Kong, since the Law Society of England and Wales allowed its examinations to be taken in Hong Kong.²⁹ For aspirant members of the Bar, however, would-be practitioners were required to be called to the Bar in England, after keeping dining terms at one of the Inns of Court, passing the Bar exams and undergoing a period of Pupillage. In practice this meant that they had to go to the expense of a trip to England, a path that was manifestly suited mainly to the wealthy, or to those who had managed to secure support through scholarships.

2.4 The development of a Hong Kong based legal education

²³ HKU, although the Chinese University of Hong Kong was represented at some of the earliest discussion of this matter.

²⁴ A classification devised to describe the discrete steps through legal education by the Ormrod Committee on Legal Education (1971) Cmnd 4595 - the two other categories were “professional” (which contemplated preparation for entering legal practice, whether as a solicitor or a barrister) and “training” (articles or pupillage respectively), and it has been widely accepted subsequently.

²⁵ At p. 333.

²⁶ See Section 5 of this Report, The Postgraduate Certificate in Laws (PCLL).

²⁷ By comparison with other former colonies such as Australia and New Zealand, for example, both of which took local control of the legal education process at a much earlier stage of their constitutional development. The constitutional history and developing status of Hong Kong is quite different from those two jurisdictions.

²⁸ Professor Keeton was to become Professor of English Law in the University of London from 1937 to 1969. See his article, “Forty-Five years on” in the newly established Hong Kong Law Journal, (1971) at 6.

²⁹ Evans, above n. 1, (1989) at p. 11.

2.4.1 Hong Kong University

The development of a local legal education system began in earnest in the 1960's, when the Department of Extra-Mural studies at the University of Hong Kong began offering part time evening courses which assisted students to take the external LLB of the University of London. This initiative was in part a result of pressure from the then President of the Law Society, Peter Vine, "who "urged the government to take some interest in considering and ameliorating provision of more systematic and effective legal education and training". The Attorney-General of the day, Sir Maurice Heenan QC,³⁰ "warmed enthusiastically to this call".³¹ This was always conceived as something of a stop-gap solution,³² since it was recognised that it was not possible in the circumstances to provide the resources needed to enable students to undertake serious independent study in Hong Kong (with the provision, for example, of an adequate Law Library).³³

2.4.2 Developing pressure for a Hong Kong legal education

In the next few years, a certain amount of pressure built locally for the development of a system of legal education that was more attuned to the local needs of Hong Kong's rapidly changing social and economic circumstances. It was felt, increasingly, that reliance upon those who had been educated and trained in the United Kingdom system was becoming unsatisfactory as more and more of the law of Hong Kong diverged from its UK roots, particularly in such matters as family law, conveyancing and company law (the Hong Kong law was still using the 1929 Companies Act rather than the somewhat different 1948 UK version, for example). It was therefore necessary for ways to be found to integrate significant amounts of local law into the teaching provision. It is also worth mentioning that, at this time, the early 1960's, there was a world-wide expansion in tertiary education which was to be extended to socio-economic groups who had not hitherto contemplated taking their education any further once schooling was completed. The expanding opportunities were, moreover, to be financed largely by governments making bursaries and grants available to prospective students.³⁴

2.4.3 Two Working Parties

In the light of this, a study was commissioned in September 1966 by the Chief Justice of Hong Kong, Sir Michael Hogan, at the instigation of the Vice-Chancellor,

"to consider and report ... (a) whether it is desirable and practicable to provide in Hong Kong *if possible in collaboration with the universities*³⁵ the teaching and training which would enable

³⁰ A New Zealander who had graduated from Canterbury College of the University of New Zealand, followed by a military career during the second world war and then administrative experience in the UK foreign service.

³¹ Evans, above n.1, (1989) at p. 12.

³² "An experiment", in the words of Evans above, n. 1, (1989) at p. 13.

³³ Evans above n.1, (1989) at p. 13

³⁴ Committee on Higher Education (23 September 1963), *Higher Education: Report of the Committee Appointed by the Prime Minister under the Chairmanship of Lord Robbins 1961-63*, Cmnd. 2154, London: HMSO.

³⁵ Emphasis added. In addition to Hong Kong University, the other University in contemplation was the Chinese University of Hong Kong, whose Vice-Chancellor was represented on the both of the Working Parties.

a candidate to qualify for admission to the Bar in Hong Kong as a barrister without the necessity of proceeding overseas; and

(b) whether the existing facilities for solicitors to obtain their qualification without proceeding overseas are satisfactory and in particular to consider whether there should be any additional training or examination in the Laws of Hong Kong”.

A short Report, “The Report of the First Working Party on Legal Education (1966)” was issued in June the following year. The Working Party ³⁶consisted of the Senior Puisne Judge as Chairman, and representatives of the Attorney-General, the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong University and the Chinese University of Hong Kong.

The group, which addressed its Report to the Chief Justice, made recommendations which, with the approval of the University and Polytechnic Grants Committee, led directly to the establishment of the Department of Law at the University of Hong Kong whose role was to provide the academic stage of legal education³⁷ through a three year LL.B. Honours degree.³⁸ It was the standard English practice at the time for Law degrees to be Honours degrees, and to be of three years duration.³⁹

2.5 Vocational Training

Importantly, no promises or undertakings were given at that stage as to any further funding from the Grants Committee for the transition studies that were necessary to move “from learning to earning”,⁴⁰ the vocational and professional stage. It was rapidly appreciated, nevertheless, that it would be necessary to put in place some arrangements for vocational training for practice as a Solicitor or at

³⁶ The Working Party had also been advised by Zelman Cowen, C.L. Pannam, and A.G. Guest. (1967). Cowen and Pannam had earlier visited the University to supplement the teaching during the Australian Christmas long vacation and this was said by Evans to be “probably the single most important factor in getting the experiment up and running” Above, n. 1 (1989). Cowen had a distinguished academic career at Oxford and elsewhere, before becoming Governor-General of Australia in 1977. Professor Guest, who was a Fellow of University College, Oxford at the time of his visit, was subsequently the Professor of English Law at King’s College, London from 1966-1997. Mr Pannam was at the time a Senior Lecturer in Law in the University of Melbourne. More recently, Clifford Pannam Q.C. was said to be “generally regarded as one of the great advocates of the Victorian Bar of the past half-century” (2014) *Victorian Bar News*, No 156, p. 58.

³⁷ A classification devised to describe the discrete steps through legal education by the Ormrod Committee on Legal Education (1971) Cmnd 4595 (discussed in section 3) - the two other categories were “professional” which involved further study of a practical nature, and “training” (articles or pupillage).

³⁸ Practice at HKU has altered subsequently, so that the LL.B. is no longer an Honours degree as such, but candidates who perform particularly well in their studies and examinations can qualify to be awarded Honours.

³⁹ The Scottish model, which was adopted in New Zealand, began with a foundational year that included non law options, as students adjusted to study at a university. Oxbridge and other UK Law Faculties continue to offer the B.A. Honours as its Law degree, and others offer a three year LL.B.

⁴⁰ The expression was coined by Glanville Williams in his seminal work, *Learning the Law* (1945).

the Bar for those who would fairly soon graduate from the new course, and a second Committee was appointed⁴¹ by the HKU Vice-Chancellor acting with the new Chief Justice, Sir Ivo Rigby.⁴²

2.5.1 The Second Working Party – the development of the PCLL

The Report of the Second Working Party⁴³ on Legal Education (1969) was concerned with education for legal practice, for which purpose the Postgraduate Certificate in Laws (PCLL) was created.⁴⁴ Teaching for this began in 1972. It was initially administered by the Department of Law (later to be known as the School of Law) under a Director of Professional Legal Education. When the School became a Faculty of Law in 1984, it consisted of two Departments, a Department of Law which was responsible for the academic degrees, and the Department of Professional Legal Education. The latter now has some 20 members of academic staff, and their work is augmented by members from the Department of Law, visiting practitioners and members of the judiciary.

2. 6 The City University of Hong Kong

The institution that was to become the City University of Hong Kong had been established in 1984 as the City Polytechnic of Hong Kong. There was an existing Hong Kong Polytechnic, but there had been a call for a new one leading to the 1984 development. A Department of Law was established in 1987, ten years before the handover to China was due to take place, and possibly with a view to that development.⁴⁵ The Ordinance for the Advisory Council was amended to include a position for a representative on the nomination of the Vice Chancellor of City University.⁴⁶

The institution was accorded university status in 1994, becoming the City University of Hong Kong. From the outset in 1987, it too began offering a PCLL to those who wished to enter legal practice, in addition to the LL.B. undergraduate course. In 2004, it was the first Hong Kong University to introduce the degree of Juris Doctor (JD), thereby creating a pathway that enabled persons already holding a university degree to a quick route to enter the legal profession.

⁴¹ The membership of the Committee was slightly larger than the first Committee had been, adding an additional, recently arrived member of the Law Department of Hong Kong who had experience with the Law Society of England's Examinations.

⁴² Zelman Cowen was joined on this occasion by Professor L.C.B. (Jim) Gower, who after being Professor of Commercial Law at London University from 1948 to 1962, and for a time Professor of Law and Dean at the University of Lagos (1962-65) went on to become the Vice-Chancellor of the University of Southampton (1973-1979).

⁴³ See 2.4.3.

⁴⁴ See M. Greenwood, 'Professional Legal Education in Hong Kong (1990) 8 Journal of Professional Legal Education 47.

⁴⁵ Greenwood, *id.*, suggests that this may have been in the mind of those proposing the development in light of the need for education about such matters as the importance of the rule of law.

⁴⁶ HKU, by contrast, was entitled to nominate two representatives.

2.7 The Chinese University of Hong Kong

The University, the main campus of which is based on the New Territories, but is also relatively accessible to the main conglomeration on Hong Kong Island,⁴⁷ had been established in 1963. Law was not initially taught there,⁴⁸ but in 2004, the university submitted a proposal to the UGC to be permitted to establish Law as a discipline within its offerings. It was inaugurated in November 2006, initially as a School of Law for two years, and then became a Faculty in 2008. The Faculty first offered the PCLL in 2008. A change was at the same time made to the Ordinance to extend membership of the SCLET to the Dean and one other person.⁴⁹

2.8 Concurrent developments: The changing social, economic, political and constitutional background

The history of developments subsequent to the establishment of Law teaching at HKU in the enhanced provision of legal education⁵⁰ in Hong Kong closely reflects the increasingly rapid development of that jurisdiction as a major economic and legal centre. The development of Hong Kong as a legal hub was not in any sense an accidental by-product of these developments; it was entirely consistent with government policy.⁵¹

As it has become an international economic powerhouse, the legal market has developed correspondingly, including for example such areas as shipping, financial services and telecommunications. The more recent “one belt and one road” initiative, which envisages an enormous upsurge in Chinese investment in infrastructure projects in widely spread geographical areas throughout Asia and Africa, extending perhaps even as far as Europe, may be expected to generate further legal work for the Hong Kong legal sector.

The PRC’s relatively recent entry on a large scale into the world’s trading sphere⁵² has been facilitated in large measure through the use of the legal services available through Hong Kong. Hong Kong’s development as one of the world’s major ports, its consequent continued economic and social development, and the changes to Hong Kong’s constitutional status accompanying the hand-over in 1997 have drawn to Hong Kong some of the largest legal firms from around the world, in particular from the United Kingdom and the United States of America. These organisations have inevitably

⁴⁷ The professional legal education section of the Law Faculty is now based in Central on Hong Kong Island, very much in the midst of the courts and legal Hong Kong.

⁴⁸ A representative of the Vice-Chancellor of this University was on both of the Working Parties (discussed above at 2.4.3) that led to the establishment of the Law Department at HKU.

⁴⁹ On the nomination of the Vice-Chancellor of the Chinese University of Hong Kong, who had the power to nominate two persons. (Added by 10 of 2005, s. 184). The original Dean was Professor Michael McConville, who had previously been the Dean at the City University of Hong Kong. He was in turn replaced by Professor Christopher Gane, who commenced in the position in September 2011.

⁵⁰ See L. Marsh, M Ramsden and C. Young, “Legal Education in Hong Kong: A History of Reform” in S. Orosun Parker (ed), *Legal Education in Asia* (2014), modified and updated in (2016) 3 *Asian Journal of Legal Education* 144; Feng Lim, “Legal Education at a Turning Point: A Case Study of Hong Kong (2016) in C. Jamin and W. van Caenegem (eds), *The Internationalisation of Legal Education* (2016).

⁵¹ [Reference]

⁵² The process was initiated in December 1978, led by the then President Deng Xiaoping. China was admitted to membership of the World Trade Organisation in December 2001. This was preceded by a lengthy form of negotiations requiring significant changes to the Chinese economy.

altered significantly the legal milieu into which law graduates from the Hong Kong universities will enter. It was in part a recognition of these developments that, in the space of the next thirty two years, two further institutions were permitted to include Law as part of their suite of offerings.

2.9 The structure of the legal profession in Hong Kong

From the outset, Hong Kong's legal professional arrangements were based upon those of the United Kingdom, and the profession was split into the two branches of the Bar and the Solicitors. Each of these bodies was professionally regulated, by the Bar Council and the Law Society respectively, and each of these bodies has rightly taken a keen interest in the education of new recruits in to the profession.

2.9.1 The role and authority of the Law Society⁵³

The Law Society was formed on 8 July 1907⁵⁴ as a company limited by guarantee, and was then known as The Incorporated Law Society of Hong Kong. The present name was adopted in 1969. As of 2016, it was reported that there were 9076 solicitors with a practising certificate, working in 870 law firms. 81 of the firms were foreign, and 988 foreign lawyers were employed in Hong Kong. 2342 solicitors held a practising certificate but were not in private practice. 82% of practising solicitors were ethnic Chinese.⁵⁵

By virtue of the Hong Kong Legal Practitioners Ordinance, the Law Society is responsible for the regulation and administration of matters such as admissions to practise as a Solicitor in Hong Kong. Different legal regimes apply according to whether the applicant wishes to be a Trainee Solicitor, or is applying as an Overseas Lawyer, or as a Foreign Lawyer.

Under the Ordinance, The Society issues practising certificates, having satisfied itself that the applicant is so entitled. It oversees compliance with the practising rules, and has an extensive disciplinary authority over the practising profession in the event of failure to comply with the relevant rules.

It also has power under the Ordinance to establish the conditions for admission to practise, and power to make Rules relating thereto. Under the Trainee Solicitor Rules, Rule 7(a) (ii) appears to permit the Society to prescribe "such other examination or course as the Society may require or set".⁵⁶

2.9.2 The role and authority of the Bar Association and Bar Council

According to the information available on the website of the Bar Association, there are about 1,300 barristers practising in Hong Kong. Out of these, there are 100 Senior Counsel (called "Queen's Counsel" before 1 July 1997). Senior Counsel are appointed by the Chief Justice as a recognition of the relevant barristers, ability and standing in the profession. In addition, Queen's Counsel (and more rarely, Junior Counsel) are admitted from time to time on an ad hoc basis for the purpose of

⁵³ The role of the Law Society as a regulatory agency is more fully discussed in Section 6 of this Report.

⁵⁴ The Law Society celebrated its centenary in 2007. See *Celebrating a Centenary: the Law Society of Hong Kong 1907-2007* (2007). It appears that the early records of the proceedings of the Society disappeared during the Second World War.

⁵⁵ The figures are taken from the website of the Law Society in 2016.

⁵⁶ This is discussed below at Section 6.4.

conducting specific cases in Hong Kong. There are also a small number of employed barristers who work as in-house lawyers and do not offer their services to the general public.

By virtue of the Legal Practitioners Ordinance, s.72A, the Chief Justice has the authority to prescribe examinations to be taken by those who wish to enter the profession. It appears that the Chief Justice would act only on the initiative of the Bar Association. As is the case with the Law Society, the Bar Association administers the process of dealing with applications for admission, collection of fees, issuance of practising certificates, in addition to acting as a disciplinary tribunal when required. At present, it would seem, and by comparison with the situation in the United Kingdom, the Association has little involvement with the processes surrounding applications for pupillage.

All barristers in Hong Kong are subject to the Code of Conduct issued by the HKBA (“Bar Code”). The Bar Code sets out the main principles governing the duties and conduct of barristers. If a barrister acts in breach of the Bar Code, the Bar Council may refer the matter to the Barristers Disciplinary Tribunal, which is an independent body comprising members appointed by the Chief Justice. If the Barristers Disciplinary Tribunal finds that a barrister is guilty of a disciplinary offence, it has power to impose different forms of punishment which include fine, suspension and striking off.

2.10 Professional Legal Education and the role of universities

It is clear that, behind the Law Society’s expressed intention to hold its own Common Entrance Examination there is some disquiet about the way in which the PCLL is operating as the final gateway to the practice of law in Hong Kong. There is also an apparent dissatisfaction with the way in which the universities are dealing with the education and training that is intended to prepare students for the practice of Law.⁵⁷ There is nothing particularly novel about this situation. In his introductory essay to *Legal Education in Hong Kong*,⁵⁸ Professor Evans describes the position in 1974 thus:

“The relationship between university legal education and the needs of the profession in England has, for many years, been characterised by mutual suspicion. On the one hand, the universities have suspected the professional bodies of requiring nothing more than a narrow vocational training unsuited to the academic standards of a university. On the other hand, the profession have suspected the universities of being more concerned with an ‘unrelated’ education in legal principles than with teaching the students their relevance and applicability in the actual conditions of practice. This remarkable situation is found in few countries outside England but it was reflected in Hong Kong where the qualification for admission to practice was, generally speaking, an English qualification”

As is pointed out in Section 5 of this Review, the autonomy of universities and principles of academic freedom are formally protected under Art 137 of the Basic Law, and the freedom is one that is widely defined. It currently extends to teaching content, student admissions, staff recruitment and resource allocation, as well as freedom to set research objectives. In the particular context of the matters being discussed here, it must be noted that arrangements designed to protect these interests must be weighed against the equivalent protections of professional independence and self-regulation enshrined in Art 142 of the Basic Law, and reflected in the powers and duties conferred upon the SCLET under the Legal Practitioners Ordinance. It is apparent to the consultants that the

⁵⁷ These are spelled out in more detail below, at Section 5.4.

⁵⁸ (1974), above n. 1, at p 23.

reconciliations between these sometimes conflicting vantage points that were reached in the early development years of Hong Kong's legal education⁵⁹ require reconsideration in the light of modern, more competitive, conditions.

2.10.1 *Some historical perspective*

It may help to put current matters into perspective to point out that the position in 1974 and the position in Hong Kong now reflect an ambivalence that goes back for centuries. Although Law, along with Medicine and Theology, was one of the higher Faculties of the mediaeval Universities such as Paris, Bologna, Oxford and Cambridge, there was an historical reluctance to embrace the idea that it was appropriate for "professional" subjects to be taught within the university environment. For centuries, study leading to the practice of the Common Law took place at the Inns of Court in London, not only for those proposing to practise at the Bar, but also for Solicitors and Attorneys. At the Universities of Oxford and Cambridge, the Law taught was "Civil" or Roman Law, and Canon Law.⁶⁰ It was not until 1758 that Oxford appointed Sir William Blackstone to the Vinerian Chair as the very first Professor of English Law. Cambridge followed suit rather later, in 1800, with the creation of the Downing Professorship of English Laws.

Those initiatives did not, however, immediately lead to the establishment of courses and lectures tending directly towards the practice of law. Over the years, the law syllabus was increasingly modified to include instruction in and study of English common law, but even then it was in no real sense regarded by those who were closely involved with it, whether as teachers or pupils, as preparation for a career in the practice of law.⁶¹ For those who had such aspirations, it was necessary to study and be trained elsewhere.⁶²

2.10.2 *Preparation for practice in Hong Kong: collaboration between university and the professions*

It has been pointed out earlier⁶³ that the decision taken in 1966/7 that education to prepare students for the practising professions should be undertaken through the University of Hong Kong was taken in some haste, and was to some extent dictated by the fact that resources would not be forthcoming for anything in the nature of an institution created separately for this purpose. Given the backgrounds of those responsible for taking the decision, it was also perhaps a slightly surprising decision, since nothing like it had then occurred in the United Kingdom, the home background for most of those individuals who were taking the decision. This point was acknowledged in the *Proposals of the First Working Party*. In para 10 of its Report, it said:

"If a scheme of local qualification on these lines were adopted, it seems to us that it would be very desirable that the relations between the legal profession in Hong Kong and the Department of Law in the University of Hong Kong should be somewhat closer than is usual in England and Wales, and that the representatives of the profession should be associated with the University in planning

⁵⁹ See the statement describing the mutual understandings at 2.10.2 and 2.13 below.

⁶⁰ For a period during and after the Reformation, the teaching of Canon Law was suppressed by order of King Henry VIII.

⁶¹ To this day, Roman Law (under the title "Civil Law") remains a compulsory first year subject at Cambridge. Oxford for a period towards the end of last century experimented with giving the students an option other than Roman Law, but the experiment was apparently discontinued, being substituted by "A Roman Introduction to Civil Law".

⁶² For a comprehensive study, see A. Boon and J. Webb, 'Legal Education in England and Wales: Back to the Future?' (2008) 58 *Journal of Legal Education* 79.

⁶³ Above 2.5.

the structure and content of the LL.B. degree as well as the further postgraduate examination we recommend. With this object in view we envisage the appointment of a Statutory Board consisting of representatives of the Chief Justice, the Attorney-General and both branches of the legal profession who, acting in conjunction with the University of Hong Kong, would be associated with the responsibility for:

- (1) Prescribing the content of courses for the postgraduate professional training in law which we recommend for those seeking admission to practise as lawyers in Hong Kong; and
- (2) Controlling the respective professional examinations in respect of such postgraduate courses.

It may be seen from the above that the object of having a statutory board was:

- (1) To provide a base for close association between the University and the professions and judiciary; and
- (2) To ensure that control of the contents of courses and of the examinations for the postgraduates seeking admittance to the professions was vested not in the University alone but in a body on which professional lawyers, in combination, would be in a majority.”

Presciently, perhaps, the Report went on to observe⁶⁴ that:

“The Hong Kong Law Society are concerned that the power to make decisions relating to solicitors should not be transferred to a body on which solicitors have only minority representation, and it is unlikely that the members of The Law Society would agree to any such transfer.”

2.10.3 The implications for Hong Kong

Seen against that background, the decision to place the professional training for lawyers in the university structure was, in one sense, initiating a process that seems (with the benefit of hindsight, perhaps) to be inherently likely to lead to strains in the future. Reconciling the different aims of those educating people to become lawyers in Hong Kong and at the same time accommodating the needs of those who were expected and prepared to employ them as Solicitors, or to give them facilities in which to begin practice at the Bar, was inherently likely to give rise to tensions, and to require a highly responsive and flexible administrative structure. The tensions and strains of accommodating the interests and legitimate concerns of the various participants in the process were always likely to be difficult, and this was to some degree recognised by the proponents of change in Hong Kong. The problems of creating and maintaining standards at all stages of the process were formidable. Those strains have only been heightened as two other university providers have moved in to the picture. A regulatory framework that may have been perfectly adequate when there was only one provider in the picture, and which has not changed a great deal in substance since it was first established in 1971, is inherently unlikely to be sufficiently agile to cope with an entirely different legal market context.

⁶⁴ At p. 123.

2.11 The Advisory Committee on Legal Education

The mechanism devised in the light of the considerations mentioned in the preceding paragraph was the establishment in 1971 of the Advisory Committee on Legal Education. This was one of the recommendations of the First Working Party,⁶⁵ and as its name suggests, it was envisaged that this was to be essentially an advisory body.

Professor Evans⁶⁶ explained the thinking behind this development as follows:

“The purpose in making this Advisory Committee less formal than the body proposed by the First Working Party was to enable it to function as a three-way channel of communication between the professional bodies, the University, and the Chief Justice (the last in the exercise of this statutory functions under the Legal Practitioners Ordinance). The emphasis is laid on *communication* and especially on informal communication for the sake of ensuring the effectiveness of that communication. The Legal Practitioners (Amendment) Ordinance has now established an Advisory Committee on Legal Education which ‘may advise the Chief Justice and the Vice-Chancellor of the University of Hong Kong on the education, professional training and qualifications for admission of barristers and solicitors’.”⁶⁷

It will be noted that the original Advisory Board was established to advise the Chief Justice and the Vice-Chancellor. As part of the handover process, however, this was changed so that the recipient of the advice was to become the Chief Executive of Hong Kong. It is not at all clear whether the introduction of this element has had an impact upon the functioning of the Committee, and in particular whether this has had an impact upon the level of communication between the parties as originally identified.

2.12. Redmond Roper and the ACLE

The Redmond Roper Report did not describe the work of the Committee,⁶⁸ nor dwell on what it perceived to be its shortcomings, contenting itself with the reflection that:

“In many ways the LQC [proposed Legal Qualifying Council] would replace the functions of the ACLE, although its focus is on the requirements for admission to practice and its powers would not be advisory but executive. As to the former, there are broader questions relating to legal education but it would appear that the ACLE has effectively confined itself to matters relating to qualifications for admission. It may not, therefore, need to continue in existence.”

⁶⁵ See the lengthy “Memorandum on the Creation of a Statutory Board” in Appendix D of the work mentioned in n.1, (1974).

⁶⁶ Above, n. 1 (1974) at p. 25.

⁶⁷ The Ordinance states that its role was to advise the “Chief Executive”. It is not at all clear whether the introduction of this element has had an impact upon the difficulties of communication between the parties as originally identified.

⁶⁸ If annual reports of the ACLE were produced, they do not appear to be available for on-line consultation, and have not therefore been considered in the preparation of this report.

As the final sentence of that passage foreshadows, it was not thought necessary to preserve the ACLE, but was instead to be replaced by a statutory body with decision making rather than advisory powers.

2. 13 The development, composition and role of the Standing Committee on Legal Education and Training of the Legislative Council

One of the recommendations of the Redmond Roper Report was the establishment of a statutory body with sufficient status and powers to oversee the implementation of reforms and to monitor the future direction of legal education and training. Such a body, the ACLE, was already in existence, as has been seen,⁶⁹ but its powers were purely advisory. The solution adopted was to make the oversight body a Standing Committee of the Legislative Council, although it is not obvious from the website of the Committee that it has any links with the Legislative Council. The Annual Reports are, however, made to the Chief Executive and are to be laid before the Legislative Council.

Pursuant to this recommendation, s.74A of the Legal Practitioners Ordinance Cap. 159 was promulgated in 2004 under which Standing Committee on Legal Education and Training (SCLET) was established. SCLET is empowered to keep under review legal education and training in Hong Kong, to make recommendations thereon, and to collect and disseminate information about legal education and training in Hong Kong. Members of SCLET are appointed by the Chief Executive upon the nomination of various stakeholders in the legal community. Members of the public are also represented.

2.13.1 The functions and composition of the Standing Committee on Legal Education and Training

The Hong Kong Legal Practitioners Ordinance s 74A provides:

- (1) There is established by this section a Standing Committee on Legal Education and Training.
- (2) The functions of the committee are—
 - (a) to keep under review, evaluate and assess—
 - (i) the system and provision of legal education and training in Hong Kong;
 - (ii) without prejudice to the generality of subparagraph (i), the academic requirements and standards for admission to the Postgraduate Certificate in Laws programme;
 - (b) to monitor the provision of vocational training of prospective legal practitioners in Hong Kong by organizations other than the Society or the Hong Kong Bar Association;
 - (c) to make recommendations on matters referred to in paragraphs (a) and (b); and
 - (d) to collect and disseminate information concerning the system of legal education and training in Hong Kong.
- (3) The committee shall consist of—

⁶⁹ Above 2.12.1.

- (a) 17 members appointed by the Chief Executive of whom—
 - (i) 2 shall be persons nominated by the Chief Justice;
 - (ii) 1 shall be a person nominated by the Secretary for Justice;
 - (iii) 1 shall be a person nominated by the Secretary for Education;
 - (iv) 2 shall be persons nominated by the Law Society;
 - (v) 2 shall be persons nominated by the Hong Kong Bar Association;
 - (vi) 2 shall be persons nominated by the Vice-Chancellor of the University of Hong Kong;
 - (vii) 2 shall be persons nominated by the President of the City University of Hong Kong;
 - (viii) 2 shall be persons nominated by the Vice-Chancellor of The Chinese University of Hong Kong;
 - (ix) 2 shall be members of the public; and
 - (x) 1 shall be a person nominated by the Federation for Self-financing Tertiary Education, a non-profit-making educational organization, from among its members which provide continuing legal education courses in Hong Kong; and

- (b) a chairman appointed by the Chief Executive after consultation with the persons and organizations making nominations pursuant to paragraph (a)(i) to (viii) and (ix).”

The committee is entitled to determine its own procedure. Detailed provision is then made in the Ordinance for such matters as to attendance at meetings by a substitute, the length of tenure of committee members, and the Chair (two years, in both cases), the procedure for resignation and for the Secretary For Justice to Gazette notices of appointment and for an obligation for the committee to report annually to the Chief Executive.

The first members of the Committee were appointed in August 2005 for a period of two years.

2.13.2 Secretariat

The Secretariat to the Committee is currently provided by the Law Society. The Secretary is also the Director of Standards and Development of the Law Society and, it would appear, an employee of that body. The Secretariat is housed in the Law Society premises, and the meetings of the Committee are held there. This is, no doubt, in some ways a convenient set of arrangements, but the situation poses the slightly difficult question whether there might be a potential conflict of interest at work, and raises the question whether the Committee should have its own, arms-length secretariat. A contrast is to be made with the Panel on Administration of Justice and Legal Services which has its own Clerk, and who is a member of the Legislative Council’s Secretariat. It might also be contrasted with comparable institutions in Australasia, such as the Australian Legal Admission Boards (which are normally statutory independent regulatory bodies), and the New Zealand Council for Legal Education, which has a Secretary who functions from a building close to the Law Society, to signify that she is at arms-length from the Society itself.

2.13.3 Annual Reports of the Standing Committee

Details of the proceedings of SCLET are published in its Annual Reports which are available on the Committee's website.⁷⁰ These contain a brief summary of the Major Matters dealt with by the Standing Committee in the course of the year, but minutes of the meetings are not available on the Committee's website. The Annual Reports of the Standing Committee contain separate reports from each of the individual university providers as to the statistics and performance relating to each of the three degrees that are the building blocks for admission to legal practice, namely the LL.B., the JD and the PCLL. As noted elsewhere in this Report, it would appear that there is no formal feedback to the individual Faculties as part of this process.⁷¹ The Reports also contain commentary from the providers as to any changes that have been made in the course of the year under review, and other highlights.

2.13.4 The use of sub-Committees

In the years since it was instigated, the Standing Committee has achieved a considerable amount of progress, particularly in the implementation of the proposals emanating from Redmond Roper. Much of the business of SCLET is transacted through *ad hoc* committees established for particular purposes. This was true of the implementation of the recommendations of the Redmond Roper Report itself, on such matters as English Language Proficiency to look into matters such as the English language proficiency of law students. Another was set up to consider the pre-requisites for entry into the Postgraduate Certificate in Laws programmes. Another subcommittee considered various local schooling developments affecting legal education, including the implementation of the "3+3+4" academic structure and another, the increasing use of mediation as a means of alternative dispute resolution. The SCLET also scrutinizes annually the law-related educational and vocational programmes provided by various institutions under its purview. It has also overseen the creation of the Conversion Examination Board whose activities are the subject of annual report to the SCLET.

2.14 The possible establishment of a unified Professional Law School

2.14.1 Co-operation between the providers

Section 5 of this Report is written on the assumption that continuing attempts could be made to deliver the PCLL course in the three universities, and our recommendations in that section are made on the premise that it may be possible to find modes of co-operation and collaboration that will eliminate the inconsistencies of current practices that give rise to some of the current concerns. In one of the most contentious areas, that of admissions, we recommend (5.2) that the providers "work together to increase the transparency of the admissions process, and to develop consistent criteria across all three institutions". We point to⁷² the fact, however, that "previous attempts at creating cross-institutional initiatives (such as the Joint Examinations Board between HKU and CityU in the early 90s) have not been successful or sustainable." We also make the point that admissions standards and processes are intimately bound up with the autonomy of the universities. Much of that autonomy would have to be significantly surrendered if admission arrangements were to be "pooled" in the way

⁷⁰ The First Report was presented covering 1 September 2005 to 31 August 2006, and the reporting date was originally set as 1 September to 31 August, but that was changed as from 1 January 2009 to 31 December. The most recent Report available is that covering 1 January 2016 to December 2016.

⁷¹ See para ***.

⁷² In 5.3.2.

envisaged. It is suggested that the intra-university element of competition to which we refer in this Report makes it unlikely that such a process is going to produce a more satisfactory result.

2.14.2 Redmond-Roper recommendations

The considerations in the foregoing paragraphs, together with the evident current difficulties that are being caused in Hong Kong by the attempt to mount vocational training in each of the three universities prompts the present consultants to raise for re-consideration⁷³ the question whether the current provision leading to the PCLL, which is the principal educational requirement for admission to the legal profession, should continue to be offered through the existing university structure? This general issue was discussed at some length in the Redmond Roper Report, although their suggestion that vocational training should be taken out of the university system was ultimately rejected. It is necessary to quote what that Report said,⁷⁴ at some length:

“The consultants suggest that the only realistic and effective means of developing a process of practical training, within an institutional setting, of the standard needed to meet the expectation in terms of the reference, *ie.* capable of meeting the challenges of legal practice and the needs of Hong Kong society into the 21st century, is to remove institutional practical training from its university setting. Based on experience in other jurisdictions, an institution devoted solely to practical training, appropriately staffed and with a tightly focussed programme dedicated to specific practical legal training goals, is likely to require less resources. ...

... The consultants suggest that it is unlikely that the PCLL could remain within the universities and yet become a single integrated course focussed on lawyering. They are also sceptical that the existing teachers would willingly and happily move to this arrangement.

The consultants believe that present inconsistencies and inequities in access to vocational training through the PCLL could be overcome by having a separate legal practice course in its own institute. It would be able to provide places to all those who were otherwise qualified and were seeking a place, as it would have its own funds and would not be constrained by the limitations which the universities face, reliant as they are on the UGC for the number of places to be funded and the level of funding.

The consultants have concluded that the only way to resolve the impasse in present arrangements is to give to the universities that which is most appropriately dealt with by them in view of their distinctive expertise and mission, and to place the institutional practical training into a specific vocational stage for which the professions would be responsible. This means that the proposed legal practice institute would not be placed within the universities although it may be affiliated with the universities in order to attract UGC funding. As well, although there might be some members of its governing and/or teaching body drawn from the law schools, it would be the creature of the profession. Although this proposal would separate the two stages – academic and vocational – the consultants believe this is the most likely to succeed. This does not mean, however, that there would not be a process and a venue for regular exchange of views and indeed for the formulation of the general expectations of

⁷³ This was discussed in Redmond Roper at 15.4.1.

⁷⁴ *Id.*

those to be admitted to practice in Hong Kong, in which all would be involved. This would be done through the proposed Legal Qualifying Council.”

Some of the prognoses and predictions of the earlier consultants have indeed come to pass. Experience has shown that it has indeed not been possible to develop “a single integrated course focussed on lawyering” across three institutions.

2.15 Advantages of a single institution

The principal advantages of having all applicants for a place at a single institute of vocational legal training are those of scale. The figures cited earlier⁷⁵ show that any such institute would be a large one in terms of student numbers.

- The institution could develop a suite of offerings, from which students would be able to select, according to the type of legal practice that they would wish to enter, such as (for example):
 - financial, business and commercial laws;
 - public law, including constitutional law, administrative law, planning, criminal law and justice;
 - family law, housing law, immigration law, social security law.
- The teaching and instruction in the institution could focus solely on training for practise in one or other branch of the profession.
- There is need and scope for an institute that focusses its research on aspects of vocational legal education, and legal professional organisation and practice, including legal ethics. The objectives of any such institute should therefore be framed in such a way as to include applied research and scholarship into legal practice and the development of vocational legal education.
- Engagement of the local legal professions: We have made the point earlier that extensive use is made of the professions but that it is not easy to make comparisons across the three schools as to how this is done, or to make quality comparisons. It is clear from the interviews conducted by the consultants that there was a great deal of goodwill in both branches of the professions towards the educational enterprise. This could be further strengthened.
- Students could be selected through a single, unified, admissions process, administered through an open process that deals with applications for admission entirely on the merits of the candidates.
- Establishing such an Institute would potentially resolve some of the concerns that exist, rightly or wrongly,⁷⁶ about the present system, including capacity for additional student numbers and consistency of processes and outcomes.

⁷⁵ Figures extracted from the Annual Reports of the SCLET for 2013, 2014, 2015 show that the numbers for those years had been respectively 650 students, 650, 651 before a drop to 418 for the 2016 Report.

⁷⁶ See further Section 5 of this Report.

2.18 The Disadvantages of a single institution

It must be acknowledged that there would be considerable resource implications were any decision taken to proceed by establishing a bespoke professional studies institution tailored to Hong Kong's particular circumstances, especially in the initial phases. Questions will arise as to matters such as finding suitable premises for such an enterprise, and provision of start-up costs

Consideration would have to be given to institutional structure as well as resource reallocation. This may not be straightforward. We take the view that it is critical, for reasons of access and diversity, that continued UGC support is available to potential applicants. Consequently we do not support the Redmond Roper proposal for an institution independent of the universities. If this proposal is adopted we encourage the universities to explore the means by which the institute might be established as a shared or cross-institutional enterprise. This should also simplify arrangements for transferring existing teaching staff to the new school structure.

There may be some argument that the move to a single institution reduces flexibility and scope for (competitive) innovation in professional legal training in Hong Kong. We agree that this is a risk which must be balanced against the benefits of improved consistency.⁷⁷

A single institution would in effect constitute a monopoly, which may possibly over time give rise to difficulties of maintaining standards. This can be mitigated to some extent by enhanced quality assurance and accreditation powers/procedures, including reserved powers to remove accreditation from a provider, or to introduce a further provider into the market.⁷⁸

2.17 Conclusions

The rapidly-developing nature of legal education in Hong Kong appears to have outpaced the capacities of the existing regulatory framework to deal satisfactorily with the challenges by which it is confronted.

In the final paragraph of the first Annual Report of the Standing Committee (1 September 2005 to 31 August 2006), it was reported that:

“Members of the Standing Committee consider that its meetings, and the meetings of its sub-committees, provide a useful forum in which members of the legal professional bodies, law teachers, and other interested parties can address issues of mutual concern in a constructive and collaborative manner”.

⁷⁷ We are not convinced that the competitive innovation argument carries great weight in the Hong Kong market given the way in which the market currently works. Applicants' decisions are likely shaped more by a mix of 'brand loyalty' to the university they know, assumptions about institutional quality, and strategic assessments, given the high demand for places, about where they are most likely to be admitted. The courses are not heavily marketed by the existing providers on the basis of their differences in design, and it is not clear that these differences are always well understood by applicants or employers.

⁷⁸ This latter step was taken in New Zealand following a review of professional legal training provision in 2001 (see section 3, following), when the College of Law was permitted to enter the market in direct competition with the existing Institute of Professional Legal Studies.

The spirit behind these sentiments does not seem to have survived intact. The fact that the Committee was apparently not formally consulted by the Law Society before that body made its public announcement on 6 January 2016 that the Society was proposing to implement a new Common Entrance Examination⁷⁹ is some evidence that not is all well with the current arrangements. Further, in a paper tabled at the meeting of the Legislative Council's Panel on Administration of Justice and Legal Services as recently as 26 June 2017, the Law Society reported that it had formed five Working Groups to assist it with the progress on the implementation of the Common Entrance Examination, no earlier than 2021. Para 3 of the paper states that "The Working Groups have prepared various drafts and will seek the views of the specialist Committees, the Standing Committee on Standards & Development and the Council of the Society *before* consulting the 3 law schools" (emphasis added).

2.18 Recommendations

Recommendation 2.1

That consideration be given to the establishment for Hong Kong of a separate School or Institute of Professional Legal Studies, with a view to preparing candidates for entry to the legal professions and the practice of Law.

Recommendation 2.2

That consideration be given to establishing a separate Secretariat for the Standing Committee on Legal Education and Training, linking the provision of professional services to the offices of the Legislative Council rather than, as appears to be the case at present, to the Law Society.

⁷⁹ Discussed more fully in section 6 of this Report.

3. THE REFORM OF LEGAL EDUCATION AND TRAINING: INTERNATIONAL TRENDS AND PRACTICES

The primary aim of this section is to identify and summarise key themes in legal education and training practice, primarily since the publication of the *Redmond-Roper Report*. Why is this important? We argue that comparative analysis is valuable for three reasons:

- It provides some rational basis for identifying current, internationally-recognised, trends and thinking as regards effective legal education design and pedagogy;
- It usefully supplements the very limited Hong Kong evidence base available to this Review;
- It acknowledges that legal education developments have, in practice, been strongly mimetic, with methods and approaches frequently migrating across jurisdictions.¹

We also use this analysis to prepare the ground for various arguments that follow in this report. This section thus serves to introduce key concepts and educational debates to lay, practitioner and government audiences who may be less familiar with the terminology and issues arising in modern professional education theory and practice.

This approach assumes that the challenges currently confronting legal education and training are broadly similar across jurisdictions. While there are, of course, important local variations and all systems are to an extent, the product of their particular history, policy analysis and reviews suggest most developed legal professions and legal education systems are seeking to respond to broadly the same set of challenges. We identify those we see as most critical to a review of this kind in section 3.1. More specific points of comparison will also be referred to as appropriate in later parts of this report.

In this section we draw on education and training trends in six common law jurisdictions since the mid-1990s. The analysis deliberately focusses on a mix of both larger (Australia, England and the USA) and smaller (New Zealand, Singapore and Scotland) jurisdictions. The main points of similarity and difference between the various systems are identified in Table 3.1.²

The comparators have been chosen purposefully. Australia, New Zealand, and Singapore provide strong analogues to the Hong Kong system. They share with Hong Kong a common legal heritage in

¹ Sometimes, as in Hong Kong, this has been (at least in part) a legacy of colonial history, but this does not explain phenomena such as the spread across much of the common law world in the 1980s and early 90s, of the system of skills-based vocational training developed initially by Professor Neil Gold and colleagues in British Columbia (see C. Roper, 'The Legal Practice Courses – Theoretical Frameworks and Models' (1988) 6 *Journal of Professional Legal Education* 77). Such transplants probably better reflect the growth in information flows and exchange of ideas that are a function of what another distinguished Canadian legal educationalist, Professor Harry Arthurs, calls the increased 'globalisation of the (legal) mind' – see H.W. Arthurs, 'Globalisation of the Mind: Canadian Elites and the Restructuring of the Legal Field' (1997) 12(2) *Canadian Journal of Law and Society/Revue Canadienne Droit et Société*, 219-246.

² The table highlights the normal pathways to qualification, not including transfer of jurisdiction by lawyers already qualified elsewhere. It reflects the predominant formal regulatory framework in each country. It should be noted there are some 'local' variations in Australia and the USA, reflecting the fact that regulation is state-based, not federal.

the English common law tradition: thus, all treat academic law predominantly as an undergraduate field of study, all require a further period of vocational legal training, and all have retained features of a referral advocacy profession (as a barrister in ‘independent practice’, or ‘barrister sole’).

Table 3.1 A comparison with legal education and training in six countries

Country	Undergraduate law degree	Postgraduate law degree	Other (domestic) non-law graduate pathways	Professional training course requirement	Required workplace training (WPT) or limited practice
Australia	Yes	Yes (JD)	No	Yes ³ common ⁴	Ltd practice
England	Yes	Yes (LLB/MA) ⁵	Yes ⁶	Yes separate	WPT
Hong Kong	Yes	Yes (JD)	Yes	Yes common	WPT
New Zealand	Yes	No	No	Yes common	Ltd practice
Scotland	Yes	Yes (LLB)	No	Yes common	WPT
Singapore	Yes	Yes (JD)	No	Yes common	WPT
United States	No	Yes (JD)	No	No ⁷	No

Scotland shares with Hong Kong the four-year degree, and the distinction of an entirely (public) university-based vocational training. England and Wales⁸ is included, not just by virtue of the continuing connections between the English and Hong Kong legal traditions, but because the English system is itself undergoing a period of radical change consequent on the market liberalisation measures passed in the Legal Services Act 2007. England also differs from most other jurisdictions in retaining separate professional training programmes for solicitors and barristers.

The USA is in most respects the outlier in this study. It reflects the historically alternative ‘professional school’ model of legal education, often contrasted with the English ‘liberal law school’ approach. US practices however, such as the emphasis on graduate education, and the use of both ‘socratic’

³ Or alternative workplace training – see Section 3.1, below

⁴ The reference to common training refers to initial professional training requirements. It does not preclude subsequent more specialist training requirements (as well as some form of workplace ‘apprenticeship’) for those entering or transitioning into the barrister’s profession

⁵ These are described as ‘senior status’ law degrees and satisfy the seven professional ‘Foundation’ requirements common to all qualifying law degree/common professional examination courses. The prescribed foundation subjects are: Contract, Criminal Law, Equity and Trusts, EU Law, Land Law, Public Law and Torts.

⁶ Graduates in a discipline other than law may complete a one year (full-time, or equivalent part-time) programme that addresses the seven Foundation subjects. These are generally called Graduate Diploma in Law, or Common Professional Examination courses.

⁷ Though it is not a formal requirement, many graduates will attend a Bar Examination preparation or ‘bridging’ course. These may be offered by law schools to their own students, or by external commercial providers.

⁸ For ease of reference this will be abbreviated to the ‘English’ system in this report.

teaching and clinical education, as the law school's distinctive, or 'signature', pedagogies,⁹ are being widely exported, leading to recognition that American legal education is becoming a globalised phenomenon,¹⁰ even spreading into territories, notably in Asia, historically shaped more by the civil law tradition.¹¹ The US system of a standardised and centralised state Bar Examination is also an important and relevant point of distinction.

3.1 The Legal Education Reform Agenda 1992-2016

The process of reviewing legal education and training is by no means new. In England the House of Commons in the 1840s oversaw one of the first major inquiries into legal education when it appointed a Select Committee to examine the then parlous and fragmented state of the system.¹² What is interesting and relevant however, is the extent to which review processes have developed a much greater intensity over the last 30 years, and perhaps also sophistication, at least in some key jurisdictions.¹³

Why has there been such an increase in review activities internationally? Arguably there are at least five common challenges apparent from our review of the reviews (see Table 3.2) and other legal education literature. These are often causally interlinked, and each could merit further discussion in its own right. We limit ourselves here to some brief words of explanation.

- *Growing complexity and multi-functionality of legal education and training:* university law schools in many jurisdictions no longer see themselves solely or even primarily as servicing the needs of the profession. This reflects not just the greater identification of law as an academic discipline in its own right, but also a number of structural-functional changes in the institution, notably: growth in student numbers, to the extent that for many schools in the common law world less than 50% of their graduates will be entering the traditional legal professions; internationalisation, so that significant numbers of students are studying outside their home jurisdiction, and expansion of new markets, not dependent on professional recognition or licensure, notably for postgraduate LLMs, or teaching to non-lawyers.

⁹ L.S. Shulman, 'Signature Pedagogies in the Professions' (2005) 134 *Daedalus* 52.

¹⁰ S. Chesterman, 'The Evolution of Legal Education: Internationalization, Transnationalization, Globalization' (2009) 10 *German Law Journal* 877; J. Flood, 'Global Challenges for Legal Education: Competing for the World's Students' (2015) 24 *Nottingham Law Journal* 79.

¹¹ Notably in Japan, and South Korea: see, eg, N. Kashiwagi, 'Creation of Japanese Law Schools and Their Current Development' in S. Steele and K. Taylor (eds), *Legal Education in Asia: Globalization, Change and Contexts* (Routledge, 2010), 185; J. Kim, 'Socrates v Confucius: An Analysis of South Korea's Implementation of the American Law School Model' (2009) 10 *Asian-Pacific Law & Policy Journal* 322.

¹² House of Commons (UK), *Report from the Select Committee on Legal Education*, H of C, No. 686, 25 August 1846.

¹³ This is particularly true in the UK. While there were only two examinations of the legal education and training system in England in the 130 years preceding the seminal Ormrod Committee Report (1971), by contrast four major reviews, and numerous more specialised or localised engagements, have taken place in the subsequent 40 years. For an overview of the history, see, eg, W.L. Twining, *Blackstone's Tower: The English Law School* (Sweet & Maxwell, 1994) and A. Boon & J. Webb, 'Legal Education and Training in England and Wales: Back to the Future' (2008) 58 *Journal of Legal Education* 79. On the latest Legal Education and Training Review (2011-13) specifically, see contributions in H. Sommerlad *et al* (eds), *The Futures of Legal Education and the Legal Profession* (Hart, 2015), *seriatim*

Table 3.2 Benchmark Reviews and Reports across seven jurisdictions 1992-2016¹⁴

YEAR	Abbreviation	Jurisdiction	Full title
1992	MacCrate	USA	American Bar Association, <i>Legal Education and Professional Development – An Educational Continuum</i> (ABA, 1992)
1993			
1994			
1995			
1996	ACLEC I	England	Lord Chancellor’s Advisory Committee on Legal Education and Conduct. <i>First Report on Legal Education and Training</i> . (ACLEC, 1996)
1997	ACLEC II	England	Lord Chancellor’s Advisory Committee on Legal Education and Conduct. <i>Continuing Professional Development for Solicitors and Barristers: A Second Report on Legal Education and Training</i> (ACLEC, 1997)
1998			
1999	ALRC	Australia	Australian Law Reform Commission, 89 th Report. <i>Managing Justice: Reforming the Federal Civil Justice System</i> (Canberra, 1999).
2000			
2001	Redmond-Roper	Hong Kong	Steering Committee on the Review of Legal Education and Training in Hong Kong. <i>Legal Education and Training in Hong Kong: A Preliminary Review: Report of the Consultants</i> .
	TFR	England	The Law Society Training Framework Review ¹⁵
2002	(TFR) PLT Review	New Zealand	C Finlayson et al, <i>Report of the External Review Group Appointed by the Council of Legal Education to Conduct a Review of the Professional Legal Studies Course</i> (NZCLE, 2002)
2003	(TFR)		
2004	(TFR)		
2005	(TFR)		Law Society publishes the TFR’s ‘Day One’ outcomes statement
2006	(TFR) LSS Review		Law Society of Scotland’s (LSS) Review of Professional Legal Education ¹⁶
2007	(LSS Review)	USA USA	W. Sullivan et al, <i>Educating Lawyers: Preparation for the Profession of Law</i> (Carnegie Foundation, 2007) R. Stuckey et al, <i>Best Practices for Legal Education: A Vision and a Road Map</i> (Clinical Legal Education Association, 2007)
	Carnegie Stuckey		

¹⁴ It should also be noted that certain key reports fall outside of this timeframe: The 1987 *Gold Report*, was instrumental in reducing professional control over the academic curriculum in New Zealand, and institutionalising the Professional Legal Training Course: see M. Wilson and A.T.H. Smith, ‘Fifty Years of Legal Education in New Zealand: 1963-2013: Where to from Here?’ (2013) 25 *New Zealand Universities Law Review* 801, 815. Likewise the 1987 *Pearce Report* in Australia remains the last substantial, systemic, review in that jurisdiction – see D. Barker, *A History of Australian Legal Education* (Federation Press, 2017), 208-17.

¹⁵ The TFR comprised a range of consultation papers, consultants’ and working group reports, reviewing aspects of the training framework, rather than a single report. The online public record of the TFR process was largely lost after the regulatory functions of the Law Society were transferred to the Solicitors Regulation Authority. Reasonably detailed secondary accounts of the TFR process are recorded in Boon & Webb, above; also J. Webb & A. Fancourt, ‘The Law Society’s Training Framework Review: On the Straight and Narrow or Long and Winding Road?’ (2004) 38 *Law Teacher* 293. For a critical evaluation of the impact of the TFR on later reforms, see J. Hodgson, ‘From Gavotte to Techno – But the Dance Goes On’ in N. Duncan et al, *Perspectives on Legal Education: Contemporary Responses to the Lord Upjohn Lectures* (Routledge, 2016).

¹⁶ Rather like the TFR, there is only a limited extant document base. For discussion, see now: P. Maharg, ‘“Associated life”: Democratic Professionalism and the Moral Imagination’, in Z. Bankowski and M. del Mar (eds), *The Moral Imagination and the Legal Life. Beyond Text in Legal Education*, (Ashgate, 2013), and P. Maharg, ‘The Gordian Knot: Regulatory Relationship and Legal Education’ (2017) 14 *Asian Journal of Legal Education* 79.

	Rajah	Singapore	Committee to Develop the Singapore Legal Sector, <i>Final Report</i> (September 2007)
2008	Wood I	England	Bar Standards Board, <i>Review of the Bar Vocational Course: Report of the Working Group</i> . (Bar Standards Board, 2008) www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_anne_xes_as_on_website.pdf
2009			
2010	Wood II	England	Bar Standards Board, <i>Review of Pupillage. Report of the Working Group</i> . (Bar Standards Board, 2010) www.barstandardsboard.org.uk/media/1383787/pupillage_report.pdf
2011	Tipping	New Zealand	A. Tipping, <i>Review of the Professional Legal Studies Course by the Rt Hon Sir Andrew Tipping: Report to the New Zealand Council of Legal Education</i> (NZCLE, 2011)
2012			
2013	LETR	England	J. Webb et al, <i>Setting Standards: The future of legal services education and training regulation in England and Wales</i> (LETR, 2013) www.letr.org.uk
	4 th CSLP	Singapore	Report of the 4th Committee on the Supply of Lawyers (Ministry of Justice, 2013)
2014	Productivity Commission	Australia	Productivity Commission, <i>Access to Justice Arrangements</i> (Productivity Commission, 2014) ¹⁷
	ABA Task Force	USA	ABA Legal Education Task Force, <i>Report and Recommendations: American Bar Association Task Force on the Future of Legal Education</i> (ABA, 2014) www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf
2015	LACC Consultation	Australia	Law Admissions Consultative Committee, <i>Review of Academic Requirements for Admission to the Legal Profession</i> (LACC, 2015) https://www.lawcouncil.asn.au/resources/law-admissions-consultative-committee/review-of-academic-requirements
2013-17 ¹⁸	SRA – Training for Tomorrow	England	Solicitors Regulation Authority, <i>Policy Statement: Training for Tomorrow</i> (16 October 2013) www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page BMG Research, <i>Development of a Competence Statement for Solicitors</i> (August 2014) www.sra.org.uk/sra/policy/training-for-tomorrow/resources.page Solicitors Regulation Authority, <i>A New Route to Qualification: The Solicitors Qualifying Examination</i> (25 April 2017) www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#download
	BSB – Future Bar Training	England	Bar Standards Board, <i>The Professional Statement</i> (n.d.) www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/professional-statement/

¹⁷ As the title suggests, the Australian Productivity Commission Report was not exclusively about education and training arrangements, but considered legal education specifically in the context of access to justice reform. In Chapter 7.2, the report called specifically for a fundamental review of the Australian system, including the overall balance between the three stages of education and training; the scope of the knowledge requirements for the academic stage, and arrangements for regulatory oversight.

¹⁸ These refer to only some of the key policy and research documents produced by the English regulators in progressing their work in the wake of the LETR. A full set of consultation and other documents can be found on the SRA website (www.sra.org.uk/sra/policy/training-for-tomorrow.page). Information on the BSB programme of work can be found at www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/. Closed BSB consultations and responses are accessible via www.barstandardsboard.org.uk/about-bar-standards-board/consultations/closed-consultations/

- *Development of a better and broader understanding of preparation for practice*; since the early 1980s it has increasingly been recognised that developing professional competence required more than just additive knowledge of ‘vocational’ subjects. New approaches to vocational training, and growing interest more broadly in ethics and professional values,¹⁹ skills-based,²⁰ experiential learning,²¹ and, specifically, clinical models of legal education²² has spread across most common law jurisdictions. By the early 1990s the need for a balanced curriculum of knowledge, skills, and professional values was the new orthodoxy, and one that was quickly reflected in the language and recommendations of the various major reviews.²³
- *Need to respond to the diversification and segmentation of legal work*: changes to the nature of legal work have become an increasingly important context, and in some cases rationale, for these review processes. A key debate in England, reflected in the TFR and LETR discussions, has been the amount of flexibility providers should have to tailor vocational training to the needs of certain segments of the market, or whether a strict ‘one size fits all’ regime should be maintained.²⁴ Some liberalisation has been permitted since the late 1990s, enabling providers and large law firms to construct a more bespoke version of the vocational Legal Practice Course. The Solicitors’ Regulation Authority’s approach in the wake of LETR has been to move towards permitting far greater flexibility in terms of qualification pathways, whilst

¹⁹ Professional Responsibility became the only required course in American Bar Association-accredited law schools following the Watergate scandal in 1976; for other jurisdictions, see W.B. Cotter, *Professional Responsibility Instruction in Canada: A Coordinated Curriculum for Legal Education* (Conceptcom, 1992); W.B. Cotter and C. Roper, *Report on a Project on Education and Training in Legal Ethics and Professional Responsibility for the Council of Legal Education and the New Zealand Law Society* (NZCLE, 1996); ACLEC1 (notably paras 1.19-1.20 and 2.4), Redmond-Roper, ch.14; K. Economides and J. Rogers, *Preparatory Ethics Training for Future Solicitors*, (Law Society of England and Wales, 2009).

²⁰ See, eg, N. Gold, ‘Are Skills Really Frills?’ (1993) 11 *Journal of Professional Legal Education* 1. N. Gold, K. Mackie and W. Twining (eds), *Learning Lawyers Skills* (Butterworths, 1988); A. Boon, ‘History is Past Politics: A Critique of the Legal Skills Movement in England and Wales’, (1998) 25 *Journal of Law & Society* 151. Note also the American Bar Association, *Lawyer Competency ...* (the Cramton Report) which was an important precursor to much of this activity.

²¹ See, eg, references to the importance of active and experiential learning methods in both ACLEC1 (paras 4.20-4.21) and Redmond-Roper, paras 7.6.3 and 7.6.6. See also D.R. Barnhizer, ‘The Purposes and Methods of American Legal Education’ (2011) 36 *Journal of the Legal Profession* 1, 39-44.

²² See, eg, J. Giddings, ‘Contemplating the Futures of Clinical Legal Education’ (2008) 17 *Griffith Law Review* 1. Note also the continuing emphasis placed on clinical methods by the Carnegie Report, chs 2-3. For analysis of the relevance and role of clinical legal education in Hong Kong, see M. Ramsden and L. Marsh, ‘Using Clinical Legal Education to Address an Unmet Legal Need: A Hong Kong Perspective’ (2014) 63 *Journal of Legal Education* 447.

²³ Notably in the MacCrate Report which developed influential lists of lawyering skills and values, but also in ACLEC I, Redmond-Roper, and the Carnegie Report.

²⁴ This was also echoed in the Australian Law Reform Commission’s 1999 Report, which called on admitting authorities to “render practical legal training requirements sufficiently flexible to permit a diversity of approaches and delivery modes”.

aiming for consistency through common outcomes and assessment.²⁵ Regulation in Australia is also relatively liberal in that it permits the vocational stage to be satisfied by either a PLT course or supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the admitting authority.²⁶ This is used by some of the larger, particularly regional and national firms to deliver their own in-house training package. The move to greater flexibility is by no means universal, however. In other jurisdictions, such as Singapore or the USA, there is a continuing focus on standardisation through (eg) provision of a common course and training provider (in Singapore), or via highly standardised assessment (USA).

- *Growing demand for more ‘practice-ready’ graduates and trainees, particularly in the context of cost pressures from both private clients and legal aid funders.* Changes to the market for legal services in most common law jurisdictions are likely to have significant, though somewhat unpredictable long term effects on both the market for and nature of legal training, and this has been recognised increasingly by both the more recent review documents, and professional literature. There is growing recognition of the need for new skills and competencies,²⁷ including transferable professional skills and capabilities, such as commercial understanding, project management skills, language competencies, and the ability to code, or otherwise work with new practice technologies, and paradoxical though it may sound, an even greater emphasis on client communication skills, as the ‘human interface’ becomes the market differentiator for more personalised legal services.
- *Doubts about quality and consistency of education and training provision:* debate about standards, comparability of awards, and the extent to which courses prepare students for employment seem relatively widespread. These should not be ignored; but neither should we disregard the fact that the reality is quite hard to pin down. Quality itself is an elusive and difficult concept, and there is still a lack of transparent and credible quality indicators for the higher education sector.²⁸ The problems of standardisation and consistency are a particular focal point for this review, in the wake of debates about the need for a ‘common entrance examination’ to the profession. We explore this in depth in Section 6, but introduce the issue, from the perspective of existing reviews, below.
- *Increased student numbers: gatekeeping, progression and quality assurance:* legal education and training has conventionally performed a significant gatekeeping function on behalf of the profession. As higher education has become far more marketised, professional and university interests in number control have diverged, with larger numbers of graduates wanting to pursue professional opportunities. This of itself has raised important questions about what

²⁵ Discussed further below. There is in educational design an inherent tension between consistency (of process or, more especially, outcome) and flexibility in design and delivery. Neither is an end in itself but both are, educationally-speaking, instrumental goods.

²⁶ See, eg, Sch 2 of the Legal Profession Uniform Admission Rules 2015 in force in New South Wales and Victoria.

²⁷ See generally B. Murray and A. Fortinberry, *Leading the Future: The Human Science of Law Firm Strategy and Leadership* (Ark Group, 2016), pp.157-65, on hiring for the future law firm.

²⁸ See, eg, B. Probert, *The Quality of Australia’s Higher Education System: How it Might be Defined, Improved and Assured* (Australian Government Office for Learning and Teaching, 2015).

barriers to access are appropriate, and where they should be located. Moreover, as university admission (in some jurisdictions)²⁹ has become less selective, this has added to the questions that have (rightly or wrongly) been raised about the consistency and quality of graduate standards.

In the following sub-sections we consider how these various issues have been addressed in the review and reform processes considered. We start, however, with a broader point about the changing regulatory context itself.

3.2 Thinking about Regulation

Legal education reviews have always operated in a context of regulation, but they have not always been self-consciously regulatory *processes*. There has long been recognition that there is a public interest dimension to the organisation and delivery of legal education,³⁰ as well as potentially sometimes conflicting private (consumer vs professional) interests. However, many earlier reviews assumed a broad alignment of public and private interests, and trusted that the profession would act as the guardian of both.³¹ Today we live in a more sceptical world. The need for regulation and more explicitly regulatory framing of problems has come to the fore, in the context of both increasingly large and complex legal education systems,³² and a growing market discourse of consumer protection, competency standards, and quality management/assurance. Both the universities and professional bodies are more closely regulated spaces than they were thirty, or even fifteen years ago: this is particularly apparent in Australia, the UK and (to a lesser extent) New Zealand, where there has been a marked increase in external control or at least oversight of professional regulation.³³

²⁹ This has historically been less of an issue in many civil law jurisdictions, where university entry has been less selective, but relatively high failure/discontinuance rates have been culturally and economically more acceptable than in the Anglo-American tradition.

³⁰ Eg, the remit of the 1988 Marre Report in England was to “identify those areas where changes in the present education of the legal profession, and in the structure and practices of the profession, might be in the public interest”; ACLEC I specifically framed its work in terms of contributing to the maintenance of both the rule of law, and the international competitiveness of the English legal profession (p.3).

³¹ The 1979 *Royal Commission on Legal Services* (the Benson Commission) in England has often been cited as a significant example. Despite its ‘public interest’ remit, the Marre Report, dominated numerically by members of the profession, also became an essentially defensive exercise: see R.L. Abel, “The Professional as Political: English Lawyers from the 1989 Green Papers Through the Access to Justice Act 1999” in W.L.F. Felstiner (ed), *Reorganisation and Resistance: Legal Professions Confront a Changing World* (Hart, 2005) 7; J. Webb, ‘A Tale of Two Cities’, in Duncan et al (eds), above, n.15, 36.

³² Eg, in commenting on the UK (which is of course significant as a feeder jurisdiction to the Hong Kong PCLL), the 2013 *LETR Report* (para 2.11) noted:

...there are over 600 QLD [Qualifying Law Degree] courses available across the UK and the Republic of Ireland. These include joint honours degrees; sandwich degrees; part-time degrees; degrees which incorporate parts of the qualification regime of other jurisdictions, such as the Anglo-French double *maîtrise* and degrees which incorporate the Legal Practice Course (LPC), the Bar Professional Training Course (BPTC) or CILEx and paralegal qualifications.

³³ England and Australia are thus described as at the forefront of a new ‘consumerist-competitive’ model of legal services regulation, distinct from the more traditional profession-centric approach in the US (or, we would add, Hong Kong): see N. Semple, R.G. Pearce and R. Newman Knake, ‘A Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Divergent Regulatory Regimes in Australia, England/Wales, and North America’ (2013) 16 *Legal Ethics* 258.

The *LETR Report* in particular is distinctive in taking regulation seriously.³⁴ It points to the need for a more adequately complex understanding of the role of regulation itself in maintaining and enhancing a legal education and training system. In a competitive education and training market, training regulation is not just about setting standards and quality assurance. Regulation itself will have market effects and consequences. For example:

- If regulation is over-inclusive, it can add significantly to the costs of training and may be anti-competitive in effect.
- Where training costs are high, this will also likely have negative consequences on access to justice, as the costs of training are either passed on to consumers, or parts of the private client sector decline as they find they cannot compete with the corporate sector in attracting new talent.³⁵
- If regulation is under-inclusive and poorly enforced, it may undermine professional competence claims.

Moreover, operating within the context of the Legal Services Act regulatory objectives, LETR had to be particularly sensitive to the continuing risks to regulation posed by competing stakeholder (and sponsor) interests. Thus, for example, in a competitive context, training providers' might seek to co-opt or subvert reform debates to strategies for establishing or maintaining their own market position or competitive advantage. Equally, professional stakeholders might have their own private agendas (eg, to control numbers and supply to the profession, or to use training and entry regulation to restrict competition³⁶), rather than seek to operate purely in the public interest. These risks needed to be considered in offering and evaluating proposals for reform, and in thinking about future regulatory processes and structures.

Looking to the future, the LETR also recognised that, by drawing on work in regulatory theory, different forms of regulation (hierarchical rules, competition, community norms and design principles and practices) might be deployed (i) to make education and training standards *the* primary tool for assuring professional competence from 'cradle to grave', and (ii) to make the education and training system itself more coordinated, reflexive and self-renewing.³⁷ Interestingly these approaches were seen not just as useful in their own right, but as a way of reducing reliance on 'one-shot' high-stakes external review processes, like the LETR itself. So far, however, little of this broader vision seems to have translated into regulatory practice in England and Wales.

We return to a number of these regulatory considerations in the course of this report, chiefly in sections 6, 7 and 8. We now turn to the key themes emerging from this review of the literature, focussing on: the issue of quality and moves towards competencies, outcomes and regulatory standards as a way of maintaining quality and consistency in the system; debates about the structure

³⁴ LETR Literature Review, chs 2, 3 and LETR Report, ch.6. See also J. Webb, 'Regulating Lawyers in a Liberalized Legal Services Market: The Role of Legal Education and Training', (2013) 24 *Stanford Law and Policy Review* 533, and Maharg, 'The Gordian Knot' above, n.16.

³⁵ G. Hadfield, 'The Price of Law: How the Market for Lawyers Distorts the Justice System', (2000) 98 *Michigan Law Review* 953-1006.

³⁶ Cp M.S. Larson, *The Rise of Professionalism: Monopolies of Competence and Sheltered Markets*, Revised edn. (Routledge, 2012).

³⁷ See LETR Literature Review (ch. 3) Legal Education and Conduct of Business Requirements, paras. 39-52; LETR Report, paras 6.158-6.160.

of education and training systems; the necessary ‘content’ of education and training, and developments in pedagogy and assessment.

3.3 Quality: Consistency and Standardisation

As noted above, there has been a growing debate about quality and standards across higher education internationally. Issues of standardisation and quality *assurance*³⁸ have been drivers of a number of the review processes considered here, including ACLEC I and II, the Stuckey project and the LETR. This is not surprising given the professional focus of most of these reviews, and the centrality of quality assessment to the regulatory function.

Increasing levels of consistency and standardisation in a system is not straightforward. There are both structural challenges, and difficulties inherent in the process of course and assessment design itself. Structural challenges may include:

- difficulties of achieving consistency at scale, as numbers of students and institutions increase
- the creation, by education policy, of perverse systemic incentives, eg, the extent to which increased competition and marketisation of higher education may encourage strategies like ‘spoonfeeding’ students, and grade inflation, and/or reduce collaboration in standard setting across ‘competitor’ institutions.
- Consistency and coordination problems actually created by failures to reduce the stratification or fragmentation of regulation and quality assurance functions in most common law systems.³⁹

Design challenges include:

- the inherent “fuzziness and complexity” of assessment judgments;
- tensions between flexibility and innovation, on the one hand, and the need for consistency and reliability on the other, manifested, eg, in the extent to which variation is permitted in a system:
 - in the range of assessment tools;
 - in the range of outcomes assessed;
 - in the ways in which different assessment regulations determine classification

Existing reviews have come up with relatively few (consistent) answers to these problems. The Law Society of Scotland PEAT1 redesign, the Stuckey project and LETR Report all placed considerable emphasis on the use of various process tools. The use of outcomes and written standards (discussed below), the development of more and better ‘best practice’ guidance in respect of teaching and

³⁸ The point here being to distinguish projects or reviews that have consciously focussed on assuring quality as a sustainable system process, from those reviews that have sought primarily to make a one-off quality judgment about the legal education and training system.

³⁹ In the English context, see, eg, the discussion in Webb, ‘Tale of Two Cities’, above, pp.31-33, 39-40 (noting the collective failure of the academy and the profession to work together to resolve coordination and integration problems identified persistently by the 1936 Atkin Committee, the 1971 Ormrod Committee, ACLEC and LETR). Cp also the Redmond-Roper Report’s recommendations for a Legal Qualifying Council (sections 16.9-16.10).

assessment methods, assessor meetings and training, and statistical tools to validate assessments are all recommended approaches to a greater or lesser degree.

In contrast, other systems have maintained or increased emphasis on centralised assessment as the primary guarantor of standards. This is the approach in Singapore (as noted), and has long been the US model, though there are equally long-standing debates about the negative impact of the Bar Examination on law school curriculum development, and on professional diversity. The point has also been made that the restricted (written) formats of the US Bar Examination do insufficient to assess the range of skills required of the modern practitioner.⁴⁰ This may be addressed with more sophisticated, but, likely, more expensive and more administratively complex assessment design. Thus, stage 2 of the (English) Solicitors Qualifying Examination, proposed as part of the ‘Training for Tomorrow’ reforms, anticipates using a range of simulated practice assessments, somewhat akin to the simulated clinical examinations used in medical training.⁴¹ At this stage, however, we do not know what the cost of these proposed new assessments will be. The English system may benefit from some economies of scale in setting and administering such assessments. For smaller jurisdictions, particularly, the trade-off between quality and cost-effectiveness may be more acute.

3.4 The Search for Competence

One of the most profound shifts affecting both curriculum design and (latterly) regulation, has been the move to reconceptualise professional education through the lens of ‘competence’. Elements of a competency-based approach are developed and supported in the ACLEC 1, TFR and LETR reviews in England, the Law Society of Scotland reforms, and in Stuckey and the 2014 Task Force in the US. The Redmond-Roper Report also recognised the need for benchmarks and standards, but offered little discussion of the form they should take.⁴² As we shall see in later discussions, the Hong Kong system is now having to address the consequences of that somewhat laissez-faire approach.

In this part of our report we diverge into a consideration of educational theory and design principles. This is because there is no single model of competence-based education, and, for that, matter no single conception of competence. Whether to adopt a competence framework, and, if so, what type of framework are thus important policy questions for both regulatory and educational practice.

The term competence can convey quite different things. The LETR, for example, identified at least four senses in which the word may be used:⁴³

- A meets a minimum standard of (historic) ability – this may simply mean that s/he has completed the formal requirements of a qualification system
- A meets a continuing standard of performance, measured against an occupational or socially expected norm – ie, the idea that “professionals should be able to do that which they profess they can do”
- A is on the mid-point on a scale between novice and expert

⁴⁰ Stuckey, pp.12-13. The Singapore Bar Examination similarly does not formally assess advocacy and client communication skills.

⁴¹ See further section 6.3.2 for details

⁴² Redmond-Roper, pp. 332-3.

⁴³ Legal Education and Training Review, *Briefing Paper 1/2011: Competence*, p.1. Available online at <http://www.lettr.org.uk/briefing-and-discussion-papers/index.html>

- A's performance is not negligent or sufficiently incompetent to merit sanction or barring from practice.

Historically, the regulation of legal practice has tended to operate within the first and last meanings.⁴⁴ A person's initial competence to enter practice was thus conventionally deemed from the fact that they had achieved a certain level of education, and passed specific courses. There was no specific assessment of whether they could actually do the job. Once qualified, one's competence was similarly largely assumed to continue, unless one did something sufficiently incompetent to attract legal or disciplinary sanction.

More modern notions of professional competence, however, reflect a rather different understanding of and approach to competency. Following Lester, we can, first, draw a distinction between two types of professional competency regulation. (i) There are those standards that are concerned with a practitioner's actual *performance* in practice, which are usually part of the profession's code of conduct and/or the court's supervisory jurisdiction (so closer to meaning four, above). The standard of competence in this context is largely tacit, and generally applied after the event where there is an assertion of unsatisfactory conduct. (ii) Increasingly, law firms and regulators also adopt explicit standards that set a threshold of *ability* which must be met as a benchmark for initial education and/or continuing professional development.⁴⁵ This report is of course concerned with this latter type of standard. Competence in this educational sense does not focus exclusively on either underlying knowledge, or real-world professional performance. It operates as an *ex ante* functional standard which seeks to train students, trainees, or practitioners to the level of what they should be able to do. This brings us closest to the second or third meanings identified by the LETR.

Competence-based training, in this modern functional sense, has its origins in developments in occupational and workplace training. Starting in the US in the 1970s,⁴⁶ the approach expanded into the UK and Australia through the 1980s and has, since the 1990s, become an increasingly globalised norm. What has been the rationale behind the move to competence? We suggest there are three main claims that have been made for competence-based education and training.

First, competence-based education provides a broader-based assessment of ability. It emerged primarily as a response to the narrowness of traditional, knowledge-centred, educational models. It reflected also a growing acceptance that skills and other attributes could, to a significant extent, be 'taught' in the classroom. This essential point of difference has become sufficiently accepted to appear self-evident: 'knowing' something by itself is not enough; functional competence requires the appropriate deployment of a combination of knowledge application and other abilities. If professional systems of training are to be indicators of functional competence, they must therefore specify, teach and assess the whole package. Specification is the crucial first step. As the Stuckey *Best Practices* Project concludes: "when objectives are not made explicit, the result is almost certainly a preoccupation with specific knowledge."⁴⁷

Secondly competency standards reduce the consistency problem. In theory, if performance of an activity can be broken down into clearly described, readily observable components, then (so long as the outcomes are being achieved) it should matter less who is teaching, or assessing whom, when or

⁴⁴ J. Cooper, 'What is Legal Competence?' (1991) 54 *Modern Law Review* 112

⁴⁵ On law firm competency statements, see, eg, LETR Literature Review, ch.5, and N.W. Hamilton, 'Law Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism', (2013) 11 *University of St Thomas Law Journal* 6.

⁴⁶ See H.R. Cort and J.L. Sammons, 'The Search for Good Lawyering: A Concept and Model of Lawyering Competencies' (1980) 29 *Cleveland State Law Review* 397.

⁴⁷ Stuckey, above, p.43.

where. However, while a well-constructed competency specification does offer a good starting point for consistent performance and assessment, it has not provided the strong solution to consistency problems that early proponents hoped. This is not so much the fault of competence models themselves, but a tendency (of regulators and others) to underestimate the relative and inherent subjectivity of any individualised assessment of performance. As Professor Alison Wolf has observed:

[A]ny assessment process is complex, incremental, and, above all, judgmental. It has to be because the actual performance which one observes - directly, or in the form of artefacts - is intrinsically variable: One person's playing of a piano piece, one person's operations plan, is by definition not exactly the same as another's, and cannot be fitted mechanistically to either a written list of criteria or to an exemplar.⁴⁸

Thirdly, the focus on competences, and the use of outcomes in particular, moves regulatory attention somewhat away from the need to control learning inputs and processes. This has been seen as a good thing by numerous reviews. It simplifies the regulatory/quality assurance process. By creating a standard set of outcomes for all providers, a system can also maximise flexibility in learning design, and increase student choice of pathways, while still providing some assurance of consistency of outcome. A competence-based approach does not necessarily override the specification of other kinds of standards. As we see in section 3.5, outcome statements are often supplemented by written standards that prescribe, or provide guidance on, other input or process measures (ie setting content and/or teaching method expectations). However, it must be recognised that the more extensive the specification of learning processes, and resource requirements (IT, library resources, staffing) the more likely the system becomes locked into a particular kind of training model.

This capacity of competence-based approaches to balance consistency and flexibility has been key to their support in the UK, notably in the TFR and LETR. The degree of specification is a critical policy variable that has major practical effect. Current, contrasting, developments in England and the USA illustrate the point. In England, there has been widespread concern that the Solicitors Regulation Authority's latest outcome specification is over-inclusive and will in fact unduly constrain providers, particularly at the academic stage.⁴⁹ By contrast, the ABA Task Force's approach, by requiring law schools to each create their *own* statement of outcomes, without any standard benchmark, uses outcomes quite deliberately to encourage law schools to address a broader range of competences than they have heretofore, while maintaining flexibility, and scope for innovation. The greater risk to consistency in the latter does not appear to have been a major consideration.⁵⁰

In design terms there are essentially three types of competence framework.⁵¹ Each of these have been deployed, or at least suggested, in legal education debates, though unfortunately the differences are not always well understood by reviewers or framework designers, resulting in a number of accidentally hybrid and sometimes inefficient schemes.

- *The 'internal' or 'attributes-based' model:* this approach focusses on the individual competencies as personal traits, skills and attributes that tend to change over time. This

⁴⁸ A. Wolf, 'Competence Based Assessment' in J. Raven and J. Stephenson (eds), *Competence in the Learning Society*, (Peter Lang, 2001), p.453 at 466.

⁴⁹ See responses to [SRA Consultation][to be completed]

⁵⁰ The likely assumption here is that the external State/Multi-state Bar Examinations address any problems of inconsistency that do arise.

⁵¹ Except where otherwise cited, the following draws substantially on S. Lester, 'Professional Competence Standards and Frameworks in the United Kingdom' (2014) 39 *Assessment and Evaluation in Higher Education* 38-52.

person-centred approach to competencies has tended to dominate in North American models, though interestingly it was also the primary approach modelled in both the ACLEC 1 and LETR Reports.⁵²

- *The 'external' or 'activity-based' model:* which has dominated UK occupational frameworks, and focusses on defining specific task or role competences in terms of the activities performed. The revised competence statement produced by the Solicitors Regulation Authority following LETR draws primarily on this model.

The differences between these two approaches are not insignificant. The first model, for example, aligns closely with work within the 'Instructional Design' tradition, which was also influential on early competence-based vocational legal training.⁵³ According to Lester it lends itself well to a 'learning outcomes' approach to course design, and is generally seen as more focussed on the characteristics and personal attributes of the competent performer. This may be advantageous where there is a substantial ethical and values-based component to competency, and may also align more closely with training approaches that seek to evaluate future capability rather than just current competence.⁵⁴ Its more holistic approach to competency, however, may limit its effectiveness for professional certification purposes.⁵⁵ The 'external' approach, by contrast, by focussing on descriptions of specific activities is said to be much better for assessing actual workplace practice.

The external approach, particularly in earlier formulations has been criticised for being unduly rigid and formalistic, and for understating the importance of knowledge, which tends to be assessed only inferentially from performance. Consequently, there have been significant moves to develop a third, hybrid, type. In Australia, this has been called the 'integrated approach', which seeks to combine the essence of activity and attribute approaches,⁵⁶ while in the UK and some parts of Europe activity-based outcome statements have simply been supported by supplementary statements of required knowledge. This seems to be the approach finally taken by the SRA in its 'Training for Tomorrow' programme.⁵⁷ Another hybrid variant was developed as part of the Law Society of Scotland's reforms of the Diploma in Legal Practice. The Diploma structure was substantially revised to create a curriculum that built outward from a set of core competencies in 'professionalism', conceived of as a set of attitudinal, ethical and communicative capacities. Whereas a relatively conventional outcomes-

⁵² See Annex 4 of this report.

⁵³ A.J. Pirie, 'Objectives in Legal Education: The Case for Systematic Instructional Design' (1987) 37 *Journal of Legal Education* 576.

⁵⁴ See, eg, M. Maughan, 'A Capability Approach to the Legal Practice Course' in J. Webb and C. Maughan (eds), *Teaching Lawyers Skills* (Butterworths, 1996).

⁵⁵ M. Mulder, 'Conceptions of Professional Competence' in: S. Billett, C. Harteis, and H. Gruber (eds), *International Handbook of Research in Professional and Practice-based Learning* (Springer 2014).

⁵⁶ P. Hager, J. Gonczi, and J.A. Athanasou, 'General Issues about Assessment of Competence', (1994) 19 *Assessment and Evaluation in Higher Education* 3

⁵⁷ Though note that the approach taken by the SRA to the knowledge requirements has been widely criticised. See, eg, Hodgson, above n.15. Professor Richard Moorhead, one of the UK's leading academic commentators on the legal profession and legal education, has similarly observed: "[It] is a fool's errand: it is way too over and under-inclusive to be useful": R. Moorhead, 'My response to the SRA's proposals for an SQE' *Lawyer Watch* (blog) 28 February 2016, available online at <https://lawyerwatch.wordpress.com/2016/02/28/my-response-to-the-sras-proposals-for-an-sqe/>.

based approach was adopted for the other parts of the curriculum, the standards specification for 'professionalism' was framed as a set of 'commitments' to "a range of values, tasks, skills and traits".⁵⁸

Other issues that need to be addressed in regulating competence schemes relate to the grading and 'levels' of competence. Firstly, should competence-based schemes involve grading, beyond pass/fail? One of the advantages of a competence approach is that it straightforwardly focusses on the key question for professional regulation: is the person competent? That question obviously begs a yes/no answer.⁵⁹ From a regulatory point of view grading can be considered extraneous, and a source of unnecessary complication. This is not to say that competence statements can be in some way standard-free. A competence statement normally must comprise both task specification (the outcome required) and a statement of the expected standard of performance.⁶⁰ Without the latter, a competence statement is merely a descriptor of what someone might be able to do; there is no indication as to the quality required of the performance, which is what actually denotes competence.

From an educational perspective, the arguments may be more nuanced. Grading may be valuable, in terms of building extrinsic motivation for students, and can, potentially (as degree bands or GPAs already do), create points of difference in a competitive recruitment market. It is also sometimes asserted that 'mere' competence sets the bar too low, and that courses should be more ambitious. Whatever its educational merits, this argument it seems to us has no proper place in regulation. A regulator's primary function must be to assure *competence*. To set the benchmark above competence seems unjustifiable. It is not necessary in terms of consumer safety, and it potentially limits access to the profession, and to that extent could be deemed a restrictive practice. Whether grading above competence is desirable is a legitimate policy question; whether the baseline standard should ever be set above the competence norm (so far as we can reliably assess it) is far harder to justify.

The second issue relates to the level of competence. While basic competency can (and should) be defined as a *threshold* assessment (eg, the 'day one' standard expected of a new trainee in the office or chambers), competency in practice is of course more fluid than that suggests. Research demonstrates that experts tend to have a different understanding of knowledge-in-use than less experienced workers, and may work and (to some extent) learn in ways that differ from novices, and even from those that are competent. Some competence schemes seek to accommodate this, either by creating separate 'specialist' frameworks or pathways, or by defining levels of experience/capability. Since competency too is not a 'once and for all' quality, and can be lost as well as gained over time, assessments of *continuing* competence are being embedded in some professional training schemes (particularly in medicine). It is striking that relatively few continuing professional development (CPD) schemes in law operate on a competency basis, and none that we are aware of have seriously addressed questions of continuing re-accreditation.⁶¹ This is a point to which we return in Section 8.

⁵⁸ See Maharg, 'The Gordian Knot', above n.16, at 90, and Annex 5, following.

⁵⁹ Assuming that learning and assessment tasks are reliable in distinguishing a competent performance from one that is not (yet) competent.

⁶⁰ A. McKee and M. Eraut, 'Introduction', in McKee and Eraut (eds), *Learning Trajectories, Innovation and Identity for Professional Development* (Springer, 2012), p.3

⁶¹ For a relatively recent overview of CPD approaches within and across professions, see LETR Literature Review, ch.5, at <http://www.lettr.org.uk/wp-content/uploads/LR-chapter-5.pdf>. The LETR Report also rejected

3.5 Assuring Competence and Consistency: Outcomes, and Standards

As intimated already, the main mechanism for implementing a competence-based approach is a framework of outcome statements, usually supported by written standards. We therefore look in this sub-section at a range of practices adopted elsewhere, and issues arising therefrom.

In educational terms, outcome statements drive the transition from a content-focussed to a more competence- or capability-focussed curriculum. They may be grouped in various ways, but each set of outcomes should reflect the extent to which professional work encompasses a range of knowledge, skilled behaviours and attitudes (reflecting underlying personal and professional values). This tripartite structure is widely validated by educationalists, and was at the heart of the MacCrate, ACLEC, TFR and LETR recommendations. The Australian Law Reform Commission in 2000 similarly endorsed MacCrate, and called for the wholesale replacement of “outmoded notions of what lawyers need to know.”⁶² As recent US research has affirmed, graduates are more likely to be successful when they “come to the job with a much broader blend of legal skills, professional competencies, and characteristics that comprise the *whole lawyer*.”⁶³ We adopt the knowledge-skills-attitudes/values typology in assessing the benchmarks currently adopted in Hong Kong later in this report.

Outcome-based approaches have been embedded in both academic and vocational law courses for many years. The significant development in practice has been the attempt to standardise as part of national quality frameworks. Nationally agreed standards exist specifically for the Australian⁶⁴ and New Zealand⁶⁵ professional legal training courses, the English Legal Practice Course⁶⁶ and Scottish Foundation (degree), PEAT1 (Diploma) and PEAT2 (training contract) levels – note too that the Scottish scheme is distinctive in carrying core outcomes through into the workplace setting.⁶⁷ In all cases these frameworks have been devised by or under the auspices of the relevant professional regulatory bodies.

Equivalent, though less fully developed frameworks also exist at the academic stage, for example, in the UK Quality Assurance Agency Law Benchmark,⁶⁸ and latterly, in the ‘Threshold Learning Outcomes (TLOs) for the Australian law degree. The latter were devised as part of a larger project to align disciplines nationally with the standards and graduate attributes of the Australian Qualifications

generic continuing accreditation as a step too far for the profession at this stage; see particularly paras 5.118-5.119.

⁶² See ALRC, para 2.21.

⁶³ Institute for the Advancement of the American Legal System, ‘The Whole Lawyer and the Character Quotient’ available online at <http://iaals.du.edu/foundations/reports/whole-lawyer-and-character-quotient>. Data for that report forms part of the IAALS’s larger *Foundations for Practice* study which draws on research conducted in 37 US states, using a substantial (170+ item) online survey, distributed to an estimated 780,694 attorneys, which garnered 24,137 valid responses. The data have a high level of statistical reliability.

⁶⁴ See LACC *National Competency Standards for Entry Level Lawyers* and the *Uniform Standards for PLT Providers and Courses*

⁶⁵ See New Zealand Council of Legal Education, *Professional Legal Studies Course and Assessment Standards Regulations 2002*, available at http://www.nzcle.org.nz/Docs/Course_Assess_Stand_Regs.pdf. The prescribed outcomes are relatively high level and represent a baseline which may be expanded upon by course providers. See, eg, Institute of Professional Legal Studies, ‘Skills covered during the IPLS course’ at <https://www.ipls.org.nz/course-information/the-skills-you-learn/>.

⁶⁶ Reproduced in Annex 6

⁶⁷ See further Section 7.

⁶⁸ Quality Assurance Agency (UK), Subject Benchmark Statement: Law (2015) <http://www.qaa.ac.uk/publications/information-and-guidance/publication?PubID=2966#.WfPelluCygo>.

Framework (AQF).⁶⁹ As the name indicates the TLOs are outcome-based descriptors which represent, as minimum standards of performance, the “set of knowledge, skills and the application of the knowledge and skills a person has acquired and is able to demonstrate as a result of learning”.⁷⁰ Equivalent TLOs were published for the JD degree in March 2012, reflecting the need to define JD outcomes at a postgraduate level. These frameworks obviously require some translation and implementation to programme and particularly subject level, together with careful alignment to both teaching and assessment activities (and criteria). Differences in translation to subject level, and inadequate alignment will frequently explain some degree of inconsistency between programmes. One important function of programme monitoring can be to check that alignment is maintained.

Outcome statements are then commonly supported by other written standards. As noted these will often focus on other input (content), process (teaching and assessments methods) and resource criteria. Regulators may set detailed obligatory conditions, such as the American Bar Association Standards (which also have a very specific accreditation function),⁷¹ or operate as indicative or aspirational ‘soft law’,⁷² there is no standard approach. Each has its own risks; aspirational standards inevitably lack enforceability, but obligatory measures, especially if over-inclusive, will likely have an inflationary effect on the cost of legal education, and can bring rigidity to programmes. The overall balance between input, process and outcome measures is a matter of judgment; designers face a choice that is often summarised in terms of the tension, already described, between consistency and flexibility. Consistency, reflected in a ‘standardisation’ in course design, and of assessment particularly, increases confidence in the reliability of the outcomes produced, but excessive standardisation will tend to reduce the flexibility of training and inhibit innovation, by ‘locking-in’ teaching and learning methods, and/or modes of assessment.⁷³ Getting the balance right is particularly critical in ‘high stakes’ programmes, like the PCLL. However international experience to date does not seem to offer a clear ‘magic bullet’ solution.

3.6 Structure: The Future of the Academic/Vocational Divide

The seminal Ormrod Report in 1971 did much to embed the idea of a structural academic and vocational divide within the English common law tradition.⁷⁴ This approach has been adopted in Hong Kong, and is reflected in all of the comparator systems considered here, except the USA. Relatively few of the reviews to date have sought to disrupt that model. A number of programmes exist in both the UK and Australia which have, seemingly successfully, fused the law degree and professional legal training course, but these have tended to remain, in a system-wide sense, outliers. Reviews in England and Wales have, since ACLEC I, been sympathetic to creating a regulatory environment that permits some permutation of the stages, as well as (in the TFR, Wood II and LETR) some liberalisation of what

⁶⁹ See <http://www.aqf.edu.au/>

⁷⁰ Australian Learning and Teaching Council (2010), p.9, available online at <http://www.cald.asn.au/assets/lists/Resources/KiftetallTASStandardsStatement2010%20TLOs%20LLB.pdf>. The TLOs are organised into the following six categories: TLO 1: Knowledge; TLO 2: Ethics and professional responsibility; TLO 3: Thinking skills; TLO 4: Research skills; TLO 5: Communication and collaboration; TLO 6: Self-management.

⁷¹ Available online at http://www.americanbar.org/groups/legal_education/accreditation.html

⁷² As is the case with the Council of Australian Law Deans (CALD) *Standards for Australian Law Schools* – see <http://www.cald.asn.au/assets/lists/ALSSC%20Resources/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Amended%20to%20March%202013.pdf>.

⁷³ Though there may be counterarguments that process regulation may be used more aspirationally to encourage innovation and ‘legislate’ best practice – cp C. Roper, *Standards for Australian Law Schools: Final Report* (Council of Australian Law Deans, 2008), section 2.1, http://www.cald.asn.au/docs/Roper_Report.pdf.

⁷⁴ See discussion in Redmond-Roper, sections 2.1.1 and 2.1.2.

may count as workplace training under the training contract/pupillage, though both branches of the profession have remained relatively cautious in this regard, with the Bar possibly more so.

This structuring has created benefits and burdens. It has permitted the law degree and the vocational stage to become if anything more distinct. This of itself can be seen as a mixed blessing. Law degrees have become more varied and multi-functional; some might say more academic and closer to the research and teaching practices of the rest of the university. The vocational courses, likewise, have become more distinct and specialised. The advantages for both are self-evident, but it does also mean that the Ormrod/ACLEC I notion of a continuum of education and training has struggled to maintain traction.

Despite the apparent differences between UK and US models, the lack of a continuum has also been a recurrent theme in US legal education, criticised heavily in the MacCrate Report, and again more recently in the Carnegie Report. In the US system, however, this has been exacerbated by the continuing absence of a proper focal point for the development of more vocational skills. The Carnegie Report's solution was primarily to reframe legal education through the metaphor of three essential, and (most importantly) *integrated* 'apprenticeships'. These it describes as the 'cognitive apprenticeship', which provides students with their academic knowledge and ways of thinking; an 'apprenticeship of skills and practice' which develops the ability to do and act in the ways shared by practitioners, and an 'apprenticeship of identity and purpose', which introduces students to the values of their professional community. This criticism has latterly been taken up by a growing number of law schools, though, interestingly, the driver for change has been the market, and declining enrolments, not regulation. Many US law schools are now developing new 'practice-ready' courses on legal skills and transactional work, transforming (often) the final year of the JD far more into a preparation for the profession of law.

In England, since the LETR, there has been a marked divergence in approaches to the continuum as between the regulators for solicitors and barristers. The Solicitors Regulation Authority has signalled, by moving to outcomes-based regulation and a system of external, standardised, assessment a clear intention to liberalise,⁷⁵ if not actively disrupt, the existing system of education and training. The Bar's approach, in comparison, has been more conservative, with the BSB indicating, in March 2017, a clear preference for retaining the qualifying law degree as the normal first stage of education and training.⁷⁶

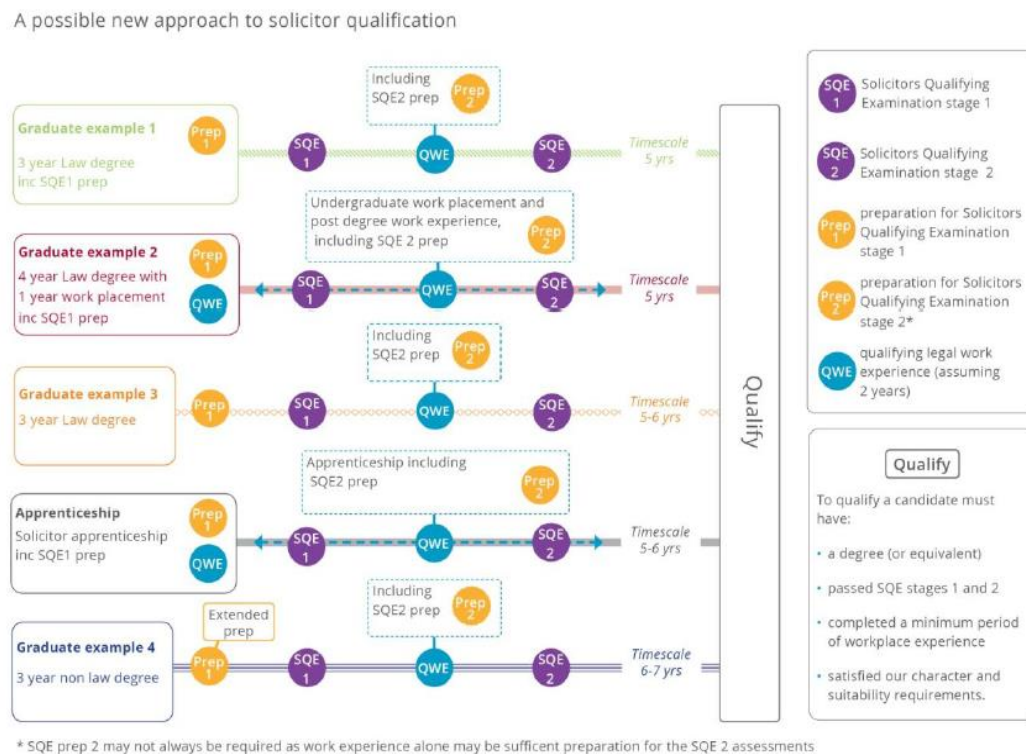
The proposed solicitors' regime anticipates a set of indicative pathways (included here as Figure 3.3). These highlight the potentially radical nature of the reform, and its capacity to blur the line between academic and vocational education and training, and to introduce new graduate and non-graduate routes.⁷⁷

⁷⁵ This was a deliberate quality, access and diversity strategy for LETR, and is reflected in the SRA's *Training for Tomorrow* policy statement – Table 3.2 above.

⁷⁶ Bar Standards Board, *BSB Policy Statement on Bar Training*, 23 March 2017, available online at https://www.barstandardsboard.org.uk/media/1825162/032317_fbt_-_policy_statement_version_for_publication.pdf

⁷⁷ The SRA has already signalled some relaxation of the process through a new "equivalent means" application, under which candidates can apply for recognition of alternative qualifications/experience as satisfying some or all of the education and training requirements. This has been presented as a 'holding position' subject to completion of the SRA's training review, to enable experienced (generally graduate) paralegals to apply for admission on the basis of demonstrably equivalent experience to those on a conventional training contract

Figure 3.3: Potential pathways to qualification as an English solicitor under the SQE⁷⁸



The extent to which a Legal Practice Course (in its current form) will continue is also uncertain, though there is some indication that the model is still favoured by the larger firms that employ the majority of trainees.

The challenge for the SRA may be whether alternative provision can be created without it being perceived by the market as inferior to more conventional approaches to qualification. That two such major jurisdictions appear to be moving substantially in the direction of a stronger integrated academic-professional curriculum, is, nonetheless, of some significance.

3.7 Rethinking 'Content'

The structure of existing regulation in common law systems demonstrates a fairly widespread view that intending lawyers need a 'common core' of substantive legal knowledge. This tends to involve an understanding of the basics of at least one's own legal system, the common law of obligations (Contract and Tort), Criminal Law, fundamentals of Public Law and Real Property (and perhaps personalty), as well as Civil and Criminal Procedure and Evidence. Market effects also construct a further informal curriculum around the formal core, narrowing the focus of the degree for many

pathway. See G. Langdon-Down, 'Legal Training: Making the Grade' *Law Society Gazette*, 10 November 2014; available online at <http://www.lawgazette.co.uk/law/legal-training-making-the-grade/5044905.fullarticle>. The other major development has been the approval of apprenticeship pathways, which, through a combination of workplace and structured classroom learning, could enable school leavers to enter the workplace as trainee paralegals, and work through to full qualification as a solicitor. The qualification framework for these higher apprenticeships would still include study at degree (or equivalent) level.

⁷⁸ [SRA 2016 Consultation]

students onto study predominantly of doctrine, and onto areas of corporate and commercial law.⁷⁹ These forces have been criticised by some in academia for marginalising critical and contextual (interdisciplinary) approaches,⁸⁰ which not only provide breadth to the curriculum, but may have specific value in developing creative and critical thinking, and strengthening the range of analytical skills developed in the law degree.

The relatively narrow focus on legal knowledge and skills more generally has also emerged as a growing professional concern in some respects. and can be seen currently in calls for students to develop (composite) knowledge and skills in business and commercial awareness, and in the need for professionals to develop what the Susskinds call “new relationships with technology” as more and more technology moves from back office to frontline functions in legal work.⁸¹ This begs not just a need for additional technical knowledge and skills amongst new lawyers, but also a more nuanced and critical appreciation of how practice works, and how technology may disrupt (in both positive and negative ways) not just the practice of law, but the operation of ‘justice’.⁸²

There is far less agreement about how much of this old and new content should be taught within an academic as opposed to vocational context, or how much the vocational stage should be expected to address areas such as evidence and procedure *de novo* or on the basis of prior academic learning, or whether some of these newer domains of knowledge should be integrated into the core, or left to more optional offerings. There is, from the pattern of reviews discussed in this section, a lack of any immediately obvious or preferred solution to that question.

A more radical perspective on content, apparent in some of the reviews,⁸³ is to suggest that it is largely the wrong question, and that we need to move away from regulation’s “solitary preoccupation with the detailed content of numerous bodies of substantive law.”⁸⁴ Content regulation has the virtue of relative simplicity, but risks redundancy in an increasingly segmented and specialised practice environment. The perils of over-prescription have also been widely rehearsed: overloading the curriculum; encouraging an undue preoccupation with ‘local’ law at the expense of international and comparative perspectives, and undermining the importance of generic and professional skills, and values. In Australia, where the “Priestley 11” provide a comparable level of prescription to Hong Kong, there has been a nearly 20-year debate regarding their reduction. This was mooted again by the Law Admissions Consultative Council in their 2015 proposal for a ‘limited review’ of the academic requirements, though the majority of respondents to that consultation took the view that the issue

⁷⁹ Johnstone and Vignaendra, 467; C. Jones, ‘Legal Education in Hong Kong: Producing the Producers’ in Steele & Taylor (eds), above, at 125; also M. Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2013).

⁸⁰ See, eg, Thornton, id; A. Sanders, ‘Poor Thinking, Poor Outcome? The Future of the Law Degree after the Legal Education and Training Review and the Case for Socio-Legalism’ in H. Sommerlad et al (eds), *The Futures of Legal Education and the Legal Profession* (Hart, 2015). The practitioner survey data obtained by the LETR highlighted this effect: it was notable that, out of a long list of knowledge areas, jurisprudence and socio-legal approaches were at the bottom: see Table 2.4.

⁸¹ R. Susskind and D. Susskind, *The Future of the Professions* (Oxford UP, 2015) pp.109-13.

⁸² Eg, B. Simpson, ‘Algorithms or Advocacy: Does the Legal Profession have a Future in a Digital World?’ (2016) 25 *Information & Communications Technology Law* 50; D.A. Remus, ‘The Uncertain Promise of Predictive Coding’ (2014) 99 *Iowa Law Review* 101

⁸³ Notably ACLEC I and the ALRC.

⁸⁴ M. Keyes and R. Johnstone, ‘Changing Legal Education: Rhetoric, Reality, and Prospects for the Future’ (2004) 26 *Sydney Law Review* 537 at 544 (citing the Australian Law Reform Commission).

needed to be addressed in the context of a more thorough-going review of the education and training system.

It must be acknowledged that it is also challenging for legal professions to question their institutional and (in a broad sense of the term) political attachment to maintaining a ‘one size fits all’ training regime. The benefits and risks of a more specialised and activity-based approach was broached by the LETR Report,⁸⁵ but it was not progressed either by LETR, or by the English regulatory authorities subsequently. In short, none of the reviews considered in this report has seriously advanced a case for moving away from a system that starts from and largely maintains a ‘lowest common denominator’ standard of generalist practice, despite the sunk costs and potential risks to competence that *may* be involved in maintaining such an approach. Medicine provides an obvious comparator, as a system that relies much more on activity-based authorisation and training. No one suggests training in general practice is sufficient preparation to be a brain surgeon. The analogous critical question that has not been addressed in law (or at least not outside the realm of specialist advocacy) is at what point and to what extent specialisation needs to be built into regulation, rather than treated as an optional extra.

A further challenge lies in balancing substantive content with demands for a growing range of legal skills and attributes. The recent *Foundations* study in the US found that only 23% of practitioners believed new lawyers had sufficient skills to practice.⁸⁶ However, the study also recognised that the notion of a practice-ready lawyer is also somewhat unrealistic. The crucial question therefore remains how much skills development can and should be provided in academic and vocational training, and how much should be developed on a more ‘just in time’ basis in practice.

Unfortunately, there is, again, limited agreement across jurisdictions as to the range of skills and attributes required of an entry-level lawyer, beyond legal research, ‘good’ written and oral communication skills (including some drafting) and (increasingly) teamwork skills. The extent of training in and placement of technical legal skills such as negotiation and advocacy is particularly variable, and as more and more of the larger firms limit trainee access to clients, even vocational training in a staple skill such as client interviewing arguably starts to lose its ‘just in time’ rationale.

At the same time, new work capabilities and attributes are also beginning to make their claim on professional attention. The need for commercial awareness is increasingly highlighted in the trade press and was strongly emphasised in the LETR Report, and in the New Zealand Tipping Report.⁸⁷ Skills of data analysis are also being recognised, particularly in the related sense of an ability to understand complex financial information, and in terms of the growing recognition of the value to law firms of ‘big

⁸⁵ An activity-based approach to authorisation has been advanced in the English context by the Legal Services Consumer Panel: see, eg, Legal Futures, ‘Goodbye solicitors, hello “regulated legal advisors”: consumer panel seeks radical training reform’ *Legal Futures*, 21 May 2012, <https://www.legalfutures.co.uk/latest-news/consumer-panel-seeks-radical-reform-of-training-to-open-up-legal-practice-to-all>. The term describes a potentially radical move to a risk-based rather than (or on top of any) broad title-based system of regulation whereby individuals are authorised specifically to undertake certain higher risk activities or areas of practice. The approach was not adopted by the LETR, not least because of the absence of robust evidence in respect of the risk areas that should be regulated.

⁸⁶ See above, n.63.

⁸⁷ LETR Report, paras 2.74-2.77 – note that the discussion in LETR also balanced this with references to an equivalent need for ‘social awareness’, especially in legal aid and social welfare fields; Tipping Report, para. 6.1. See also the Hong Kong Law Society’s first submission to our consultation.

data' and legal analytics.⁸⁸ Legal project management is another composite knowledge and skill set that is being highlighted as important to new and existing ways of working in practice. As Professor Stephen Mayson has observed: “[t]here is little point in training lawyers to give accurate – and even useful – advice... if they are unable to scope, price and deliver their services in an effective and efficient way... This is a matter of professional and organisational culture as well as education and training.”⁸⁹ Emotional and developmental competencies are also being emphasised in a number of projects, reports and professional competence schemas, including the need for emotional intelligence,⁹⁰ personal resilience,⁹¹ and self-management skills.⁹² The need to address these matters is discussed further in sections 4 and 5 of this report.

3.8 Learning and Teaching Approaches, and Assessment

Most system-level reviews of legal education and training have said relatively little substantively about teaching and assessment. Is this lack of focus on learning problematic, as some commentators assert?⁹³ There are evident risks, in that reviews may do insufficient thereby to encourage creativity and innovation in learning, teaching and assessment, and may also fail to foresee consequences for delivery or assessment of their policy recommendations. On the other hand, there are also risks of over-specification and interference that may lock teaching and assessment into an outmoded or unhelpful framework. On balance, the better view, particularly where review processes are high level, and do not have the opportunity or resource to engage directly and in depth with teaching and learning processes, is that the function of an education and training review is more properly geared to facilitating rather than prescribing educational approaches and methods. In the context of this review, there are however some possible caveats to that approach.

First, the nature and extent of teaching in ethics, values and ‘professionalism’ has been a matter of recurrent debate and an area where pedagogy cannot perhaps so readily be ignored. Ethics, in the narrow sense of the ‘law on lawyering’, is prescribed as part of the academic stage in most common law jurisdictions except England. But there are also acknowledged limitations in treating ethics as just another doctrinal subject, and many academic approaches to the subject seek to avoid a legalistic approach.⁹⁴ This, however, does not make it an easy or necessarily popular subject, as much of the literature attests. Ethics in this sense raises also a larger question, regarding the responsibility of legal education to develop not just an understanding of but a curriculum-wide *commitment* to a range of values and attributes that are central to law, and to the ideals of professionalism. This may go well beyond what we traditionally conceive of as ethics and professionalism. For example, the Canadian

⁸⁸ Susskind & Susskind, above n.64, at 115-6. Note also the emergence of courses in data analytics and ‘computational legal studies’ at a number of US law schools.

⁸⁹ S. Mayson, ‘Of Competence, Confidence and the Last Chance Saloon’ in Duncan et al, above n.15, 85 at 91.

⁹⁰ Tipping Report para. 6.1

⁹¹ LETR Report, para. 4.84; see also the growing body of lawyer/law student wellbeing research in Australia, the US and the UK... [refs to follow].

⁹² See, eg, the Australian TLOs for the law degree/JD.

⁹³ W. W. S.Chow and F. Tiba, ‘Legal Education Reviews: Too Many ‘What’s’, Too Few ‘How’s’, (2013) *European Journal of Law and Technology*, Vol. 4, No. 1, available online at...

⁹⁴ See, eg, K. Economides (ed) *Ethical Challenges to Legal Education and Conduct* (Hart, 1998);

Arthurs Report⁹⁵ took a broad view, constructing a notion of “humane professionalism”, which it positioned at the centre of the law school mission, and characterised as an approach that

“avoid[s] narrow vocationalism ... [and intensifies] present efforts to transmit liberal and humane intellectual values, encourage[s] interdisciplinary study, and ensure[s] some exposure to legal theory and legal research...”⁹⁶

This notion was also substantially embraced by ACLEC I, though later reviews have, possibly, returned to a more instrumental view. A challenge, particularly for profession-sponsored reviews may well be the difficulty of stepping beyond the assumptions of a seemingly pre-ordained but often largely tacit conception of professionalism, whether that takes a narrow or broad, elite or commercialised form. Some comparison, however, can also be made with the relatively extended emphasis on ‘professionalism’ in the US MacCrate Report, and the Scottish PEAT1 and PEAT2 reforms, which might also be seen as an alternative consideration to the more commercialised professionalism often associated with modern practice environments.⁹⁷

This fluidity around the scope and placement of ethics and professionalism raises important questions about what is taught, and how. For example, law schools are experimenting with integrated and pervasive approaches to professional ethics,⁹⁸ or developing specifically value-based teaching approaches,⁹⁹ and there is considerable and longstanding debate about the need for clinical or other experiential learning approaches, to co-produce what Carnegie describes as the skills and practice, and identity and values apprenticeships. There has however been little discussion of whether and how a broader ‘humane professionalism’ might be embedded in the curriculum, since this is one area where pedagogy is relatively critical, it may benefit from some further discussion and reflection.

Secondly, circumstances may require us to take a more directive approach to assessment, at least in the context of the PCLL and the proposals for common assessment being advanced by the Law Society. Assessment is a matter that has been too frequently neglected in curriculum discussion, and is an area where law schools have tended to be quite conventional in approach.¹⁰⁰ This may reflect explicit regulation, or merely teachers’ preferences, or their perceptions as to professional and regulatory norms. One of the impacts, however, of a move to more explicitly competence-based systems is that assessment, not curriculum, nor teaching, becomes the primary means of assuring competence. Thus, in England, we can see a significant shift from ACLEC I, which focused primarily on standards enacted through teaching and learning methods, to the TFR’s advocacy of outcomes, and on assessment as the means by which attainment of outcomes would be monitored and classified, to the SQE, which centres the regulation of ‘day one’ competence almost entirely on the assessment process. The benefits and

⁹⁵ Social Sciences and Humanities Research Council of Canada, *Law and Learning / Le droit et le savoir: Report of the Consultative Group on Research and Education in Law* (SSHRC, 1983) [The ‘Arthurs Report’].

⁹⁶ Id at 155.

⁹⁷ J. Evetts, ‘Professionalism, Enterprise and the Market: Complementary or Contradictory?’ in Sommerlad et al (eds), above n.13, 23ff. Cp also Jones, above n.79, (discussing the commodification and ‘use-value’ of legal education in Hong Kong).

⁹⁸ D.L. Rhode, *Professional Responsibility: Ethics by the Pervasive Method*, 2nd edition, (Aspen, 1998)

⁹⁹ V. Holmes, ‘Giving Voice to Values: Enhancing Students’ Capacity to Cope with Ethical Challenges in Legal Practice’ (2015) 18 *Legal Ethics* 115; also J. Rogers, ‘Bringing Your-Self to Law: interim results of a study of UNSW Law’s new ethics course’, Optimising Student Success Forum, UNSW Sydney, 7 November 2014.

¹⁰⁰ K. Hinett and A. Bone, ‘Diversifying Assessment and Developing Judgement in Legal Education’ in R. Burridge et al (eds), *Effective Learning and Teaching in Law* (Kogan Page, 2002).

risks of these approaches have obvious currency in the context of the Common Entrance Examination debate in Hong Kong, and are, therefore, a matter to which we return in Section 6.

3.9 The Expansion of Legal Education and the need for Number Control

Higher education has long been valued as a hybrid good, generating not just private benefits, but substantial public benefits as well. A well-educated population is better positioned to engage in active political and cultural citizenship, and tends to enjoy improved social, economic and even health outcomes. The expansion of higher education, in that sense, is of material societal benefit in a way that is more than the sum of the private (employment) benefits it delivers. The value of legal education, particularly academic legal education, must be considered in this light, not just as preparation for the profession.

Nonetheless, it must be acknowledged that the continuing expansion of legal education has created systemic pressures in many jurisdictions, not just Hong Kong, and not just those reviewed here. Most of the systems identified – the UK, the US, Australia and New Zealand have in fact eschewed serious attempts at supply control: they take the position that the market must simply work itself out. Singapore has sought to take a more managed approach, though this also highlights the difficulty of supply control, including the extent to which managed change tends, in practice, to follow rather than anticipate market trends. Singapore’s restrictive approach to admission standards and recognition of overseas degrees initially left the market experiencing a shortfall of well-educated graduates. As a consequence, following the recommendations in the 2006 Report of the Third Committee on the Supply of Lawyers, intake was raised at the National University of Singapore, and a second law school approved at Singapore Management University, with an initial cohort of 90 students.¹⁰¹ By 2010, however, a more complex picture was emerging, and dearth was becoming excess, with numbers of overseas graduates, in particular, increasing significantly.¹⁰² There was thus a consequent mismatch between the numbers of law graduates and available training contracts that had simply not been anticipated in 2006.¹⁰³

Globalisation, innovation, and the increased segmentation of the legal services market add to the complexity of attempting supply control. The training market in most developed jurisdictions is dominated by the larger law firms. In the largest of these, practising ‘global law’, work and training is to some degree de-territorialised: an individual lawyer’s or trainee’s home title and jurisdiction therefore matter far less. The fact that clients are seemingly becoming less willing to pay for the work of trainees, as well as applying more general pressures on law firms to reduce costs, adds a further variable to the mix.¹⁰⁴ Domestic trainees are thus competing globally with trainees from other jurisdictions, and (to some extent) with paralegals and outsourcers who may be anywhere in the

¹⁰¹ Ministry of Law, Singapore, ‘Government accepts key recommendations of the Third Committee on the Supply of Lawyers’ <https://www.mlaw.gov.sg/news/press-releases/government-accepts-key-recommendations-of-the-third-committee-on-the-supply-of-lawyers-and-.html>

¹⁰² The number of graduates of ‘recognised’ UK institutions alone doubled between 2010 and 2014 from 510 to 1,142: ‘Singapore is facing a glut of lawyers’ *Straits Times*, 17 August 2014, available online at <http://www.straitstimes.com/singapore/singapore-is-facing-a-glut-of-lawyers-shanmugam>

¹⁰³ A further challenge of Singapore’s more centralised approach has been the pressure of increasing student numbers on the single professional law school: interview of Professor Walter Woon (Dean, Singapore Institute of Legal Education) conducted by Professor Julian Webb, Singapore, November 2016.

¹⁰⁴ What Richard Susskind calls the ‘more for less’ challenge: see now R. Susskind and D. Susskind, above n.64, 108-9.

world. Whether these technologies¹⁰⁵ are also having a more general impact on the number of conventional training positions available is hard to quantify at present, and some such losses might in any event be off-set by new legal and hybrid roles, in both increasingly technology-enhanced ‘oldlaw’ and ‘BigLaw’ firms, in expanding ‘in-house’ legal departments, as well as a variety of new technology-led businesses.¹⁰⁶

The extent to which training generally (and particularly the most lucrative training positions) are found in the corporate sphere also of itself distorts the market, and disguises more subtle systemic problems. Singapore again offers a useful example, though the trends identified are by no means unique to that jurisdiction. The Rajah Committee and Fourth Committee reports observed both a high rate of attrition among junior lawyers, particularly in private practice, and a potential shortage of lawyers/trainees prepared to enter what the Rajah Report called ‘community’ as opposed to corporate law.¹⁰⁷ Despite the apparent oversupply of graduates, this led the Fourth Committee to propose a third Singaporean law school,¹⁰⁸ which opened at SIM University in 2016, specifically focussed on attracting students, particularly mature and non-traditional entrants, into ‘community’ (particularly criminal and family law) legal practice.¹⁰⁹

This analysis leads us to the view that ‘how many lawyers is too many?’¹¹⁰ is probably an unanswerable question. It may even be another wrong question. It may not be that we are training too many lawyers, but that we are (to some extent) training them for the wrong things. The 2014 ABA Taskforce appears to have come to a similar conclusion, calling (*inter alia*) on the ABA to focus on developing limited licensure or regulated ‘paralegal’ schemes, rather than continue to produce large numbers of ‘full-service’ lawyers, as that might do more to reduce the growing access to justice gap.¹¹¹ We return to this issue in both section 5 and section 8 of this report.

3.10 Conclusions

From economic and cultural perspectives legal education and training represents a considerable success story. University law schools have grown, diversified and developed. They have become much more autonomous, multi-functional, institutions. Today they operate increasingly within their own norms of appropriate teaching, research and scholarship, rather than as a ‘service industry’ for the profession. These strengths, it follows, also create some potential tension between the educational objectives and ambitions of the legal profession and the academy. For some this may beg questions

¹⁰⁵ ‘Technologies’ here is used in the broad sense applied by economists. It therefore includes not just new information and communications technology, but also innovation in organisational and business forms (eg multidisciplinary practices or alternative business structures [ABS]) and processes (eg outsourcing) which are also transforming the way in which lawyers deliver legal services: see F.H. Stephen, *Lawyers, Markets and Regulation* (Edward Elgar, 2013), p.128.

¹⁰⁶ R. Susskind, *Tomorrow’s Lawyers* (Oxford UP, 2013), 121-31; see also discussion in the LETR Report, ch. 3.

¹⁰⁷ Rajah Report, para 2.23.

¹⁰⁸ [Fourth Committee ref]

¹⁰⁹ Further consideration is being given to the professional and public legal education measures necessary to enhance access to justice by a Civil Justice Review Committee that was established in May 2016, but has yet to report: Ministry of Law, Singapore, ‘Committee to Recommend Reforms to Enhance Access to Justice’, press release, 18 May 2016, available online at <https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/committee-to-recommend-reforms-to-enhance-access-to-justice.html>.

¹¹⁰ See S. Chesterman, ‘Too many lawyers? Or too few?’ *The Straits Times*, 1 November 2014, <http://www.straitstimes.com/opinion/too-many-lawyers-or-too-few>.

¹¹¹ Final report, pp.24-5 and Recommendations B6, C3 and D1.

about whether the law school has moved to far from one of its historically central functions: the work of professional formation.

Internationally, vocational training too has changed and diversified. It has become more specialised, more distinct from academic legal education in its focus and methods, and has generally worked hard to stay relevant and attuned to the needs of a modern, rapidly changing, practice environment, though whether it has been successful in that endeavour is far more moot.¹¹²

In addition to these positives, systems also suffer a degree of inertial drag. Most reviews owe more to the past than the future, both because of the paucity of quality evidence about future training needs, and because many professionals and academics views are often insufficiently engaged in thinking about the processes of education and training, and intrinsically conservative about what can and should be taught.¹¹³ The extent to which regulation acts as an enabler or a brake on change is a relevant and emergent theme of a number of the more recent reviews. While there are also some other clear trends, in terms, notably, of the need for a balanced focus on knowledge, skills and (professional and personal) attributes in the curriculum, and supporting the move from content-based to competence-based regulation, there are also numerous issues where policy and practice remain relatively *ad hoc*. There are also structural issues that have not, on the whole, been examined or questioned rigorously by reports: these include: the role of public legal education; the complex impacts of legal education and training on access to justice; what the substantial number of students who do not enter the legal profession take forward from legal study into *their* future careers; how initial academic and professional learning fuse with the neglected subject of continuing professional development. It is notable that most of these larger questions fall outside our terms of reference.

This review aims to reflect on what we know and what we think works, in relation to the key themes highlighted in this section. It considers, from the evidence, what is likely to be acceptable (or not) to key stakeholders, and what decisions and mechanisms are required to move Hong Kong legal education and training forward. It recognises that this kind of review process of itself can be a crude and sometimes inadequate mechanism for addressing some of the larger questions. This is, therefore, also an opportunity to consider what future structures and processes will best enable future reflection on and renewal of the legal education and training system in Hong Kong

¹¹² Susskind, above n.106, 132-46.

¹¹³ Cp. Chow and Fiba, above n.92. Note also the conservatism that is readily apparent from the extensive LETR data.

4. THE ACADEMIC STAGE OF LEGAL EDUCATION¹

Introduction

For those who intend to practise law in Hong Kong, there are a number of pathways. The standard path is through the completion of a degree, either the Bachelor of Laws (LL.B.) or the Juris Doctor (JD) in one of the three universities in Hong Kong offering those degrees. In each case, the degree is made up from a combination of legally mandated courses, together with student-chosen courses from a menu of “electives”.

Students may also enter the Hong Kong system at a later point, having completed a common law degree in another jurisdiction, or via the University of London’s International Programme (known to many still as the University of London “External’ degree),² or as a non-law graduate, via the Hong Kong Common Professional Examination course. Some diversity of pathways is not unusual in modern, increasingly globalized education and training systems, though Hong Kong, like the UK itself permits a relatively high number of such alternatives. This does account for a significant part of the difficulties in both standardising admissions, and managing variations in students’ knowledge and experience at the PCLL stage. A number of observations in respect of the admission and preparation of overseas graduates are therefore noted in section 5. In this section we focus primarily on the ‘home’ degree student experience.

4.1 Developments since Redmond Roper

A large number of the changes that were advocated by Redmond Roper have been implemented, including in particular the offering of the Juris Doctor (JD) degree to those who have already graduated with a degree in a non-law subject, and the change from a three year to a four year LL.B. degree from the 2004-5 academic year. The latter recommendation was motivated in part by a desire to introduce non-law subjects into the curriculum,³ and the individual universities have implemented that suggestion in ways that fit best with their own structures. The four year model has since become the university-wide norm in Hong Kong, following on from the introduction of the shorter period of secondary schooling implemented as part of the “3+3+4” model. We observe that there have been some concerns that the new system somehow dilutes or devalues the four year LLB, but we have identified no hard evidence in support of this view. The law schools are confident in their ability to maintain the law curriculum, and any move to revert to a longer law degree would seem unwarranted both on cost and access grounds, and by comparison with the norms operating in other common law systems.

¹ Time constraints during the visit of the consultants to Hong Kong were such that it was not possible to include site visits to the universities to discuss the programmes. Written details of programmes and courses were requested as part of our initial consultation, and individual meetings were held with each of the Deans and a selection of their colleagues responsible for particular facets of the programme of each university.

² Having also completed examinations in the ‘top-up’ subjects identified in section 4.2.1.

³ Redmond Roper Report, pp.133-6.

Other significant changes that have occurred have been the incorporation of a greater element of local Hong Kong material into the syllabus, and in the compulsory core courses in particular. It is evident from the syllabuses of the universities that the “Top-up” subjects referred to below⁴ are now included as part of the main curriculum when Constitutional Law includes the public law of Hong Kong, and Land Law can include the Hong Kong dimensions of that subject. The Hong Kong Legal System has been added as a separate topic in each case, since it is now required as a pre-requisite to admission to the PCLL course.

4.2 The Bachelor of Laws (LL.B., and LL.B. Honours)

4.2.1 The “core” courses

A significant part of the syllabus of the degrees offered by the three universities is dictated by the “core” subjects that students must have successfully studied before they are entitled to enrol for the Postgraduate Certificate of Laws, which is the passport to practice in both branches of the legal profession.⁵ The prescribed core subjects are:

Contract	Civil Procedure
Tort	Criminal Procedure
Constitutional Law	Evidence
Criminal Law	Business Associations
Land Law	Commercial Law
Equity	

In addition, in 2008, the Standing Committee on Legal Education and Training issued a “statement”⁶ to the effect that “Students who have not passed all of the following three subjects at a university LL.B/LLB double degree /JD course in Hong Kong must also demonstrate competence in the following “Top-up Subjects”:

- Hong Kong Constitutional Law
- Hong Kong Legal System
- Hong Kong Land Law”.

⁴ Section 4.2.1, below.

⁵ This is the subject of consideration in section 4.2.5, and again separately in Section 5 below.

⁶ The matter does not appear to have been recorded in the Annual Report of the Standing Committee on Legal Education and Training for the relevant period.

It will be seen, then, that a very large element of the LL.B. degree (and even more of the JD, discussed below) is taken up with what are in effect compulsory subjects for those intending to enter the practice of Law. This is, in terms of international comparisons, on the high side of the number of subjects that must be taken. It is similar to Australia and its so-called “Priestley eleven”, but notably more than either England and Wales, which currently stipulates seven,⁷ or New Zealand, which also requires seven subjects, including Legal Ethics for those who intend to enter the profession.⁸

4.2.2 Non-prescribed compulsory courses

In Hong Kong, however, because of the complex constitutional arrangements that obtain in the jurisdiction, and the bilingual nature of the legal system, some additional courses are fairly much essential to enable aspirant lawyers to be properly prepared for practice. These subjects, although not formally compulsory so far as the Law Society and Bar requirements are concerned, are made compulsory by the individual universities as part of their degree courses. The individual universities vary slightly in what they require in this category, but they include (eg):

Legal Research and Writing

Law and Society

Chinese Law and Chinese Language

It is difficult to take issue with what seem to be, at first blush, an eminently sensible path to take. However, it should be noted that, for every compulsory course that the students are required to undertake, there is less scope for choice available to the students to pursue their own courses of study and subsequent practice.

4.2.3 The impact of content prescription

The risks of over-prescription of compulsory courses have already been rehearsed in section 3.7: an overloading the curriculum with knowledge that may have a relatively short shelf-life, or inbuilt redundancy as a result of growing professional specialisation; a preoccupation with legal localisms at the expense of international, comparative and (perhaps) global perspectives, and a preoccupation with knowledge at the expense of transferable skills. One other very obvious upshot of the constraints outlined above is that, although each of the Faculties appears to offer a considerable number of

⁷ The *Joint Announcement on Qualifying Law Degrees* agreed between the universities and the profession specifies Contract, Criminal Law, EU Law, Equity & Trusts, Land Law, Public Law and Torts as ‘Foundations’ which must occupy not less than two-thirds of a three year qualifying degree in law. In practice this rather understates the actual prescribed knowledge and skills, partly because of the gradual accretion of new content that has an impact across the curriculum (notably in Human Rights and substantive rather than institutional EU law) but also because of a growing, and explicit, focus on graduate skills. It is possible that the number of Foundations could ultimately go down when Brexit materialises, and European Law, which was inserted after the United Kingdom joined the European Common Market in 1973, could be removed from the list, however the continuing impact of EU law means this is unlikely to be a short term outcome. Moreover, note that the move to the new Solicitors Qualifying Examination also potentially blurs distinctions between academic and vocational content in the future education and training of English solicitors (see further section 3.6, above).

⁸ The other subjects are Legal System, Contracts, Torts, Criminal Law, Public Law, and Property Law – New Zealand Council of Legal Education, Professional Examination in Law Regulations 2008, Schedule 1.

elective subjects,⁹ individual students are not likely to be able to include many of the subjects that are ostensibly on offer in their third and fourth years of study.

Recent debates in other jurisdictions have, on the whole, indicated a reluctance to increase subject prescription, and, indeed, some willingness to question the existing scope of content regulation. The (Australian) Law Admissions Consultative Committee, has thus questioned the value of retaining predominantly ‘vocational’ subjects such as procedure and ethics within the Priestley requirements, when those are also a part of professional legal training.¹⁰ This question may be even more apposite in the Hong Kong context, where there is a longer period of vocational training. The English LETR Report also found no strong agreement amongst stakeholders for further extending the existing Foundations.¹¹

Strikingly, there appears to be little dissensus, based on our consultation data, from the existing core curriculum in Hong Kong, notwithstanding its breadth. We therefore make little in the way of recommendations in this regard, subject to the three observations which follow, the first is minor and the others rather more substantial.

First, we take the view that course titles matter, and recommend that Civil Procedure should be ‘modernised’ and renamed Dispute Resolution to give proper recognition to the growing significance of alternative dispute resolution mechanisms, including the rise of mediation, moves to online dispute resolution mechanisms, and growing interest in, and research into, virtual courts. We would encourage degree providers to review their curricula (if necessary) to ensure that their courses adequately reflect this broader emphasis

Secondly, if there is willingness to reduce the existing compulsory core, we suggest that the inclusion of Conveyancing within Land Law is a significant outlier relative to most comparable jurisdictions. This subject could properly be relocated to the vocational stage, particularly given stated concerns as to continuing overlap (in various areas) between the academic and vocational stages.¹²

Thirdly, we note the continuing international debate about the role and value of Legal Ethics within the academic curriculum. Amongst common law jurisdictions, Hong Kong is now something of an exception in not requiring some element of Legal Ethics within the degree/JD.¹³ The USA, Canada, Australia and New Zealand all require the subject (either as a conventional ‘core’ subject, or as a required course – in the New Zealand case – for those seeking entry to the profession). There has, moreover, been considerable debate in the UK regarding undergraduate Legal Ethics, in the context

⁹ One Faculty identifies 206 “disciplinary” electives as being available in the 2017-18 academic year, but it does not indicate which of them are actually being offered in the year. It also lists 31 electives in the area of Chinese Law, which it does qualify by saying that “Not all specialisations are necessarily on offer in every year”.

¹⁰ Law Admissions Consultative Committee, ‘Review of the Academic Requirements for Admission to the Legal Profession’ (2015), pp.5-7, at https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/01.12.14_-_Review_of_Academic_Requirements_for_Admission.pdf

¹¹ LETR Report, paras 2.52-2.58.

¹² See, eg, the Hong Kong Law Society’s first response to our consultation.

¹³ Some elements of legal ethics are included in some electives and even in compulsory courses, including (eg) a JD core course, in Hong Kong, but this is not at present a regulatory requirement.

of the LETR.¹⁴ Despite some groundswell for its inclusion, particularly from the Law Society,¹⁵ the LETR Report rejected moves to introduce Ethics as a further Foundation subject, consistent with its desire to constrain the core. It did however recommend (Recommendation 7) that all degrees should address ethics at a more systemic level, in terms of the relationship between law and morality, legal values, and the values of the legal profession (as distinct from a course in professional conduct as such).

We note also the detailed and thoughtful discussion of the place of legal values in the Hong Kong system offered by the Redmond Roper Report.¹⁶ Its observations on the importance of principles of public service, and commitments to the rule of law, justice and fairness are as relevant to the curriculum today as they were in 2001. We would also add to these some reference to commitments to professional autonomy and independence of action, which are of, perhaps, growing importance in the context of an increasingly client-centred and commercialised practice environment. The development of such values-based teaching remains, however, somewhat patchy at the academic stage. Following the ACLEC, Redmond-Roper and Carnegie Reports (to name but a few discussed in section 3) we take the view that some development and inculcation of legal ethics and professional values is desirable from the earliest stages of legal education. Conceptually, this sits with the widespread view that any higher education worth the name involves education about (and, perhaps necessarily, in) values.¹⁷ More pragmatically, we also consider that the academic stage can provide a more critical and less client-and rule-centric context to begin such conversations than vocational training.

We do not make any substantive recommendations in respect of electives. We note that several respondents to the consultation highlighted areas of perceived unmet need or growing relevance. These included consumer law, competition law, human rights, immigration law, intellectual property, and the impact of new and emerging technologies on law and legal practice. Many of these are being addressed, and we recognise that, with limited electives, and student tendencies to focus on subjects perceived to enhance their opportunities for a career in the large commercial law firms, there are genuine difficulties in attracting student numbers to many such options.

4.2.4 Part time and full time study

Part-time study is not, so far as we can assess, a substantial feature of the law school experience. Each of the Universities indicate in their literature that the undergraduate degree requires not less than four years of full time study for the LL.B. degree. The Hong Kong University regulations (for example) contemplate the possibility that a person may without permission extend their studies up to a maximum period of six academic years, but can progress further after that only with the permission of the Faculty Board. This is not inconsistent with international comparisons, but it is relatively

¹⁴ Above, n.11, paras 2.71-2.73

¹⁵ K. Economides and J. Rogers, *Preparatory Ethics Training for Future Solicitors*, (Law Society of England and Wales, 2009); A. Boon, *Legal Ethics at the Initial Stage: A Model Curriculum* (Law Society of England and Wales, 2010).

¹⁶ Chapter 14, notably pp.300-1.

¹⁷ See, eg, L.R. Churchill, 'The Teaching of Ethics and Moral Values in Teaching: Some Contemporary Confusions' (1982) 53 *Journal of Higher Education* 296; F. Cownie, "Alternative Values in Legal Education" (2003) 6 *Legal Ethics* 159.

constrained by comparison with more practice in more liberalised jurisdictions which have sought to encourage part-time study as a means of widening access.

4.2.5 Admissions

The admission requirements at all three universities are high both by comparison with the other university subjects offered by the individual universities, and by comparison with international standards, suggesting that those selected are of a high calibre. Particular attention is paid to the applicant's use of English ability, and the required level is generally higher in the Law Faculties than is set for the other parts of the Universities. The numbers of applications for the LL.B. tend to be relatively small by international standards, but these are now augmented by entrants with non-Law degrees through the JD route. It is also noted that there are considerable numbers, proportionately, who though Hong Kong citizens have obtained their degrees outside Hong Kong, primarily in the United Kingdom, before returning to Hong Kong to undertake the PCLL vocational programme.

4.2.6 International experience as part of the Hong Kong degree – exchange and other arrangements

Each of the three Law Schools is very internationally oriented, in terms particularly of their efforts to expose students to the educational environments of other jurisdictions. Sometime this is achieved through joint degrees offered by United Kingdom universities and a Hong Kong one, such as the arrangement between HKU and University College London (one of the most highly rated Law Faculties in the United Kingdom). As noted in Section 2, the other Faculties also have in place a number of similar exchange arrangements, as was suggested by Redmond Roper. For example, the City University offers a Global Legal Education and Awareness Project, which provides the opportunity for students to engage in a month-long intensive course of study at University College Oxford, and at Monash University.

4.2.7 A highly responsive environment

The Annual Reports prepared by the Universities and received by SCLET present a picture of a system whose participants are acutely conscious of their role in meeting "challenges of legal practice and the needs of Hong Kong society"¹⁸ and highly responsive to those changing needs. During our consultation, and in response to our Questionnaire, we received suggestions from responders as to other aspects of legal education that the universities might consider, if they have not already done so, not forgetting such non-commercial areas as housing law, family law, social security and so forth.

The law schools have made strides in moving to more active learning (including, for example CityU's work on embedding discovery-based learning within the curriculum), and in supporting pro bono and clinical initiatives,¹⁹ as recommended by Redmond-Roper. Cost and other barriers to clinical education remain a constraint, however. There has been over the period a strong recognition of the importance that all students should have familiarity with the Chinese language, and with legal

¹⁸ The Consultants were asked as part of their terms of reference to have regard to this question.

¹⁹ M. Ramsden and L. Marsh, "Using Clinical Education to Innovate the Law Curriculum and Address and Unmet Legal Need: A Hong Kong Perspective" (2014) 63 *Journal of Legal Education* 1.

language in particular, though a number of respondents have suggested that more delivery of Chinese language courses and materials in the legal setting would be advantageous.

4.2.8 Overlaps with the PCLL

We received comments from some respondents to the effect that the PCLL still contained too high a quotient of substantive legal knowledge, as opposed to the transactional/vocational dimensions that should predominate at this stage of legal training. It is suggested that this borderline should be kept under constant review by the universities, so that unnecessary duplication is avoided, recognising that an element of substantive law is necessarily the context in which legal practice occurs and is necessarily therefore considered in tandem. As noted in section 4.2.3, we consider it would be appropriate to consider moving Conveyancing from the academic stage to the vocational stage, but there may also be scope to identify content that should move in the other direction.

4.3 The Juris Doctor degree

4.3.1 Overview of degree

The Juris Doctor degree was introduced into the Hong Kong legal mix when it was first offered by the City University in 2004. Its avowed purpose was to allow those whose first university degree was not in Law a reasonably fast-track route towards qualification as a lawyer. It was from the outset offered as a two year course, but it is noticeable that, although it is still technically possible to complete the degree within that space of time, the City University itself now says that it “would encourage students to complete the programme in 3 years”. The literature of Hong Kong University says that “the JD programme can usually be finished in two years”, whereas the Chinese University of Hong Kong indicates that the duration of the course is 24 months, but there is a facility for part-time study, where the period is extended to 42 months. It may also be noted that at the CUHK, weekend and evening courses are an integral part of the teaching programme. The literature also points out that the classes for the JD course are populated by graduate students only rather than as sometimes happens elsewhere, undergraduates are included within the same classes.

Since those taking the degree are almost invariably doing so with the intention of qualifying to practise Law in Hong Kong, the course is tightly curtailed by the number of compulsory courses that must be taken and passed in order to be considered for admission to the PCLL course.²⁰ On top of that, the candidates are required to take an additional 6 “free electives”.

We are aware that the question has been raised as to whether a two year period is sufficient to enable students to understand the basics of legal study sufficiently to progress to the PCLL. The JD in this regard is not unique. The Hong Kong CPE course provides a similar opportunity, and graduates of CPE-equivalent courses in England are permitted to enter vocational training after less than a year of legal education.²¹ JD graduates may lack some of the breadth of the undergraduate counterparts, but we

²⁰ Described as above at 4.2.2 for the LLB degree.

²¹ In England it was historically not the practice for those who went on to the practice of Law to have studied the subject at a university, and even now, there are those (such as Lord Sumption SCJ) who argue that this is the better course. See <http://www.law.cam.ac.uk/press/news/2013/03/those-who-wish-to-practise-law-should-not-study-law-at-university/2190>.

see no clear evidence for questioning their readiness for PCLL. Such students are already graduates. They do not share the orientation difficulties of those customarily beginning a university course shortly after leaving the more sheltered environment of secondary schooling. Furthermore, they have the advantage of having already engaged in the study at tertiary level of the range that Redmond Roper was keen to include within the experience of the average Law student.

4.3.2 The possible disadvantages of the JD degree in the employment context

We have received some suggestions that students taking the JD course might be at a disadvantage when it comes to employment, at least so far as the top tier law firms are concerned. Internships are commonly a mechanism in which an employment relationship is initiated. Candidates for those positions are commonly selected upon the GPA but the timing of the exercise is such that JD candidates have only one term's worth of GPA to which they can point, and it is not uncommon for them to be still coming to grips with the requirements of legal study, performing rather better in later examinations. Against this, it is understood that some firms actively prefer to select graduates from non-Law disciplines, as they are likely to be slightly older and somewhat more mature.

4.4 Joint degrees and double degrees

We were not given any materials showing the extent to which candidates take advantage of the opportunities to take the many different types of degree on offer. Statistics on such matters are not included in the Annual Reports made to the Standing Committee on Legal Education and Training each year.

4.5 Conclusions and Recommendation

Although the consultants were not able to visit the individual Law Schools in the course of their visit to Hong Kong, there are sufficient indicators available to be confident that the quality of legal education offered in all three of Hong Kong Law Schools is high by international standards. It was evident from materials such as the Annual Reports to the Standing Committee on Legal Education and Training presented by the Deans and the leadership teams of each of the Law Schools and Faculties that they have responded substantively to many of the challenges identified by the Redmond Roper Report, are innovative, and internationally oriented individually and collectively. The same lack of complacency was evident in the materials that were supplied to us specifically for our use, and in our discussions with the Deans and their leadership teams in the course of the visit.

We make the following recommendations:

Recommendation 4.1

That the Universities should each review their academic offerings annually, with a view to ensuring that students undertaking the PCLL courses are not required to learn (and be examined upon) significant amounts of substantive law in the vocational stage already studied at the academic stage. Procedures should be put in place by the universities to control curriculum drift and unnecessary duplication between the academic stage and PCLL. This might be achieved (eg) by periodic meetings between programme directors and/or cognate subject convenors of the relevant academic and PCLL subjects.

Recommendation 4.2

That consideration be given to moving Conveyancing entirely to the Vocational stage, and that Civil Procedure should be re-named Dispute Resolution and (where necessary) broadened to include proper consideration of ADR and ODR processes.

Recommendation 4.3

That the Universities should further examine the employment experiences and performance of JD graduates to ascertain whether they are disadvantaged in recruitment, as has been suggested to the consultants, and to see whether there is any scope for ameliorating that situation.

Recommendation 4.4

That principles of legal ethics and professionalism are introduced at the academic stage. We do not consider that this requires a full subject of professional legal ethics, but encourage the universities to consider how they might integrate ethics into programmes, as part of a subject or subjects, or pervasively across the core curriculum.

5. THE POSTGRADUATE CERTIFICATE IN LAWS (PCLL)

The PCLL is currently delivered by the three university law schools, at HKU, CityU and CUHK, and is recognised as the primary route to qualification by both the Law Society and the Bar Association.

In assessing the overall strengths and weaknesses of the PCLL, this section of our report is divided into six parts. In the first, we establish the framework for the discussion, by exploring the regulatory structure governing the PCLL. We then look more critically at the existing course design, its operation and its various components, focussing first on the three main topics of concern that have been raised in consultation: number control, admission policies and systems, and standards and quality assurance. We then conclude our review of the PCLL by making some observations and recommendations regarding course design and content for the future.

5.1 The Regulatory Context and Framework

Professional recognition of the PCLL is based on the legal professions' self-regulatory powers to specify conditions for admission. These powers are granted to the respective Law Society and Bar Councils by the Legal Practitioners Ordinance.¹ Once we move beyond these basics, however, the regulatory and oversight functions are broadly distributed, and (in some respects) somewhat undefined.

As discussed below, the Hong Kong system of vocational legal education is "functionally decentralised":² educational governance, and the management of standards and quality are distributed across a range of actors/stakeholders in the system. There have been attempts to increase coordination and enhance professional engagement with the PCLL. Following the recommendation of the Redmond-Roper Report, a course benchmark has been prescribed by the professional bodies, but more detailed course specifications are still left to the providers themselves. Programme approval and review is primarily a responsibility of the universities, though the professions play a substantial role in teaching, in reviewing course materials, and overseeing the examination process. SCLET receives annual reports and to that extent exercises a broad monitoring function, though this, we suggest, is in practice primarily a reporting activity rather than a substantial quality assurance and enhancement process.

Authorisation is an interesting question. At present it is a function of a mix of the individual university ordinances, and Legislative Council approval. This mechanism provides (as it did for CUHK) the basis for approving new university providers. Approval of additional or alternative providers (note in the context of our Recommendation 2.1) also requires amendment of the Legal Practitioners Ordinance, since, in s.2, the PCLL is defined expressly as a course delivered by the named providers. The powers and processes that would be involved in approving any non-university provider are not clear. Nor is it clear whether, and if so, how authorisation might be withdrawn from any existing provider.³ The absence of clear principles in this area is concerning, and there is an obvious risk that such uncertainty may lock the system into some structural inertia. The fact that the PCCL is a course offered by the

¹ The solicitors' rules take a rather circumlocutory route: completion of the PCLL is a condition precedent to entering a training contract under rule 7(a)(i) of the *Trainee Solicitors Rules*, and a training contract is, in turn, a requirement for admission under the authority of s.4(1)(a) of the *Legal Practitioners Ordinance*. Section 73(1)(d)(i) of the Ordinance expressly vests the power to make training regulations in the Council of the Law Society. For the Bar, r.4(1)(a) of the *Barristers (Qualification for Admission and Pupillage) Rules*, authorised under s.27(1) and s.72AA of the *Ordinance*, makes the PCLL a requirement for admission.

² J. Scheerens, C.A.W. Glas, and S.M. Thomas, *Educational Evaluation, Assessment, and Monitoring: A Systemic Approach* (Routledge, 2007), p.65.

³ See para 5 of the Law Society's First Submission.

universities also has some legal and regulatory relevance as the universities' autonomy and principles of academic freedom are formally protected under Art. 137 of the Basic Law. This freedom is widely defined and its protection is, understandably, an important and sometimes sensitive matter.⁴ As currently described, academic autonomy extends over teaching content, student admissions, staff recruitment and resource allocation, as well as freedom to set research objectives. This has some bearing on our discussions, both here and in the subsequent section, concerning the proposed Common Entrance Examination (CEE). Both the Bar Association and the Law Society acknowledge that 'interference' with the PCLL might raise concerns regarding the universities' academic freedom, though this argument has not, so far as we are aware, been raised by the law schools themselves. Moreover, any such arguments must, it seems to us, also be balanced against the equivalent protections of professional independence and self-regulation enshrined in Art 142 of the Basic Law, and reflected in the powers granted by ss.72AA and 73 of the Legal Practitioners Ordinance.

The relative complexity of this regulatory framework has obviously had some impact on both PCLL developments, and on the CEE debate that we consider in the next section. We return to it at relevant points in the discussion.

5.2 Student Numbers, Competition, and Access to the Profession

In Hong Kong, as in many other jurisdictions around the globe,⁵ there is debate about law student numbers and access to the profession. Law graduate numbers have increased appreciably in the wake of the launch of CUHK as the third law school in Hong Kong, the development of JD degrees and increased overseas graduate numbers. The PCLL is the primary gatekeeper of access to the profession in Hong Kong. Despite steady increases in PCLL numbers between 2008 and 2012,⁶ the course has become a significant bottleneck in the system, with consistently just over 50% of first choice applicants being admitted to the PCLL.⁷

⁴ See, eg, P. Morris, 'Academic Freedom, University Governance and the State: The Commission of Inquiry into the Hong Kong Institute of Education' (2010) 25 *Journal of Education Policy* 587; W-w. Law, 'Higher Education in Post-1997 Hong Kong: Politics, Academic Freedom, and Civic Engagement' in G.A. Postiglione and J. Jung (eds) *The Changing Academic Profession in Hong Kong* (Springer, 2017), 47-8

⁵ See Section 3.9 above.

⁶ Total admissions rose steadily in this period from 312 to 633 (full and part-time), peaking at 701 in 2014, before dropping back to 661 in 2015, when CityU did not recruit to its part-time pathway. Figures extracted from Law Society of Hong Kong, *Consultation on the feasibility of implementing a common entrance examination in Hong Kong* (December 2013), and the Universities' Joint Submission to the Panel on Administration of Justice, Annex, p.12.

⁷ See *id.* A point of clarification may be useful here, as there is an apparent discrepancy between these figures and those cited by the Law Society in its First Submission (para 19). The Society cites a total application figure in 2013-14 of 2,516, giving an admission rate of 27.9%. However, because individuals normally apply (separately) to more than one provider, first choice numbers provide a substantially more accurate assessment of the ratio of applicants to places. This is because a raw figure for 'total applications' contain a substantial amount of double-counting. For example, HKU in 2015-16 received over 1,000 applications from 717 individuals for its 340 (full-time and part-time) places. Of these, however only 630 were first preferences. That means nearly 400 applications were either second (or even third) choices, so duplicating first choices at other institutions, or internal duplicates, whereby applicants had applied for both full- and part-time pathways. The difference is significant, accounting for the discrepancy between an application to enrolment percentage of 34% (approx.) versus a first preference to enrolment rate of 53% - see *SCLET Annual Report 2015*, p.42. We note also that the Hong Kong system will be subject to additional pressure and distortions over the next two to three years as the effects of the 2016 and 2017 double cohorts work through the system.

Those who complete the PCLL are, however, in a strong position in respect of training positions. Based on (approximate) figures for 2014 and 2015, we estimate there is a likely training employment rate of between 80% and 90%.⁸ This is certainly better odds than in more aggressively marketised systems such as the UK or USA. The question has been put to us whether Hong Kong should move to a demand-led system. This is a difficult political and economic question that has broader ramifications for the profession and Hong Kong society. We have personal reservations about marketisation, having seen the impact in other jurisdictions where student decision-making often demonstrates the triumph of hope over experience (or the effects of familial expectations) rather than an exercise in rational choice. On the other hand, we acknowledge that there are few formal (market-based) justifications for imposing constraints on supply, other than on competence grounds. We believe ultimately that a social policy decision such as this should be made by the universities and the profession in concert, perhaps with input from government, not by this report. We can however highlight some practical options.

The near parity of PCLL graduates to training places is not, in our view, healthy for the system as a whole. We do not know whether some training positions are remaining unfilled, but, given the gravitational pull of the larger firms and (to some extent) chambers, it does suggest that smaller training providers may in fact be fishing from quite a restricted pool of (albeit still good academic quality) applicants.⁹ An increase in PCLL numbers would, in general terms, be better from competition and access perspectives.

To create a fully demand-led system would involve doubling PCLL numbers, presumably on a full-cost basis as it seems unlikely that significant additional UGC funding would be available. This would be a challenge for the law schools, both in terms of the extra plant and human resources required, but also possibly because of tensions that such an increase in fee paying students may create with existing university funding policies. This scale of increase, if desired, may be more readily achieved via the creation of a new School/Institute of Professional legal Studies, than by incremental growth within the existing system.

Additional PCLL places will not magically increase the number of jobs, so, as in the UK and the US, entry to the workplace will become the new bottleneck. Based on British and US experience, the PCLL provider(s) will no longer be blamed for an unfair admissions policy, they will be accused instead of greed in taking fees from PCLL students for whom there are no jobs. The profession too, currently somewhat sheltered from criticism by the PCLL, will be expected to find solutions to the new bottleneck. If this pressure creates some greater flexibility and innovation in training, and possibly greater competition amongst lawyers in the marketplace, that may not be a bad thing. However, it must also be remembered that it is not the function of a legal training (or legal services) regulator to create jobs for lawyers.

⁸ This is based on approximately 600-650 PCLL graduands pursuing in the region of 550 training places. As neither the Law Society nor Bar Association websites publish annual training contract/pupillage numbers, this figure is extrapolated from the total number of registered training contracts (between 900-1,000 in recent years – note that because training contracts are for two years the number of positions available annually is, of course, substantially below that figure, we estimate around 50%). Pupillages can also be estimated from Bar admission data, suggesting a figure of approximately 80 per annum.

⁹ Though Bar data also suggest that some weaker candidates, unable to obtain training contracts, are entering pupillage, but falling by the wayside because there is insufficient work available to them.

Some increase in PCLL numbers is already possible. During our enquiries, it has been suggested that each PCLL provider could, without substantial risks to quality, or physical capacity, offer up to another 40-50 places, ie 120-150 in total.¹⁰ Overall, this would represent an increase in admissions of approximately 20% (on 2015 figures), and would take the success rate of first place applicants up to over 60%. We would encourage law schools to take these steps, aside from any temporary measures necessary to deal with the short-term 'double cohort' problem, or longer-term resolution regarding our Recommendation 2.1.

One-off or piecemeal increases in conventional student numbers are unlikely to provide a long-term solution to what may well be a continuing tension between the accessibility of professional training, and the capacity of providers. In the absence of increased capacity through a unified professional law school (Recommendation 2.1), (or of an agreed need for a fourth 'full-service' law school), other options should be considered including:

- Opening up the PCLL market to a further specialist training provider
- Developing an online version (or versions) of the PCLL to extend access
- Developing an assessment pathway for experienced graduate paralegals/law clerks

Each of these options needs further detailed evaluation and costing. Creating an additional specific PCLL provider would require legislative change, and likely would require students to be privately-funded. It may be the (next) most efficient way to increase places. It could increase competition between training providers, which can be double-edged – increasing innovation, and/or encouraging a 'race to the bottom' in attracting students. Moreover, it could also add to current consistency and quality assurance concerns, and test the capacity of the professional bodies to provide examiners and monitor standards of the programme.¹¹

The second and third options could be developed within the existing structure. An online programme does not create the same level of demand on physical plant, and has cost and access advantages in enabling students to earn while they learn. The use of online learning in professional legal training is becoming increasingly commonplace, with technological solutions removing most of the barriers to teaching skills remotely. The New Zealand Professional Legal Training Course, and both the College of Law, Australia, and the Legal Workshop at the Australian National University all deliver substantially online training; this can be of high quality, but it requires substantial upfront resourcing and development.

We note that the Common Entrance Examination proposal at one point appeared to offer a variant of our third suggestion, and garnered some support amongst stakeholders and student groups for an assessment, possibly akin to the OLQE.¹² However the OLQE is not a cognate assessment. It is devised with experienced practitioners in mind and does not directly assess skills. We also question, in section 6.8, the efficacy (and comparability) of an assessment-only pathway open to all graduates who do not get a PCLL place. Failure rates would likely be high, unless a substantial secondary market in assessment preparation courses developed.

¹⁰ Interview with HKU, 16 December 2015, verbatim transcript, p.22 (Professor Hor);

¹¹ Note the comments to this effect in the Bar Association's first response (16 December 2015), para. 31.

¹² See references and discussion at section 6.8, below; note also HKU SPACE, Response to First Consultation, pp.7, 10;

We are also aware, however, that a significant proportion of students who do not get onto the PCLL still find work in the legal sector as paralegals, or law clerks, and in certain in-house and compliance functions.¹³ There are often limited career development pathways for these individuals.¹⁴ To that extent, an experience-based assessment pathway, meeting PCLL outcomes, would seem to offer both a way of expanding access to the profession, and creating opportunities for career progression for those with relevant work experience. We recommend that further work be undertaken to explore the feasibility of these options.

5.3 The Admission Criteria and Process

Given the numbers competing for PCLL places, it is not surprising that the admission process has come under a degree of scrutiny and criticism. In this section, we therefore review the admission process as it currently operates, and examine the criticisms that have been made of it.

In terms of formal criteria, PCLL applicants must normally have obtained:

- An LLB or JD degree from CityU, CUHK, or HKU, or
- Hold an equivalent academic legal qualification (LLB, JD or Common Professional Examination - CPE) from a recognised overseas institution in a common law jurisdiction,
- and supply evidence that they are competent in
 - the eleven core subjects and
 - the three Hong Kong ‘top-up’ subjects¹⁵

The admission system focusses very heavily on academic merit. Applicants must have obtained at least a high lower second class honours degree (or the equivalent grade/GPA on a JD or CPE programme), though in reality competition is such that a 2:i has become the de facto standard. Students must also demonstrate a satisfactory proficiency in English language (normally at least 7 on IELTS), and must satisfy other ‘local’ admission criteria of the preferred provider. The system of requiring applicants to rank their choice of provider institutions also operates as a de facto admissions criterion, as second or third choice applications are relatively unlikely to succeed. The admission process has been the subject of a range of criticisms. These have primarily focused on:¹⁶

- A perceived lack of transparency in the admission system
- Concerns as to the consistency of admissions criteria between PCLL providers
- The element of lottery that the requirement to rank providers brings to the system, as applicants seek to second guess the quality profile of applicants to each provider, and quite often their own final performance as well.

¹³ This was considered, *inter alia*, in the interview with Hong Kong Exchanges and Clearing Ltd (18 December 2015)(Ms Wong and Ms Lai).

¹⁴ A point emphasised by the HKU SPACE Response; also verbatim transcript of interview with CUHK (Professor Gane and Mr Morris).

¹⁵ On the core and top-up subjects, see section 4.2, above.

¹⁶ See Hong Kong Law Society, First Submission, paras 9-11; Justice Chan, Written Submission, paras 24-32;

- Potential conflict of interests for the universities in selecting between graduates of different degrees, and in choosing between their own students and those of other, particularly overseas, universities

We have no doubt that some of this criticism is a response to the level of competition and pressure for places on the PCLL; this is an extremely ‘high stakes’ admission process. A significant number of students who satisfy the formal entry threshold will not be admitted anywhere in any one year.

A significant increase in places might of itself quieten these criticisms, because the impact of admission decisions would be reduced thereby. However such a ‘solution’ does not address the underlying concerns raised, or at least not entirely. A number of possible reform measures have therefore been identified in the course of this review by ourselves, and by stakeholders. These are:

- To increase the transparency and consistency of admission criteria and processes
- To establish common admission criteria, or a common admissions board for the PCLL as a whole
- Grading the Conversion Examination
- To introduce a PCLL entrance test

We now consider each of these in turn.

5.3.1 Increase the transparency and consistency of admission criteria/processes

The law schools themselves have acknowledged that there is still more work that can be done to increase transparency and dispel ‘rumours and misconceptions’. We encourage them to do so, and note that it would undoubtedly be to the benefit of the reputation of the system as a whole if they were actively supported in this endeavour by the professional bodies.

The quality and consistency of information on PCLL webpages could be improved. Some are significantly more detailed than others, for example. There may be a case for admissions teams to be (even) more proactive in explaining the criteria and processes through open days and presentations to applicants, and to law firm recruitment managers as well. In particular we take the view that more could be done to identify and explain the operation of GPAs, and to disclose (with appropriate guidelines/caveats) the trend in average GPA required over, eg, the past five years.

We note also that there is a considerable amount of mythology around the admissions process. Some is unfounded, or based on limited evidence and a degree of conjecture. This is understandable but unhelpful, insofar as it tends to undermine the reputation of the system. Nonetheless, more could be done by providers to counter rumour. Notably:

- There is a perception that candidates who reapply in later years are at a disadvantage. We have no evidence that there is any systematic preference for first-time applicants. The more likely reality is, that, on the whole, weaker candidates simply remain weaker candidates. We were advised of cases where candidates were able to improve their performance, through a CPE or similar means, and were admitted on a later attempt. If the admission system as a whole has an impact, it is that, by focussing on initial qualifications, and taking little account of either work experience, or postgraduate (eg LLM study), it offers those reapplying only

limited opportunities to improve their chances. Some re-evaluation of ‘equivalences’ to traditional academic merit may enhance access opportunities.

- Anecdotally, unsuccessful home students question the comparability of standards of successful overseas applicants, while overseas-qualified students suspect that there is a bias against them. Logically it would be difficult for both groups to be right. The law schools maintain that both groups are assessed entirely on their merits, though, given the heterogeneity of applicants, this is a genuinely difficult task.¹⁷ We note that roughly similar proportions of home and overseas graduates have been admitted in the past.¹⁸ Our view is that the law schools are acting in good faith in the admission process, but greater transparency with regard to, eg, institutional caps on overseas numbers, and in analysing and publishing a range of admissions data (not just admissions criteria) would be useful as both a check against unintended bias, and in informing both regulators and applicants about recruitment trends.
- It is also clear that each PCLL recruits, in practice, predominantly its own graduates. The Redmond-Roper Report noted the prevalence of this trend with the ‘old’ PCLL, and the associated equity concern was one of the reasons behind their proposal for an independent PCLL provider.¹⁹ All providers state publicly on their websites (and have assured us) that this does not reflect any deliberate policy of favouring one’s own. None however have provided data analysis to back this up. Again, demonstrating success rates for different groups of applicants would provide both reassurance, and a check against unintended bias in recruitment.

5.3.2 Establish common admission criteria or a common admissions board between the three law schools in Hong Kong.

Admissions are an area that, rightly in our view, falls within the realm of academic autonomy. If no single provider is developed, care needs to be taken therefore not to impinge unduly on the universities’ proper freedom of action in this regard. However, given the crucial gatekeeper function that the PCLL provides, and the level of current uncertainty regarding the fairness of the system as a whole, we do not think the current position is sufficiently justifiable.

We are also aware that previous attempts at creating cross-institutional initiatives (such as the Joint Examinations Board between HKU and CityU in the early 90s) have not been successful or sustainable. A joint admissions board, on this basis, may be a step too far, particularly in the context of other initiatives proposed later in this section. Nonetheless, we take the view that the provider’s institutional autonomy does add somewhat to the complexities and uncertainties of the admission process as a whole. Each provider maintains its own application form, or even forms, and there are inevitable design and even limited informational differences between these. There are also some variations between institutional deadlines for applications, scholarships, and supporting documents

¹⁷ This is not a problem unique to Hong Kong (we see it, eg, in Singapore and Malaysia too), but it is nonetheless significant.

¹⁸ Panel on Administration of Justice and Legal Services, Background brief prepared by the Legislative Council Secretariat for the meeting on 27 April 2015, LC Paper No CB(4)825/14-15(07), para 38. Note however that this does not equate to parity of places, with seemingly less than 20% of places going to overseas graduates, id. Paras 40-41.

¹⁹ Redmond-Roper Report, 176-7, 327. This benefit applies with equal force to our cognate proposal in Recommendation 2.1.

(eg in 2017 application deadlines are 28 April (HKU), and 30 April (CUHK and CityU). Admission criteria do appear to be broadly consistent, though some crucial differential treatment may arise, particularly in assessing borderline applicants, and in the assessment of the ‘standing’ of overseas graduates’ degrees.²⁰

Against this, it has been suggested that a degree of diversity in admissions policy goes some way to reduce “the problem of deserving applicants ‘slipping through the cracks’ of a rigid criterion set in stone for all 3 providers.”²¹ While providers must retain a degree of discretion, we do not wholly accept that argument. Consistency ‘in the detail’, or at the very least transparency about inconsistency, matters more than this suggests, precisely because so few non-first choice applicants obtain a place. The ‘diversity’ safety net is no great safety net if institutions can easily fill their courses with applicants who qualify on the (conventional) merits.²²

We would therefore recommend that the universities, in conjunction with the profession, seek to establish more standardised admissions criteria. We would also encourage the design and use of a standardised entry form that can be submitted to all providers. Published criteria should include reference to:

- Minimum academic standard (as honours, and equivalent GPA for Hong Kong institutions)
- The actual English language proficiency standard required
- The practice of averaging across all law grades (not just those that, eg, in the UK count towards honours)
- Guidance on the ‘standing’ of overseas law schools and how it is assessed
- Indicative factors that may be taken into account in determining whether a candidate who does not meet the normal entry requirement may exceptionally be admitted

Providers may also wish to consider whether class ranking, or percentile, should also be included in the required admission criteria. In addition to these requirements, we would encourage the providers also to consider whether any other specific attributes should be identified as ‘desirable’ or ‘advantageous’. We do not take a strong position on any specific attributes, but suggest such factors might include:

- Legal work experience (defined broadly to include clinical course options, internships, or vacation placements)²³
- Evidence of proficiency in Putonghua

We accept that admission should continue to be predominantly merit-based. While it may properly be objected that high academic performance is by no means the only indicator of professional

²⁰ All providers have indicated that their assessment will be influenced not just by the application and transcript, but also by the “standing” of the applicant’s law school. There is however no published statement or even, so far as we are aware, informal agreement between providers as to ‘standing’ of individual law schools, or the criteria upon which any such judgment is based.

²¹ First Response, para 6.8.

²² We note and commend in spirit HKU’s initiative in opening-up a small percentage of places to non-traditional applicants, though ultimately a fairer approach would be to revise more generally the concept of merit so that it operates more inclusively

²³ This is increasingly commonly used, eg in the UK, though we note that there may be socio-economic or other diversity-based considerations which go against its use as a criterion.

success,²⁴ studies in other jurisdictions point to a strong correlation between prior academic performance, and performance in vocational examinations.²⁵ There is some evidence of this in the Hong Kong experience as well.²⁶ To that extent, academic merit is clearly a rational and relevant criterion for PCLL providers to adopt, though in the interests of equity, we would encourage the providers to work to develop a broader and more inclusive conception of merit.²⁷

5.3.3 Grading the Conversion Examinations

Currently, the conversion examinations are marked on a pass or fail basis. Grading the conversion examinations and then using the results as a relevant admission factor may give a more complete picture of the performance of non-Hong Kong law students, and in strengthening equivalency between home and overseas graduates. For those who do not do so well in their LLB subjects, a good performance in the Conversion Examination could, for example, also help them gain admission. This is, of course, a matter that is outside the remit of the law schools, but we recommend that it be considered by the Conversion Examination Board.

If this proposal is adopted, care will need to be taken in setting the grade boundaries. We are aware that there is a relatively high failure rate in the Examination, which likely reflects both the absence of any required preparatory course, and the fact that students may take the Examination at any stage in their legal studies. Consequently, if grades are to count, boundaries should be set on a realistic grading curve that is referenced to the existing mark distribution. Where there are multiple attempts, consideration needs to be given to whether later marks should count in full, or be capped, or averaged across sittings. The universities will also need to assess whether they will consider the number of attempts taken in their admission criteria.

5.3.4 Introduce a PCLL entrance test

This is a different proposal from the common entrance examination to the solicitors' profession, as advanced by the Law Society and discussed in Section 6 of this report. Standardised admission tests²⁸ are already used in some other jurisdictions. The best known of these is the Law School Admission Test (LSAT), which is a standardised test of reading comprehension, and analytical and logical reasoning skills. It is used by US, Canadian and some Australian JD programmes.²⁹ The Bar Professional Training Course in England has also adopted a standardised admission test, though this has been controversial, and the test that was introduced is relatively low stakes, designed to identify the weakest 10% of applicants only. On the other hand, the English Legal Services Board has published

²⁴ See....

²⁵ [refs]

²⁶ HKU, First Response, para 6.5(b)(ii)

²⁷ We note that all providers are sensitive to this need and engaging in various initiatives already, see again the HKU initiative already referenced; CityU and CUHK's also both indicate that some re-evaluation of criteria could (and should) be undertaken: CUHK First Response (p.6); CityU, First Response, p.9.

²⁸ The emphasis on standardisation is important here; any notion of developing ad hoc tests should be strongly rejected, since these are unlikely to be valid or reliable instruments. Proper (psychometric, etc) design and testing is critical to ensure that a test has validity and is appropriately standardised.

²⁹ See, eg, Law School Admission Council factsheet, 'About the Law School Admission Test (LSAT)' available at [https://www.lsac.org/docs/default-source/publications-\(lsac-resources\)/about-the-lsat.pdf](https://www.lsac.org/docs/default-source/publications-(lsac-resources)/about-the-lsat.pdf)

commissioned research sceptical of their use.³⁰ It should also be noted that these tests are never used as a substitute for other admissions information, and the LSAT specifically notes that the best predictor of first-year law school success is the individual LSAT score combined with undergraduate GPA. Given the relatively high design costs associated with such standardised assessments, the additional costs in administration and maintenance, and continuing doubts about the value that such a test may add, we are wary of recommending this approach. If other approaches, however, are not successful, then this option may need to be given further consideration.

5.4 Standards and Quality Assurance

The final major issue with regard to the PCLL has been the question of (assessment) standards and quality. This has come to the fore in the debate about consistency of outcomes and standards across PCLL providers, which has been the primary justification for a CEE (see Section 6.5.1, following). However, the CEE approach does not absolve us from discussing quality here. While the CEE has a certain appeal, as it seems a simple and efficient check on quality, the reality is not quite so straightforward. Some degree of standardisation and quality assurance of courses would still be required, even if there is a CEE, and particularly if the CEE covers only a restricted number or range of assessments – see Section 6.2.3.³¹

Quality assurance in higher and professional education has become an increasingly sophisticated and complex process, influencing everything from course design, through assessment to post-course audit and monitoring. It is conventional to talk of a quality system ‘loop’, which ensures that courses deliver what they say they will deliver. It means that standards are set, performance data is gathered and evaluated, quality gaps are identified, remedial actions taken, the effects of remedial action then considered and, in turn, reported as part of a continuous cycle of programme assurance and enhancement. Accordingly, we first consider what evidence exists for quality problems, and then offer a number of thematic solutions.

5.4.1 Evidence of Design and Standard Problems

As noted in section 1, this review was designed as a relatively high-level exercise, focussing on the overall structure, design and current and future priorities of the legal education and training system in Hong Kong. It is not a specific programme review nor a monitoring exercise. We have not observed teaching on the PCLL, nor have we reviewed discrete assessments and assessment practices. This therefore sets quite particular limits on what we can say about the programme.

Moreover, no consistent case has been made to us by stakeholders for the substantial restructuring of the PCLL, or for its replacement by a different form of training. There has been no overall criticism of the quality of teaching provided, nor of the degree of professional engagement in its design and delivery. Indeed, we note that the few specific comments we have received on teaching quality have tended to be very positive. We thus take the view that there is no clear or consistent perception that

³⁰ C. Dewberry, *Aptitude testing and the legal profession*, (Legal Services Board, June 2011) http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/aptitude_tests_and_the_legal_profession_final_report.pdf

³¹ Quality assurance issues relating to any eventual CEE are also considered separately in Section 6.7.

the PCLL is fundamentally unfit for purpose.³² Consequently, our approach here is to focus primarily on the larger issues of programme design and specification, looking at scope for better quality assurance and enhancement, not fundamental redesign.

Accordingly, we note four areas of possible³³ concern or criticism: the underlying framework of benchmarks/standards; problems in programme design and delivery, the robustness of assessment standards, and the quality assurance and monitoring process. We consider each in turn.

5.4.1.1 Inadequate prescription of standards:

The Redmond-Roper Report argued cogently that a key problem for the Hong Kong system was the absence of a comprehensive and agreed understanding of what is required of legal education and training.³⁴ In response to this criticism, both the Law Society and the Bar Association devised 'Benchmark Statements' for the PCLL. These benchmarks form the basis for PCLL design and delivery to this day.

The Law Society benchmark is quite brief by international standards, and does not provide the kind of detailed competences and outcomes discussed in Section 3, though it does provide some 'process' guidelines for course resourcing and delivery. Thus, in terms of curriculum, broad subject headings are identified, but no content or outcomes are specified. Nor is it clear whether these core areas should be equally weighted, or how much weight should be given to the pervasive subjects. These details seem to be part of the cultural understanding that exists between the providers and the profession, but as a matter of regulation that is neither sufficient nor transparent.

The Bar benchmark is somewhat more detailed. But it is now quite dated. It was adapted from the English Bar Vocational Course (BVC) specification, established more than 15 years ago, in 2001. The 2001 BVC specification and standards were reviewed in rapid succession by the (English) Bar Council's Training for the Bar Committee (the Wilson Report³⁵) and the Bar Standards Board's Bar Vocational Course Working Group (the Wood Report³⁶), both of which reported in 2008. These led to various substantive changes to the curriculum and assessment on the revised Bar Professional Training Course.

Aside from the rather unsatisfactory fact that one course has to comply with two separate benchmarks, we find it rather surprising that neither benchmark is publicly available, and neither has, so far as we are aware, been revised since their first promulgation in 2007. There appears (for example) to have been wholesale divergence from the original staff-student ratio (1:8) prescribed,

³² Notwithstanding the issues of consistency raised by the continuing debate over the need for a common assessment

³³ Though we note that the objective evidence is not, on the whole, strong as to the extent or nature of these 'problems'.

³⁴ Redmond-Roper Report, pp.331-3.

³⁵ The Bar Council of England and Wales (TfBC Working Party), *Final Report: The Bar Vocational Course (Course Specification, Standards, Pupillage)* (April 2008)

http://www.barcouncil.org.uk/media/58684/tfbc_final_report_april_2008_-_version_2_may_2008.pdf

³⁶ Bar Standards Board, *Review of the Bar Vocational Course: Report of the Working Group* (July 2008)

www.barstandardsboard.org.uk/media/1353435/bvc_report_final_with_annexes_as_on_website.pdf (referred to as 'Wood I' in Section 3 of this report)

and we wonder how much of a role these statements actually play in continuing quality assurance and monitoring.

5.4.1.2 Variability in design and delivery:

The PCLL structure is a flexible one, guided primarily by two things: the requirement of an 80%-20% focus on skills to content, and a framework distinction between core, pervasive and elective subjects.

The PCLL design has (in theory) followed the Redmond-Roper Report in adopting an 80% skills-20% substantive 'content' split. This kind of skills-loading was not unusual for the shorter courses developed in Canada, New Zealand and Australia in the 1980s and 90s, where considerable reliance could be placed on 'content' from the broad-based academic stage (which was the model Redmond-Roper proposed for Hong Kong). This was not the approach of the longer English courses, which, because of the smaller academic foundation, have had to provide a more substantive grounding in professional knowledge areas, as well as skills.³⁷

Hong Kong, however, has, since Redmond-Roper, adopted the broad base of academic subjects found in the Commonwealth jurisdictions *and* retained the long vocational course of England and Wales. This seems like a recipe for overlap, and the Law Society in its evidence to us has stated that responses to its regular PCLL survey indicate that:

there is still duplication in the contents of the PCLL Programme and the LLB Programme, and many consultees feel that insufficient teaching has been devoted to the impartation of skills and an understanding of the practice of law.³⁸

Some duplication is probably inevitable. Skills-based activities need to be contextualised, and that may warrant some review of areas of law already studied, albeit it with a different 'slant' or purpose. Too much overlap is, however, undesirable, and would best be resolved by some rationalisation (if necessary) of where and how subjects are addressed. We suggest that the providers, in conjunction with the Law Society, review these data, and if necessary undertake additional surveys/enquiries of trainees in practice to better assess what the specific gaps and overlaps (if any) are. This gap analysis should then be used as part of the information to revise the PCLL outcomes and standards (below), and in rationalising requirements at the academic stage, if necessary – per Recommendation 4.1].

We have no strong views regarding the basic core/pervasive/elective structure, which is not dissimilar to UK and Australian approaches. We do note however that it is implemented by providers in sometimes markedly different ways – see the structure and content of the different PCLL courses shown in Annex 3. We are confident that the broad areas required by the benchmarks are addressed, but the limited content specification may lead to more marked variation at a granular level.³⁹

We note that the treatment of pervasive knowledge areas is often a difficult feature of this kind of course design, as it can result in patchy and incomplete understanding of those areas by students. In

³⁷ On the English Legal Practice Course, the loading is... ; the Bar Professional Training Course...

³⁸ Hong Kong Law Society, First Submission, para. 13,

³⁹ We note that providers use this structure to incorporate the Bar training requirements in different ways, either by 'streaming' intending Bar students separately, or by treating Bar-specific requirements as distinct 'electives' (which are of course 'core' areas for the Bar. We see no particular advantage to one approach over the other, so long as the appropriate objectives for Bar training are being met.

Hong Kong, the pervasives are advocacy (which is also defined as a skill), professional conduct, trust and office accounting and financial management, client care, and revenue practice. These of themselves are somewhat overlapping and intermeshed categories – ie, there are obvious professional conduct elements to advocacy, trust accounting and client care. Sensibly, providers have generally sought to address at least some of this content in a single course format (notably in ‘professional practice’ subjects). This is commendable in providing students with a basic framework and better foundation than would be available if a purely pervasive approach to delivery were adopted. Beyond this, however, we are not able to assess the adequacy of the pervasive approach in practice.

There may be a question as to whether there should be electives, and if so whether they should be prescribed at all, or whether this should be left to providers and the market. There have been arguments in the UK that elective subjects are unnecessary and add unduly to the length and cost of training. On the other hand, it is noted that at least some employers see electives as adding value, and increasing ‘practice-readiness’. Employers have in some UK institutions had a key role in the design and delivery of new electives. We observe that electives have, so far, been retained in all of the comparator jurisdictions considered in this review, though their future is now uncertain in England in the context of the new Solicitors Qualifying Examination.

In the Hong Kong system, the role of electives is complicated by the dual nature of training, since much of the Bar training is embedded in what are, in formal programme terms, electives. Any substantial redesign of the elective component could, thus, have a significant impact on Bar training. We also note that prescription is limited in the sense that it sets a minimum range of electives, but does not preclude providers from expanding the range. Taking these factors into account, and on present evidence, we see no strong justification for substantial change.

5.4.1.3 Workload and small group teaching:

A basic measure of consistency of course ‘inputs’ (and to some extent, outcomes) is to compare class contact hours and ‘notional study time’ (NST) or ‘notional learning hours’ (Table 5.2). Notional study time is an expression of the total hours that an average individual is expected to commit to a programme, in terms of both formal class contact and personal time committed to learning. It is a somewhat crude indicator, not least because of the highly individualised nature of learning, and the extent to which individuals may therefore deviate from the expressed mean. Nonetheless, it is still a relatively common measure used by universities and others to specify expected workloads. As a comparator, it should be noted that the English Legal Practice Course sets a norm of 1400 hours of NST, and has quite specific guidance on its apportionment.⁴⁰ The Bar Professional Training Course sets a minimum of 1200 hours.⁴¹ HKU and CUHK are both consistent with that range (CityU does not specify a figure for NST).

⁴⁰ <https://www.sra.org.uk/students/resources/legal-practice-course-information-pack.page#annex2>

⁴¹ Bar Standards Board, *Bar Professional Training Course Handbook 2016-17*, p.

Table 5.2 Total and weekly contact hours and NST at PCLL providers

	Total contact	NST	Weekly LGS (hrs)	Weekly SGS (hrs)
HKU	352-384	1440	8	8 (max)
CityU	468	Not specified ⁴²	8	12-16 ⁴³
CUHK	390-420	1290-1320	15	7.5 (max) ⁴⁴

Table 5.2 also identifies the global class contact hours and the weekly distribution of hours between lectures or large group sessions (LGS) and small groups (SGS). The variation in total class contact hours between CityU and the other providers requires some careful interpretation. More is not necessarily better, or even better value for money; it may be accounted for in part by differences in curriculum organisation, but potentially significant differences in teaching and learning approach, and/or expectations of students cannot be discounted. The fact that there is, plausibly, a difference of over 100 contact hours between providers is striking. The extent to which that difference may be disproportionately accounted for in the variation in levels of small-group learning⁴⁵ is a matter of some concern. Effective skills-based learning conventionally requires smaller groups and the wide variation in frequency of small group sessions does raise *prima facie* questions as to the comparability of the outcomes that are being achieved.

5.4.1.4 Is the standard of assessment sufficiently robust?

Some observations have been made regarding the high pass rate on the PCLL,⁴⁶ though, again, it should be noted that there is by no means universal agreement amongst stakeholders that this points to a lowering of, or otherwise inadequate, standards.

In assessing standards on the PCLL a number of factors need to be acknowledged, namely:

- The course is an assessment of *competence*, assuring that someone has the skills and core knowledge to commence a training contract or pupillage. In regulatory terms, the barrier should not be set too low, but neither should it be set too high;
- Pass rates on heavily skills-based courses and components tend to be higher than for heavier knowledge-based courses – the PCLL has a substantial skills component;⁴⁷

⁴² We were told however that students are advised that the PCLL is an intensive 9-month programme and they should not take on any full- or part-time jobs or other major commitments during the programme

⁴³ Small group sessions are offered in 10 or 11 of the 12 teaching weeks.

⁴⁴ Students have 9 hours of 'tutorials' per course, normally organised as 6 x 1.5 hours

⁴⁵

⁴⁶ Recent PCLL pass rates tend to be (after resits) consistently in the region of 97% or higher, based on SCLET Annual Report from 2014 onwards. If we compare this with a snapshot of the old PCLL from the Redmond-Roper Report, this indicated that in the four years from 1996/7 to 1999/00 overall pass rates varied across institutions from a low of 66% to a high of 95%. Removing the highest and lowest outliers, the range for HKU and CityU in that period was between 86% and 92%.

⁴⁷ Before the move to centralised knowledge assessments, the overall pass rate on the English Bar Vocational Course nationally was 87% in 2009/10: Bar Council/Bar Standards Board, *An analysis of full-time students enrolled on the 2009/10 BVC* (July 2011)

www.barstandardsboard.org.uk/media/1347305/bptc_providers_report_ft_students_2009.10.pdf. For 2015-16 the first-time pass rate across the whole Bar Professional Training Course was 64%, with 11% of fails and 24%

- As noted earlier, vocational course pass rates tend to correlate with high academic performance, so this might also help account for an increasing pass rate in Hong Kong.⁴⁸

Is the PCLL out of line internationally? This is quite difficult to say, because data are often not published (as pass rates in competitive training markets are also regarded as market-sensitive information), or if published, are aggregated to preclude institutional level analysis. Pass rates on the English Legal Practice Course vary significantly from 100% to around 50%, though, anecdotally, we believe the major providers tend to have pass rates in excess of 90%.⁴⁹ The New Zealand Professional Legal Studies Course also appears to have a 100% pass rate, or close thereto.⁵⁰ Heavily knowledge-based assessments, such as the US Bar Examination will tend to have lower rates, and competitive examinations in Civil Law countries are often lower still, but then we are not comparing like with like.

The PCLL is thus clearly at the upper end of the pass range, but on the data available to us it is difficult to conclude that this is inappropriate. It does carry some risks, as the Tipping Report noted in the New Zealand context. The course will be damaged if it were to acquire a reputation as simply a ‘ticket’ for which one has to pay to access the next stage of training. Our sense is that, at present, this is not the case, and the first-time failure rate does help add to a sense of the PCLL’s robustness. At the same time, we encourage providers to consider carefully what constitutes the standard of competence, particularly at the lower end of the scale. The gap between barely competent, and confidence in a student’s competence is a difficult, but crucial one. In a professional setting, where client and public interests are at stake, is bare competence a sufficient safeguard? We note the observation of the 2008 Wood Report on the English Bar course:

“work in our opinion is competent if it is accurate, comprehensive, expressed in clear language which is grammatically and syntactically correct, and well laid-out so that it would command the respect of a professional reader – judge, instructing solicitor or opposing counsel. It must address and promote the client’s interests so far as that is possible. Errors must be limited to minor errors. The work is not to be judged by the standard of a barrister who has had several years’ experience of practice. It must be a recognisably professional piece of work offered by a newly-called barrister. In quantitative terms that indicates a standard well in excess of 50%.”⁵¹

At this stage, we recommend merely that pass rates are kept under review as part of the larger exercise in re-evaluating programme competences and monitoring standards.

of students (primarily those studying part-time) who had not yet completed the course – Bar Standards Board, *BPTC Key Statistics 2017: An analysis of students over three academic years* (June 2017) www.barstandardsboard.org.uk/media/1835435/bptc_key_statistics_report_2017_-_all_parts.pdf. Despite concerns that centralised assessments would significantly depress the pass rate, this figure is not massively out of line with the BVC first-time pass rates noted in the 2008 Wood Report, p. 36.

⁴⁸ Conversely pass rates on the US Bar Examination appear to be declining, in line with falling LSAT scores at many US law schools {Bar Examiner article}

⁴⁹ SRA... No formal analysis has been conducted to explain the wide variation in English Legal Practice Course outcomes, but it should be noted that courses in England will include a significantly broader ability range than the Hong Kong PCLL.

⁵⁰ See the Tipping Report, para G.5.

⁵¹ Above, para. 140.

5.4.1.5 Quality Assurance and Monitoring

The current Hong Kong PCLL system relies both on university quality assurance systems and a degree of professional oversight.

University quality assurance in Hong Kong is robust, reflecting the standards and practices of most well-developed quality assurance and enhancement systems. Systems in all three universities include:

- Formal accreditation of new course offerings
- Periodic review and revalidation (for university purposes) of courses
- Broader departmental/Faculty-wide review of structure, organisation and course provision
- Annual teaching quality evaluation

External audit is conducted periodically by the Quality Assurance Council of the UGC. These audits draw on internal accreditation and course review outcomes, institutional self-evaluation and evidence-based reporting. As a matter of regulatory proportionality, there is not a strong case for replicating much of this detailed activity for professional purposes. At the same time, it must be acknowledged that, in delivering courses for professional accreditation purposes, additional steps should be taken to satisfy the profession that those completing the PCLL are competent to enter the profession. This assurance at present is provided primarily by the external examiner/Academic Board structure at each university, and by annual reporting to SCLET.

External examiners provide the primary form of professional oversight. They see and approve assessments; they review (normally) borderline and failed scripts and (in the case of Law Society appointed examiners), provide feedback to the professional body. They are permitted (and generally encouraged) to visit the schools, and attend classes. Academic Boards, which have oversight of the courses, include representation from all PCLL providers, both branches of the legal profession, and lay participants.

Annual reports from each law school are submitted to SCLET, and these include sections on the PCLL. The reports are published, but there does not generally appear to be any formal feedback process from SCLET to the law schools. To this extent it is difficult to see, certainly from the published record, whether and if so how, SCLET has any direct input into the quality 'loop'. The level of detail of the reports is both somewhat descriptive and variable, certainly in comparison with UK requirements, though the Hong Kong system in this regard does not compare unfavourably with the reporting systems in place in Australia and New Zealand.

In contrast to other systems reviewed as part of this project, Hong Kong does not have a separate professional accreditation and monitoring process. In the US, American Bar Association -approved law schools must submit an annual, detailed, questionnaire response, designed to elicit their continuing compliance with the ABA Standards. Full site visits are also conducted every seven years.⁵² In New Zealand, there is a three year formal accreditation cycle for the Professional Legal Skills Course, while

⁵² American Bar Association, *The Law School Accreditation Process* (Revised edn., September 2016) www.americanbar.org/content/dam/aba/publications/misc/legal_education/2016_accreditation_brochure_final.authcheckdam.pdf

in England the Bar Professional Training Course is subject to annual monitoring visits.⁵³ Admitting authorities in Australia too have been increasing the level of active monitoring and re-accreditation of professional legal training provision. We discuss the need for improved monitoring further in section 5.4.3.

5.4.2 Solution 1: Improved Benchmarking and Programme Standards

Where a programme performs a key gatekeeping function, students, the profession, and the public at large are entitled to expect that the design and articulation of the programme benchmarks is sufficiently clear and transparent, to give confidence that each programme is capable of producing trainees with the requisite range of knowledge and skills. We therefore recommend that, as a matter of priority, steps are taken to better define not just an overarching programme specification, but specific outcomes and standards. We do not take a strong view on whether these are designed according to what in Section 3 we described as the internal or external approach, though we note the perhaps greater benefits of the internal approach at programme level.

A statement of written outcomes and standards should include:

- A set of high level programme outcomes, derived from an identification of the key knowledge, skills and professional attributes to be developed by the PCLL
- Written standards identifying core knowledge components, and key expectations in respect of learning processes and resources, including (eg) proportion of small group learning; staff-student ratios for small group work; notional learning hours
- Setting of agreed assessment bands and band descriptors common to all PCLL programmes
- Additionally consideration should be given to whether non-binding 'effective practice' guidance be developed in respect of assessment and learning processes, akin to the model adopted by the Law Society of Scotland in respect of the Diploma in Legal Practice (PEAT1) – Annex 4

This exercise should not involve simply a translation of existing content norms to outcomes. Given the effluxion of time since they were first developed, and the expressed concerns regarding consistency of outcomes on the PCLL, this is an important opportunity to review and revise the benchmarks more substantively.

4.5.3 Improvements to Quality Assurance

An internal, institution-based, approach to monitoring and quality assurance may be entirely valid in an academic context, where degrees may legitimately meet a broad range of objectives. But the Hong Kong approach seems to miss the fundamentally different objective of vocational training, namely to provide a reliable and reasonably consistent assurance of competence to the profession and the public. Accordingly we recommend that regulation be introduced to permit and facilitate the professional accreditation and monitoring of PCLL programmes.

Specifically, we recommend a system of triennial monitoring visits to providers as a balanced approach that combines a reasonable degree of risk management, whilst not-making the monitoring process

⁵³ Until relatively recently, the Legal Practice Course was also subject to regular monitoring visits, but this system has been replaced with a more detailed reporting requirement, and a system of risk-based monitoring, where visits are triggered by certain risk-events – see...

unduly onerous. These visits should be constructed as substantial quality assurance exercises, based on prepared paperwork, including a triennial programme self-evaluation; key statistics, such as student numbers, pass rates for the programme and individual subjects; summary or high-level (anonymised) student evaluation data, and external examiners' reports. So far as possible the monitoring process should be designed to draw on data already produced by the programme team for internal quality assurance purposes. Monitoring visits should seek to evaluate:

- the capacity of the programme as delivered to meet the outcomes and standards approved for the PCLL
- by observation, the quality of learning and teaching taking place and its capacity to progress students towards achievement of the outcomes;
- by meetings with students,
 - their understanding of what is required of them during the programme;
 - their understanding of the professional ethos of the programme;
 - their perceptions of the strengths and weakness of the programme as a whole
- learning development and career support available to students, both generally and to those with particular needs
- The appropriateness of teaching spaces and learning resources provided
- The appropriateness of programme-specific staff development and training resources
- the adequacy of support and training for external examiners
- the adequacy of assessment management and quality assurance processes.

In terms of composition, we suggest monitoring panels might usefully comprise: two representatives of the legal profession (1 x Bar Association, 1 x Law Society); 2 x legal academics;⁵⁴ and an independent (non-lawyer) chair.⁵⁵

Provision in regulation should also be made for (i) a monitoring visit to prescribe remedial measures (conditions) that a provider must take, or improvements that may be made (recommendations) to maintain the quality of the programme; (ii) for the accrediting body to recommend the removal of accreditation from a provider that has failed to meet substantial conditions, where that failure means that the programme is no longer achieving the outcomes and standards prescribed for the PCLL, and (iii) provision whereby a provider may appeal a determination to remove accreditation to an independent appeals board (or other appropriate body).

What might constitute an appropriate accreditation body is discussed in section 8.

5.5 Curriculum development

Whilst much of the core knowledge and skills base has continuing relevance, multiple present and future challenges exist for professional training in Hong Kong, as in most developed economies.⁵⁶ A strength of the current model is that it has a degree of flexibility to adapt to evolving pedagogies, and changing demands on practice. Curriculum and delivery approaches have continued to evolve since

⁵⁴ At least one of these should be a senior academic with experience of vocational law teaching; this could be either another PCLL provider, or from outside Hong Kong

⁵⁵ The chair could be a senior academic from another professional discipline, or from another professional regulatory body.

⁵⁶ See, eg, consultation responses from HKU SPACE;

the Redmond Roper review. Providers have been responsive to feedback from the legal profession, the judiciary and graduates. We note providers' awareness that knowledge and skills needs are changing,⁵⁷ and that new electives,⁵⁸ and possibly some more fundamental changes may be required over the next few years.

As mature training organisations with strong professional relationships, we take the view that the law schools are generally well-placed to make these assessments. We do note, however, the pull of the commercial sphere on curriculum attention. Areas beyond the commercial sector also need to be addressed: an aging population, reductions in legal aid, increased numbers of litigants in person, and other pressures on the formal court system, and the promotion of ADR are all re-shaping the terrain of personal legal services. Some of these issues need to be addressed relatively pervasively in training, for example, the practical and ethical responsibilities that arise in litigation and advocacy when acting against self-represented litigants, or the need for familiarity with alternative dispute resolution mechanisms. Others might conceivably be addressed by new electives. We encourage the law schools to ensure that such developments are not neglected.

More specifically we note four aspects of the curriculum where some re-focussing and modernisation may need to be considered.

- *Professional attributes, ethics and "professionalism"*: the subject of ethics and professional responsibility has recently been rated the most critical area of training by practitioners in the US and the UK.⁵⁹ At the same time, ethics teaching is often one of the most problematic areas in both academic and vocational training, with courses in many jurisdictions tending to take a narrow and instrumental approach to the subject,⁶⁰ underplaying the significance of both individual and collective values, and commercial and institutional pressures to decision-making.⁶¹ The approach of the Law Society of Scotland Framework (discussed in section 3, and Annex 4) offers a strong alternative approach, placing professionalism at the centre of the curriculum. We commend this model to SCLET and to PCLL providers, and encourage both the creation of stronger 'professionalism' outcomes for the PCLL, and some re-framing of the programme around this theme.
- *Increasing practice-readiness*: like other international legal centres, Hong Kong is experiencing many of the rapid changes driven by new business and information technologies, the broadening functions of (and increased opportunities for) work in-house, and the early but

⁵⁷ See, eg, CUHK, First response, p.4

⁵⁸ See HKU, First response, para 5.20

⁵⁹ See LETR Report, Ch. 2, Table 2.4 and associated discussion. The US *Foundations for Practice* study also emphasises the centrality of "professionalism" with over 95% of practitioner respondents saying that key aspects of this characteristic are essential for graduates to develop in the short term: Institute for the Advancement of the American Legal System, 'Foundations for Practice Project', at <http://iaals.du.edu/foundations/home>.

⁶⁰ See, eg, R. Moorhead et al, *Ethical Capacities of New Advocates*, 59 (describing ethics instruction and assessment on the English BVC/BPTC as "very focused on the Code of Conduct, fairly detached from practice and difficult to contextualise without any experience on which to draw"); also J. Rogers, 'Coming to terms with legal ethics assessment' in M. Robertson et al, *The Ethics Project in Legal Education* (Routledge, 2011), 212; J. Webb, 'Conduct, Ethics and Experience in Vocational Legal Education: Opportunities Missed' in K. Economides, *Ethical Challenges for Legal Education and Conduct* (Hart, 1998), 271.

⁶¹ See recent studies of lawyer ethical decision-making such as [Holmes, Vaughan...]

steady growth of explicitly “NewLaw”⁶² practice entities. A weakness of many professional legal training programmes is that they remain locked in an ‘old law’ model of personalised and bespoke, face-to-face legal service delivery. The growing significance of an expanding range of (moderately) big data tools, legal analytics, and of broad and increasingly sophisticated due diligence, document assembly and litigation support tools, are not just changing legal processes, but also the problems and *risks* associated with those processes. The need to understand the value, benefits and risks of such technologies is becoming less and less peripheral to the practice of law. The fact that a growing number of jurisdictions are having serious conversations about the need to treat technological awareness as a core competence attests to this fact.⁶³ Other competencies in respect of commercial and, perhaps, social awareness and financial numeracy⁶⁴ are also routinely stressed. We recommend (i) that steps are taken to address the extent to which these matters are incorporated into the PCLL core or pervasive competencies, and (ii) encourage providers to consider what value-added they can offer their students in preparing for the employment market. We note for example the growth in new electives in degree and vocational courses in other jurisdictions, including computational legal studies, law apps, start-up law, etc, which support business skills, creativity and entrepreneurship, technological capabilities and new analytical skills. Some of these may be better included in the LLB or JD, but could be included as PCLL electives or add-ons. For example, the Australian National University offers electives in The Future of Legal Practice, and Legal Entrepreneurship.⁶⁵ BPP University permits students to take (at no cost) an extra ‘Law Firm as a Business’ module as part of the English Legal Practice Course, developing the commercial awareness and range of business skills of its graduates.⁶⁶

- *Proficiency in Chinese language*: there appears to be widespread recognition that there is a need to do more to prepare students for a legal system in which proficiency in Putonghua, not just Cantonese, is increasingly central.⁶⁷ While there is a body of international transactional work for which English is likely to remain the primary language, the need for Putonghua will only increase as links with the mainland deepen.⁶⁸ This is already particularly relevant to litigation and advocacy. Basic proficiency is better treated as an issue for the academic stage, where continuing progress is being made (see Section 4). Nonetheless, we take the view that, at the vocational stage, students particularly need to be exposed to learning experiences that are facilitated by lawyers competent in Chinese, not just linguists.
- *Preparation for lifelong learning*: Vocational courses have traditionally operated as a relatively self-contained unit of training. However, as the importance of building good professional

⁶² A widely used term for a variety of supposedly more agile alternative legal service providers, see G. Beaton, *NewLaw, New Rules: A Conversation about the Future of the Legal Services Industry* (Beaton Capital Ltd, 2013); also Eversheds Sutherland, ‘NewLaw’ in Asia’ &th December 2016, at http://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/Hong-Kong/Newlaw_in_Asia

⁶³ See Foundations project, above n.59.

⁶⁴ See discussion above at pp.50, 51, though note the latter is already addressed to a degree in the PCLL.

⁶⁵ See respectively <http://programsandcourses.anu.edu.au/2017/course/LAWS8318> and <http://programsandcourses.anu.edu.au/2017/course/LAWS8319>

⁶⁶ BPP University, *Legal Practice Course Programme Handbook, 2016-17*, <https://s3-eu-west-1.amazonaws.com/bppassets/public/assets/pdf/handbooks/LPC-Programme-Handbook-1617.pdf>

⁶⁷ See, eg, Hong Kong Bar Association, First Response; CUHK...

⁶⁸ [Consultation Ref, HKLS etc...]

learning habits has become better understood, so too has the case for treating the vocational course stage as also the first step in continuing education.⁶⁹ Accordingly, we take the view that PCLL outcomes should also address a number of core developmental learning needs, requiring that the students should 1) be able to reflect on their learning 2) demonstrate an awareness of the limits of their own knowledge and skill 3) know when and how to ask for assistance or specific supervision 4) be able to identify their future learning needs⁷⁰

- *Careers*: drawing on UK experience we would also encourage providers to consider, as student numbers increase on the PCLL, whether enough is being done in terms of career support. Options and advice regarding alternative careers are likely to become of greater importance as a larger proportion of students are likely to be excluded from the training market if that becomes a more significant bottleneck in the system.

5.6 Conclusions and Recommendations

The PCLL is distinctive internationally in terms both of being offered exclusively by the universities,⁷¹ and in respect of the relatively light touch approach to curriculum and standards exercised by the professional bodies. This has had advantages and disadvantages. It has, for example, given the PCLL a high degree of stability, and access to the resources and reputational capital that flow from association with three highly reputed⁷² institutions of higher education. The programme appears also to be well-taught and mostly respected, and supported by practitioners, particularly those willing to teach on it, and act as external assessors.

At the same time, the whole system *design* can be said to have favoured flexibility over the assurance of consistent standards. It may be argued, of course, that some of that flexibility is mediated in practice through professional engagement in assessing and monitoring of the programmes, but the effectiveness of oversight is itself limited by the absence of more detailed standards. In short, it seems that if we are to ask what is the *consistent and transparent* measure against which all providers are *uniformly* assessed, the current system lacks an adequate answer. This absence of an overall 'guiding hand' manifests also in the limited (professional) quality assurance and monitoring of the programme. It follows that the majority of our recommendations seek to address that need.

Recommendation 5.1

That the PCLL should not be constructed as an artificial barrier to entry, though we also retain concerns about the risks and costs of moving to a wholly marketised system. Any change on that scale should require high-level support from the universities and the profession. We welcome providers'

⁶⁹ Note for example the strong links between stages developed by the Scottish PEAT 1 and PEAT 2 outcomes; see further discussion in Sections 7.1.3 and 7.4.2, below.

⁷⁰ This draws directly on Solicitors Regulation Authority, *Legal Practice Course – Written Standards*, p.26, see Annex 5.

⁷¹ In terms of the jurisdictions considered in Section 3, Scotland is the only other system which locates its vocational training exclusively in the universities. Vocational courses in Australia and England and Wales operate in a 'mixed economy' of public university and private sector institutions; Singapore and New Zealand operate exclusively through non-university providers.

⁷² See sections 2.1.3 and 2.1.4, above.

agreement to increase PCLL capacity in the short term, and we encourage providers to explore longer term solutions, including those identified in Recommendation 2.1 or section 5.2.

Recommendation 5.2

That, unless moves are made rapidly to implement Recommendation 2.1, PCLL providers work together to increase the transparency of the admission process, and to develop consistent admission criteria across all three institutions. Revised admission criteria should reflect the factors identified in section 5.3.2

Recommendation 5.3

That consideration be given to grading the Conversion Examination to facilitate the comparison of home and overseas students in the admission process.

Recommendation 5.4

That the professional bodies work with the law schools to construct a proper, uniform, statement of outcomes and written standards for the PCLL. These should include reference to the matters discussed in section 5.4.2

Recommendation 5.5

That further consideration be given to whether the PCLL currently pitches the standard of competence at an appropriate level, and whether that is properly reflected in the passing standard for the course (Section 5.4.1.4)

Recommendation 5.6

That the system of PCLL quality assurance be strengthened to include a triennial review of the course (Section 5.4.3); this recommendation applies equally to any sole provider introduced under Recommendation 2.1. New regulation should be introduced to enable de-accreditation of a provider, including an independent appeal process against a recommendation of de-accreditation.

Recommendation 5.7

That (i) key stakeholders when devising the outcomes and written standards, and (ii) the PCLL providers more generally when developing electives, or considering the scope of the informal curriculum, or delivery of student support, identify and address a range of future needs/priorities for training. These include: education in professionalism; commercial awareness; understanding of new modes and technologies of legal practice; developing greater proficiency in Putonghua; developing lifelong learning/reflective practice capabilities; the need for enhanced careers advice and support.

6. THE PROPOSAL FOR A 'COMMON ENTRANCE EXAMINATION'

6.1 Introduction

In January 2016, the Law Society of Hong Kong (HKLS) announced its intention to proceed with plans to introduce, not earlier than in 2021, a new centralised assessment, the 'common entrance examination' (CEE) for those seeking to enter a trainee solicitor contract in Hong Kong.¹ Relatively few details have been made available in respect of this proposal. Accordingly, in this section of our report we briefly review the history of the CEE debate, in the context of research and international experience in assessment, and of good regulatory practice (which is relevant to the design and implementation process). We examine the Law Society's rationale for introducing the CEE, and highlight some of the benefits and risks of the CEE, and attendant processes. Finally we identify a number of educational design issues that need to be addressed if (in our view) a CEE is to be developed consistently with effective educational and good regulatory practice. We conclude the section by making a range of specific recommendations regarding the possible implementation of a limited CEE. In our view, if sensible progress cannot be made on these fronts, then the establishment of a single professional legal training school, as discussed in section 2 of this report, is the most preferable option.

6.2 The History of the CEE debate

The current proposals from the HKLS are the latest in a continuing debate between the Law Schools and the solicitors' profession as to the structure of professional legal education in Hong Kong.² As we have seen, the present system of vocational training has developed incrementally and has been relatively slow to change. The pragmatic decision to create new PCLL courses, rather than establish a common professional school or a single 'franchised' course, meant that a distributed assessment regime has emerged, largely by default.

6.2.1 Earlier attempts at reform

As noted in the previous section, a number of attempts have been made to construct cross-institutional structures and systems to assure standards across the range of PCLLs, but so far these have been less than successful. The Redmond-Roper Report's proposal for a distinct professional training institute, which would have centralised both teaching and assessment, also failed to garner support. These combination of factors goes some way to explain both the origins and continuation of the CEE debate in Hong Kong

¹ Law Society of Hong Kong, Second response, (5 January 2016). This substantively replicated a public press release issued by the Society on the same date.

² The HKBA, has, by contrast, expressed fairly consistent satisfaction with the quality of the course, ascribing differences primarily to candidates' individual ability, rather than to course design. See Bar Association responses to both the Law Society's 2013 CEE Consultation (discussed below), and its first and further responses to this process.

The matter of PCLL standards was raised again most recently by the Law Society in 2011. In 2012 it established a Working Party specifically to examine the case for a CEE, under the Chairmanship of (then Vice-President) Mr Stephen Hung. The terms of reference for the Working Party were:

- “1. To consider the suitability and feasibility of implementing a CEE in Hong Kong.
2. To recommend to the [Law Society] Standing Committee on Standards and Development and the Council if a public consultation on the CEE or such other options shall be conducted and if so to formulate in draft for the consideration of the Standing Committee... and the Council the necessary consultation documentation;
3. If appropriate, to formulate in draft for the approval of the Standing Committee... and the Council, new rules and/or amendments to existing legislation to provide a framework for the implementation of the CEE or such other recommended alternative.”

Following the recommendation of this group, the Law Society appointed a research team comprising academics from Nottingham Law School (UK), the Australian National University and the Institute of Advanced Legal Studies (University of London, UK) to undertake a consultation exercise (hereafter the ‘CEE Consultation’).³

6.2.2 The 2013 CEE Consultation Exercise

A detailed consultation paper was published by the Nottingham team, and responses invited within a consultation period from 1st December 2013 to 14th February 2014. In addition, the research team undertook a range of stakeholder interviews in Hong Kong. A report on this consultation exercise was prepared by the research team and submitted to the Law Society (we believe) in 2014. Neither any summary analysis of responses⁴ nor the final report to the Society has been published.

As noted, the Law Society has declined our request that they share the CEE Consultation findings with us,⁵ and (we believe) further affirmed its unwillingness to publish the report at the LegCo Panel on Administration of Justice and Legal Services on 26th June 2017.⁶ This is disappointing. It is, consequently, not possible for us to identify the extent to or ways in which the CEE Consultation has been taken into account in the Law Society’s decision to proceed.⁷ Nor can this report draw on the

³ Law Society of Hong Kong, ‘Consultation on the Feasibility of Implementing a Common Entrance Examination in Hong Kong’ (n.d.) (copy on file with the authors of this report).

⁴ The CEE Consultation paper (above n.3) at p.5 stated that “responses to this consultation document will not be published by HKLS, but names of respondents (where consent has been given) and a summary of anonymised responses will be posted on the HKLS website in due course.”

⁵ As is commonly the case, the research team undertaking the CEE Consultation were contractually bound to maintain the confidentiality of their report to the Society, so we were also unable to obtain a copy from that source.

⁶ Minutes of this meeting have yet to be published on the LegCo website.

⁷ As noted in Section 1, following the Law Society’s January decision we invited additional representations from stakeholders specifically on the matter of a CEE. These largely reiterated and expanded upon a range of points made to us during our stakeholder interviews. In May 2016, in the wake of the HKLS decision not to disclose its CEE Consultation Report to us, we further invited stakeholders to forward their original responses to the CEE Consultation. We received a total of seven replies to the latter request. Three of these indicated that no written submission had been made by that body to the CEE Consultation, whilst the remaining four included written responses. These were from the Hong Kong Bar Association and the three Law Schools. For

undoubtedly useful analysis of stakeholder views, as well as expert assessment provided by the Law Society's own consultants.

6.2.3 The CEE proposals so far

The design of the CEE remains, at this stage, uncertain, at least to those outwith the Law Society. The Society's original position (January 2016) appeared to be that the CEE:

- Would serve as a common assessment at the end of the PCLL and the only prerequisite to entry into a training contract⁸
- Would not displace the need to undertake the PCLL, but
- Would override the need for students to complete any other PCLL assessments *for professional recognition purposes*

This would have caused a number of obvious problems. For example, the universities would face the difficulty of certifying the 'successful' completion of a course for which there was no required assessment. Students would be confronted by the 'double jeopardy' of two sets of assessment in close proximity and on overlapping subject matter, and face the prospect of additional costs to qualification.

Subsequently, it was reported to the meeting of the Panel on Administration of Justice and Legal Services on 25th April 2016 that the Law Society had clarified its position, so that the latest CEE proposal now involves the introduction of:

- Centralised assessment *within* the PCLL (not a separate examination) – also referred to as 'commonly recognised assessment'⁹
- Pertaining only to the core subjects of the PCLL, not electives
- Set and marked by the Law Society

So far as we are aware there has been no further public announcement to this effect. We can therefore only assume that this continues to be the Law Society's intent. If so, we welcome this clarification, which anticipates a number of the strongest criticisms (and risks) of the original CEE proposal. However a number of concerns and challenges remain, which are considered in sections 6.5-6.7, and for avoidance of doubt we make a number of observations with respect to alternative CEE scenarios, here and in section 7.

6.3 The Context (1): Trends in Assessment Regimes

Centralised assessment is not unusual in professional qualifying regimes, both in law and in other disciplines. There are however significant variations as regards the extent and format of such

the record it should be noted that all were broadly critical of the idea, but we are obviously unable to say how representative they are of the views expressed across the CEE Consultation more generally.

⁸ Up until this point there was public uncertainty whether the CEE might alternatively be introduced at the point of qualification, ie on completion of the training contract.

⁹ See, eg, the summary of progress contained in the Panel on Administration of Justice and Legal Services 'Background brief' on 'Legal education and training in Hong Kong' LC Paper No CB(4)1255/16-17(04) prepared for the Panel meeting on 26 June 2017, pp. 6-7, available at <http://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170626cb4-1255-4-e.pdf>

assessment. In this section we provide an overview of trends before integrating international experience into the later discussion. For the sake of simplicity and comparability we focus primarily on legal training models, though some of these have themselves drawn on wider practices in professional education.

6.3.1 A comparative overview

Assessments of professional competence may be organised in a way that is either *distributed* or *centralised*, or sometimes a hybrid of both. Distributed assessment describes systems where, as in the Australian, UK, and current Hong Kong model of vocational legal training, course providers predominantly design and deliver their own assessments, generally against an approved curriculum and/or set of learning outcomes. Centralised assessment, on the other hand, describes a system of commonly set and marked assessments, which may be either free-standing (ie structurally independent of any course offering, such as the US Bar Examination), or embedded in a course, as part of a hybrid system, such as the English Bar Professional Training Course.

In broad terms, distributed assessment has, since the 1980s, tended to be more widely adopted in Common Law systems, reflecting the move in those systems to a greater emphasis on the learning of skills, rather than purely substantive knowledge. A recent benchmarking study for the Solicitors' Regulation Authority (England and Wales) thus reviewed assessment regimes across a sample of 18 jurisdictions worldwide, including both Civil and Common Law systems.¹⁰ It found that a majority of those considered (13 out of 18) adopted some form of centralised assessment, with all of its distributed exemplars being Common Law systems (including Hong Kong).¹¹ The nature and modes of assessment within that majority, however, varies significantly, as the table overleaf (extracted from the study) demonstrates.¹²

In South East Asia, the majority of jurisdictions have centralised bar or 'judicial' examinations (as in Mainland China, Japan, Korea, and Taiwan, for example). The other main Common Law-influenced systems in the region are, however, somewhat atypical. Singapore operates a 'centralised' assessment by default, because there is a single (unified) training provider and assessment body.¹³ In Malaysia, the assessment system is distributed; graduates of certain recognised universities must either be qualified as a barrister or solicitor in England and Wales, or complete the Certificate in Legal Practice (CLP) examination required by the Legal Profession Qualifying Board. The latter was originally designed in 1984 as a temporary alternative to support Malaysian students who were not able to sit for the (then) Bar Finals Examination in England. It involves a heavily knowledge-based set of

¹⁰ Solicitors Regulation Authority, *Qualification in other jurisdictions – international benchmarking* (September 2016) available online at...

¹¹ It should be noted that the SRA paper erroneously includes New Zealand within the 'centralised' group. In fact the two New Zealand providers of professional legal training operate their own assessments within the framework set by regulations made by the Council of Legal Education.

¹² Note that the wholly blank rows indicate a distributed assessment regime.

¹³ See Singapore Institute of Legal Education, 'Preparatory Course leading to Part B of the Singapore Bar Examinations' available at <http://www.sile.edu.sg/part-b>. For a brief survey of the reforms leading up to the introduction of the new course and examination, see A. Godwin and R. W-S. Wu, 'Legal Education, Practice Skills, and Pathways to Admission: A Comparative Analysis of Singapore, Hong Kong and Australia' (2017) 66 *Journal of Legal Education* 212.

assessments with a traditionally high failure rate. There is, after lengthy debate, now reported to be some pressure for the creation of a universal, and centralised, Malaysian bar examination.¹⁴

Table 6.1: Centralised assessment design in professional legal training

Jurisdiction	Written exam	Practical skills test	Multiple choice questions	Oral exam/ interview
Australia - New South Wales and Victoria				
Canada - British Columbia				
Canada - Ontario			✓	
France	✓	✓		✓
Germany	✓			
Hong Kong				
Italy	✓			
India	✓			
New Zealand	✓			
Nigeria	✓		✓	
Pakistan				✓
Poland	✓			
Singapore	✓			
Spain	✓			
South Africa	✓			
United Kingdom - Scotland				
United States - California	✓	✓	✓	
United States - New York	✓	✓	✓	

¹⁴ 'Azalina: Govt should not interfere with Malaysian Bar', *The Star*, 19th October 2016, re-published at http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/azalina_govt_should_not_interfere_with_malaysian_bar.html. For background, see S. Thiru, 'A first class legal profession: A Common Bar Course to transform the training of new entrants to the Malaysian legal profession' *Praxis*, July-Sept 2011, re-published online at <http://www.elawyer.com.my/blog/a-first-class-legal-profession-a-common-bar-course-to-transform-the-training-of-new-entrants-to-the-malaysian-legal-profession/>;

6.3.2 Major Reforms Proposed in England and Wales

As part of the post-LETR reform processes discussed in section 3 of this report, the Solicitors Regulation Authority in England and Wales is currently examining the feasibility of re-introducing centralised assessment to the English system of solicitors' vocational education. Given the historic linkages between the English and Hong Kong systems, these proposals merit some discussion.

The SRA has gone significantly further in this regard than the LETR recommendations. While LETR recognised concerns over comparability and consistency of standards, it did not support major change beyond a review of training outcomes, and some limited measures to enhance standardisation of assessment outcomes. The LETR researchers took the view that they did not have the evidence to identify and diagnose any consistency problems with the precision to warrant a change of this magnitude (aside from the pedagogic debates about the desirability of centralisation). Nonetheless, following consultations in 2015 and 2016,¹⁵ the SRA published proposals for a new Solicitors' Qualifying Examination (SQE).¹⁶ The proposals anticipate a two-stage, wholly centralised, assessment of competence, with SQE1 covering prescribed academic and vocational knowledge areas,¹⁷ and SQE2 assessing professional skills.¹⁸ It is thus a much broader-based proposal than the CEE reform being contemplated in Hong Kong.

Much will still depend on the detail of the proposed new regime. The SRA 2016 Consultation, commendably, includes an 81 page technical annex on the proposed new assessment structure,¹⁹ including topic areas, assessment objectives, and weightings produced by a working group of legal academics, practitioners and technical experts in assessment. The focus of SQE 1, as proposed, is on assessing 'functioning legal knowledge', based on a broad core of substantive legal knowledge and 'know how' that is to be assessed predominantly through 'scenarios' (ie hypothetical problem questions) typically or generally encountered in professional practice'.²⁰ It is anticipated that SQE 1 will be assessed by six three hour assessments, using computer-based objective testing (ie

¹⁵ See SRA 'Solicitors Qualifying Exam' available online at <https://www.sra.org.uk/home/hot-topics/Solicitors-Qualifying-Exam.page>.

¹⁶ Solicitors Regulation Authority, *A New Route to Qualification: The Solicitors Qualifying Examination (SQE)*, October 2016, available online at <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#download>. The first (2015) consultation on the SQE, received the largest ever response to an SRA consultation, with 'around' 250 responses, and met with considerable push-back from consultees, leading to the launch of a second consultation exercise. About 100 of the 2015 responses were characterised by Crispin Passmore, Executive Director of Policy at the SRA, as "wholly negative", with another 100 or so having reservations about the specific proposals: N. Hillbourne, 'SRA bows to pressure and puts SQE on hold' *Legal Futures*, 2 June 2016, at <http://www.legalfutures.co.uk/latest-news/sra-bows-pressure-puts-sqe-hold>.

¹⁷ Part One is intended to comprise six areas of knowledge (i) Principles of Professional Conduct, Public and Administrative law, and the Legal Systems of England and Wales; (ii) Dispute Resolution in Contract or Tort; (iii) Property Law and Practice; (iv) Commercial and Corporate Law and Practice; (v) Wills and the Administration of Estates and Trusts, and (vi) Criminal Law and Practice. See above n.16.

¹⁸ Part Two envisages an integrated assessment of vocational knowledge and skills, built around client interviewing and advising, writing, drafting, advocacy, and negotiation tasks. It is proposed that each skill would be assessed twice, in different practice areas (civil litigation, criminal litigation, property law and practice, wills and probate, the law of business organisations). Candidates would be expected to deal with both contentious and non-contentious areas in the overall course of the assessments. *Id.*

¹⁹ Solicitors Regulation Authority, *Solicitors Qualifying Examination: Draft Assessment Specification*, October 2016, available at <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#download>

²⁰ *Id.*, *seriatim*

computerised multiple choice tests). It should also be noted that the proposal to rely so heavily on multiple choice testing attracted very substantial (though not always fair) criticism in the 2016 consultation.²¹ Moreover in the SRA's own benchmarking exercise, it can be observed that almost all comparator jurisdictions included written examinations, and less than a quarter used multiple choice testing.²²

In Annex 7 to this Report, we include two further 'case study' summaries of centralised assessment initiatives in the Scottish solicitors' qualification and the English Bar course respectively. We offer them instructively, as examples primarily of some of the risks such projects, and as highlighting the virtue of proper design, piloting and testing of changes to such high stakes assessments. We return to the SQE and these other 'case studies' later in the discussion. We turn now to the second, regulatory, context that informs our thinking on this matter.

6.4 Context (2): The Regulatory Grounds for Intervention

We suggest that, under the current regulatory arrangements in Hong Kong, the question of professional intervention into the assessment of the PCLL, is not just a matter of educational practice, it must be properly framed in terms of the appropriateness of regulatory action.

Rule 7(a)(ii) of the *Trainee Solicitor Rules* permits the Law Society to prescribe "such *other* examination or course as the Society may require and set" (our emphasis), ie, it appears to give the Society the power to create a course or assessment scheme independent of the PCLL. That, however, appears no longer to be the Law Society's proposal. Rather, the Society wishes to take some degree of direct control over PCLL assessment. This is still problematic. As was noted in section 5, the PCLL (as a whole) is currently a prescribed element of the professional qualification regime for both the Bar and the solicitors' profession. We take the view, as discussed in section 2, that there is a legislative gap in the Ordinance insofar as it is silent on the Law Society's and Bar's power to act *unilaterally* to amend the PCLL for their own professional purposes.²³ We do not consider it in the public interest for a single professional body to exercise that degree of control over the training of a sister profession. For this and other reasons outlined in this section we propose a moratorium on CEE development until either a mutually satisfactory forum is established voluntarily between the Law Society, Bar Association, and PCLL providers to manage the CEE process, or, if this not possible, until the mechanisms we recommend in section 8 are put in place.

We nonetheless acknowledge the strength of the Law Society's argument that it would be failing in its duty to maintain the standards of the profession and to protect the public interest, if it did not act in circumstances where it would be appropriate to do so. But that statement also begs the crucial question: by what means and to what standard is the *appropriateness* of intervention to be judged? The answer to that lies in the Law Society's acknowledged role and consequent responsibilities as a public interest regulator.²⁴ This means that the Society has an obligation to ensure that its own actions

²¹ SRA, *Consultation Responses. A New Route to Qualification: The Solicitors Qualifying Examination* (April 2017) [link to follow].

²² See SRA, n.10, above.

²³ The Law Society's power under rule 7(a)(i) of the Trainee Solicitors Rules (Cap 159J) to set their own examination in addition to the PCLL appears to be a relic of the former system whereby an additional examination on solicitors' accounts was required, because this was not included in the PCLL: see HKU, Second response, para 2.1.

²⁴ See, eg, the Law Society's reliance on public interest reasons for the CEE in its first response, at p.1 and in its second response CEE rationale, discussed below at 6.5. Note also the Department of Justice's reference to the

are consistent with the public interest in both form and effect, and *demonstrably* so. Given the importance of this conclusion to the form of our analysis and conclusions, we therefore spell out the reasoning behind it, drawing substantially on modern good practice in regulation.

First, it is taken as given that the public interest is a significant justification for legal education and legal services regulation. Aside from market failure, it is probably the primary policy justification in use, across this and most regulatory fields.²⁵ It is, however, also problematic as a justification, by virtue of the difficulty of defining the public interest in any given case. Despite its long history, and wide usage in legal and political theory and in policy analysis, it remains a rather fugitive concept.²⁶ This uncertainty is not helped by common failures in design, whereby regulation fails to provide explicit principles or regulatory objectives, or to identify specific processes that would facilitate public interest decision-making.²⁷

Secondly, competition between public and private interests, and even between different facets of the public interest is inevitable.²⁸ Identification of such competing interests is therefore an important, preliminary regulatory task, and one that may require a regulator to engage with a range of stakeholders in order to identify both the competing interests and appropriate public interest criteria. In this regard, it is sometimes said that the public interest is ultimately a consensus norm “that must be repeatedly fashioned anew from among... competing values and interests”.²⁹ Such public interest criteria provide an initial basis for identifying possible solutions.

Thirdly, it follows that some comparative assessment of possible solutions must then be made against further criteria. Such assessment commonly involves judgments regarding both outcome and process.³⁰ *Outcome assessment* in formalistic models tends to involve qualitative or quantitative cost/benefit analysis, though arguments are also made in some contexts that other criteria of usability,

public interest as the “ultimate yardstick for considering any changes to legal education and training” (second response, 5th February 2016), para. 4.

²⁵ Thus, it is at the centre of Philip Selznick’s classic definition of regulation as the “sustained and focused control exercised by a public agency over activities *that are valued by a community*” (our emphasis) – see P. Selznick, ‘Focusing Organizational Research on Regulation’ in R. Noll (ed), *Regulatory Policy and the Social Sciences* (University of California Press, 1985), p.363.

²⁶ See, eg, M. Feintuck, *The ‘Public Interest’ in Regulation*, (Oxford University Press, 2004), *seriatim*. A minimalistic definition would say that an activity is in the public interest if it advances, in some way, a public good. This suffices for our purposes, given the strong public good arguments associated with access to and delivery of legal education and training. In discussing the regulatory objectives of the *Legal Services Act 2007* (England & Wales), Professor Stephen Mayson has offered a definition of public interest which seeks to capture the basic qualities of the public good, encompassing:

“objectives and actions for the collective benefit and good of current and future citizens in achieving and maintaining those fundamentals of society that are regarded by them as essential to their common security and wellbeing, and to their legitimate participation in society”

See S. Mayson, *Legal Services Regulation and the ‘Public Interest’*. Legal Services Institute, July 2011 (revised January 2013), p. available at <https://stephenmayson.com/downloads/>.

²⁷ This criticism might fairly be made of the *Legal Practitioners Ordinance*, which can be contrasted in this regard with more modern regulatory approaches in, eg, the *Legal Services Act 2007* (England and Wales) and the *2015 Legal Profession Uniform Law* (Victoria and New South Wales).

²⁸ Feintuck, above n.26, p.23.

²⁹ E.G. Krasnow and J.N. Goodman, ‘The “Public Interest” Standard: The Search for the Holy Grail.’ (1998) 50 *Federal Communications Law Journal* 605, 607.

³⁰ See, eg, International Federation of Accountants (IFAC), ‘A Definition of the Public Interest’, *IFAC Policy Position Paper No. 5*, (June 2012) at <https://www.ifac.org/publications-resources/definition-public-interest>.

or ‘social preference’ may suffice.³¹ *Process assessment* focusses on the extent to which the decision itself was made in a manner consistent with good regulatory practice. That means, does the decision- or policy-making process sufficiently reflect qualities of transparency, proportionality, targeting, public participation and accountability?³² This emphasis on process reflects the extent to which the performance of a public interest regulator is in and of itself *a proper matter of public interest*.

6.5 The rationale and process for implementing the CEE

It follows, therefore, that in analysing the process and outcomes of the Law Society’s CEE implementation as a matter of regulatory action, we focus on the following questions:

- Does the CEE proposal have a clear public interest rationale?
- Was the existing CEE decision taken following a process consistent with good regulatory practice?
- Has a proper assessment of the outcomes or foreseeable consequences of CEE implementation been undertaken?

The aim and rationale behind the CEE proposal has been something of a ‘moving target’. This obviously matters. Without a clear sense of the purposes of reform, it is difficult to determine the ameliorative measures that are necessary, and to assess the proportionality of the CEE as a regulatory response.

In the Law Society’s second submission to us, the objectives of the reform were presented as follows:

- (i) To uphold the quality of the entrants to the solicitors’ profession;
- (ii) To provide access to those who have the ability to qualify as a solicitor;
- (iii) As a regulator, the Law Society has a duty to maintain the standards of the profession and to protect public interest.

We therefore take these as the authoritative objectives, and assess whether these provide a sufficient basis, and whether the CEE as proposed at least has the potential to achieve them.³³

6.5.1 Quality

The CEE model seems to make two critical assumptions regarding quality, first that there is a significant ‘quality’ problem in respect of assessment standards, and secondly that the CEE is an appropriate fix for it.

³¹ Cp in the legal education context, the LETR Report’s emphasis on ‘social robustness’ (paras 1.15-1.21) as a preference criterion in the absence of more reliable, objective, criteria.

³² This is sometimes also captured by reference to principles of ‘better regulation’ as adopted (for example) across the EU and in Australia. See, eg, P. Coghlan, ‘The principles of good regulation’ in Productivity Commission/Australian National University, *Achieving Better Regulation of Services*, Conference Proceedings, (AusInfo, 2000), pp.31-53 at <http://www.pc.gov.au/research/supporting/better-regulation/abros.pdf>. More specifically, in a professional standards context, see, eg, N. Byron, L. Gropp & K. Gusberti, ‘Principles for regulating the professions’, *id*, pp.177-97; A. Friedman, W. Hanson & C. Williams, *Professional Standards Bodies: Standards, Levels of Compliance and Measuring Success*, (Professional Associations Research Network, 2011), p.11.

³³ Though we have not included objective (iii) separately in the discussion since it appears to provide the underlying justification for taking action, rather than be an independent objective in its own right.

The quality problem itself requires some untangling. Debate so far has tended to collapse three relatively distinct arguments: the first asserts that there is an intrinsic, *real*, absence of equivalency or consistency of standards between providers; the second asserts that there is at least a *perception* (in some quarters) that standards vary, and the third asserts that there is an across-the-board problem of *assuring* equivalency (ie, we cannot tell whether there is a real or perceptual problem because quality assurance mechanisms are missing or inadequate). The Law Society at various points has made all three assertions.³⁴ But the distinction between them is more than merely academic. A ‘perception’ problem may require different solutions to a ‘real’ problem; enhanced quality assurance might be achieved by less, or more, risky ways than imposing a new standardised assessment.

The evidence for a real quality problem is limited at best. There is no meaningful experimental data on quality on which we can draw, and ‘social preference’ data from consultation responses offer only limited support for the change. For example, the Bar Association has told us that it has no problem with the quality and standard, or consistency produced by the PCLL courses. The Legal Aid Department, similarly has indicated that it has no difficulty in recruiting trainees of sufficient quality, and therefore takes a ‘neutral’ stance on the CEE proposal. The Department of Justice has also observed that it remains unclear why the Law Society has decided to implement the CEE,³⁵ and our three practitioner/firm responses highlight the lack of sufficient justification for, or question the feasibility of the proposal.³⁶ The Law Schools have, not unreasonably, asked a number of times for evidence demonstrating material inconsistency. Justice Chan, in his personal submission, observes that there are ‘noticeable’ differences in standard, though the nature of those differences is not clear. The non-disclosure of the 2013 Consultation, and the relative lack of law firm responses to our consultation leaves us with little direct evidence of employers views on the matter.

In fairness, these evidential difficulties are not entirely unusual. Similar issues have been aired in many of the other jurisdictions considered by the consultants, and in all of those jurisdictions, the evidence (if any) has been largely impressionistic. While recognising the difficulty, we cannot simply overlook the absence of reliable evidence. This is a high stakes assessment, and change may be beneficial, but is also unlikely to be either cost- or risk-neutral. As the Law Society itself acknowledges, the existing indicators do not mean, without more, that the system is routinely permitting incompetent trainees to enter workplace training.³⁷ Changes could impact access to the profession, and experience suggests that some unintended consequences are likely to follow. The Law Society to date, has not offered any detailed modelling of a CEE, preferring instead to seek in principle approval for the idea of a CEE *before* releasing more detailed proposals. Given how much of ‘the devil is in the detail’, this is unsatisfactory. We thus have no substantive evidence as to the ‘goodness of fit’ of its solution. Nor are we aware of any kind of regulatory risk assessment, or cost/benefit analysis of the proposed changes. In the absence of these, it is difficult, if not impossible, to say that there is a ‘real’ problem to which the CEE will be either an effective or proportionate solution.

³⁴ Here we draw on the written responses and comments in the verbatim interview transcript, Law Society, 15 December 2015 (Mr Gilchrist);

³⁵ Second Submission, 5 February 2016.

³⁶ See responses from Anon., Clifford Chance, Mr Allen Che.

³⁷ Hypothetically, inconsistency in standards could reflect the fact that some course providers are actually delivering a baseline of ‘competence +’, and perceptions of other providers (who ‘merely’ meet the standard of competence) suffer in the comparison.

This is not to suggest that there is no case for change. We take the view that, in a distributed system like Hong Kong, some variation in course delivery and outcomes will undoubtedly exist. This is for two reasons. First, it is simply a foreseeable consequence of a distributed system; teaching and learning are not so formulaic that consistency can be easily achieved. Secondly, as noted in the previous section of this report, the likelihood of some inconsistency is *increased* by the absence of a robust set of uniform written outcomes and standards for vocational training. Following on from the discussion in Section 5, we do accept that, as the Law Society also asserts, the present system makes quality control more rather than less difficult. But this does not necessarily warrant substantial change to the assessment regime, rather than changes to standards or quality assurance processes, or both.

On balance, therefore, we consider the primary regulatory focus should be on the quality assurance problem, not the underlying and largely unproven (and unprovable) problem of consistency itself. Taking the quality assurance problem as the starting point, requires us to assess whether changing the assessment is the most appropriate (or at least proportionate) way of enhancing quality assurance.

6.5.2 Access

A CEE *may* enhance access to the profession, but again such effect is neither straightforward nor guaranteed. It will depend on the existence of certain systemic conditions. Common assessment may enhance access by ‘levelling the playing field’ in three situations:

- (a) Where reputational differences exist between providers, standardised assessment may, in theory, reduce the impact of such differences on trainees’ recruitment chances. This however assumes that the profession sufficiently understands the nature and effect of the changes for them to override any existing reputational disadvantages.³⁸ This cannot too readily be assumed. Reputations, good or bad and deserved or not, can be highly resilient, and sometimes have little basis in current reality.³⁹
- (b) Where a CEE is introduced as a universal threshold, in order to remove barriers to access created by differences in existing training pathways. This is one of the rationales behind the English SQE proposal, but the Hong Kong proposal does not fit this model.
- (c) Hypothetically, a CEE might also enhance access if providers were in fact setting the standard too high and excluding candidates who would pass the threshold of baseline competence. Given the high pass rates noted in section 5, this seems factually unlikely in the PCLL context.

In short, as noted in section 5, the greatest constraints on access are the numbers of PCLL and training places. If it does not impact either of those bottlenecks, it seems unlikely that a CEE by itself can significantly enhance access.

Moreover there is obvious scope for tension between the objectives of maintaining or enhancing quality and widening access. If the primary quality concern is that the present assessments are not rigorous enough, then a plausible effect of a CEE would be to increase the failure rate on the PCLL,

³⁸ Though the creation of a single teaching institution (Recommendation 2.1) might, by contrast, more readily resolve any continuing reputational differences.

³⁹ The resilience of the (English) Bar Vocational Course’s poor reputation among practitioners was noted as a matter of some difficulty (and we surmise, exasperation) by the Wood Working Party in its 2008 Report on BVC – see [ref].

and *reduce* the numbers actually competing for training positions.⁴⁰ This in and of itself raises a legitimate concern regarding market control and conflict of interest – whether deliberate or incidental - by the Law Society.⁴¹

6.5.3 A Comment on Control and Conflicts of Interest

Although not referenced in its second submission, the importance to the Law Society of re-asserting professional control over assessment was also strongly emphasised in the Society's discussion with us.⁴² The assertion of control is ambiguous. It can be read, quite appropriately, as an assertion by the Law Society of the professional privilege of self-regulation, and a proper concern with professional standards. Unfortunately, control may also be used to manipulate the training market.

Entry controls have long been used by professions generally to regulate supply control, and hence can operate as a market protection mechanism.⁴³ This is the kind of risk factor that has been influential in the move to more co-regulatory professional regimes in Australia, New Zealand, and England and Wales.⁴⁴ We cannot emphasise too strongly that we are not here questioning the basis of professional self-regulation in Hong Kong, which is an important guarantor of professional independence, and hence the Rule of Law. Nor, we stress, is there any evidence of such improper motive colouring the Law Society's decision in this instance.

However, assessment changes will have market effects, and regardless of how groundless they may be, we are aware that rumours of protectionism are circulating. This, moreover, is not entirely unsurprising. The Society's decisions not to disclose the CEE Consultation results, and to progress CEE implementation before this Review was complete may have encouraged such speculation, and may yet damage the credibility of any CEE initiative that the Society launches. As the Society itself has pointed out, perceptions matter.

In a press release responding to a statement from HKU regarding the CEE, the Law Society raised a further argument suggesting an inherent conflict of interest in the law schools' role, since they:

....provide the PCLL course and administer the PCLL examinations to their own students under the current system, for which they charge for tuition. They also provide undergraduate law degrees for which a sizeable portion of their graduates seeking to enter the Hong Kong solicitors' profession (and indeed the barristers' profession) would be required to enrol in and be examined upon.

⁴⁰ Experience in other jurisdictions would suggest that centralisation of assessment tends, either by accident or design to suppress pass rates – cp Annex 7.

⁴¹ See Hong Kong Bar Association, second response, para. 10.

⁴² As recorded in the verbatim interview transcript (Mr Heung)

⁴³ Noted in section 3.2, above. See further M.S. Larson, *The Rise of Professionalism: Monopolies of Competence and Sheltered Markets*, Revised edn. (Routledge, 2012); R. Abel, *The Legal Profession in England and Wales* (Blackwell, 1988), pp.18-19; similarly, Abel, *American Lawyers* (Oxford UP, 1989), p.71ff.

⁴⁴ Aside from the more generalised moves to co-regulation, it should be noted that the SRA has indicated a preference for a structurally, or at least functionally, independent assessment body for the SQE. The US and Singapore Bar Exams are similarly overseen by autonomous bodies, not by the professional association.

The institutions teaching the PCLL should be separate from the institution administering the examination so as to ensure impartiality in the examinations. The CEE will address this conflict as the Law Society will not be involved in teaching any preparatory course on CEE.⁴⁵

Once again, the nature of the conflict is not clearly identified. We assume that the greatest risks of conflict would be (i) student pressure to improve degree classifications or otherwise enhance their opportunities for access, given the competition for PCLL places, or (ii) some perceived incentive to pass their own students once on the PCLL. Either would be a grave breach of academic integrity. The Law Society cites no evidence in support of this assertion, and it is unclear whether it views this as an actual or merely potential conflict. On the statistical data available to us, our view is that, relative to some overseas institutions, the Hong Kong law schools have been relatively resistant to the risks of grade inflation, and given the high overall pass rate on the PCLL, it is difficult to see evidence of any systematic bias. Moreover, in light of the above discussion on control, it might well be argued that the CEE under the Law Society's proposal simply substitutes one potential conflict of interest for another. If we are to take these assertions of conflict equally seriously, then the better option would presumably be the creation of an autonomous examining body.

6.5.4 Conclusion: The regulatory process so far

To summarise, then, the arguments presented so far. We take the view that the evidence available points to a need to strengthen quality assurance processes associated with the PCLL and its assessment. Whether the CEE is a necessary and sufficient solution to those issues is another matter, and we do not consider that an adequate case for the CEE, particularly in any of its more radical formulations, has been made out by the Law Society in either its public statements, or in its evidence to us. While there is some basis to the quality justification, the access justification seems weak.

While the CEE Consultation may well have provided evidence for regulatory action, this has not been made public. We do not know what other measures the Society considered before adopting its CEE proposal, nor what criteria for selection were used. To that extent we regretfully conclude that, in this regard, the Law Society has fallen short of meeting the normal process and transparency standards reasonably expected of a public interest regulator.

We observe that the privilege of professional control carries with it certain responsibilities. The Society's assertion of control has so far involved a de facto subordination of the Bar's self-regulatory authority, in a way that creates a troubling regulatory precedent for the Hong Kong system. We also take into account doubts about the consistency of direct professional control of assessment with more modern regulatory practices, and the risks of reputational damage to any CEE regime, given the shadow of (perceived) protectionism. These considerations lead us strongly to encourage the Society to adopt a more transparent and collaborative approach to PCLL reform than it has so far.

In the remainder of this Report we identify a number of benefits, but also important risks regarding the CEE, that should be addressed before further decisions are made. At a minimum, we recommend

⁴⁵ Hong Kong Law Society, 'Response to the statements by the University of Hong Kong on Common Entrance Examination' (press release, 11 January 2016), paras 9 and 10. Available at http://www.hklawsoc.org.hk/pub_e/news/press/20160111.asp

that the proposed moratorium on CEE development is used by the Society to review progress to date and address the criticisms made herein.

6.6 Benefits and Risks of a CEE

Is the CEE, as proposed, a proportionate response to what we have now defined primarily as a quality assurance problem? This is, again, difficult to assess, given the extent to which the CEE itself remains a work in progress. Any proper assessment requires more information than we have to hand, regarding:

- How much control is the Society seeking to take over the curriculum itself through the backdoor of controlling assessment? Is the Society's intention to provide syllabi focussing on specific 'core' topics/transactions within the established course, or is it an attempt (eg) unilaterally to redefine the substantive knowledge base of the PCLL? If the latter, that would likely amount to significant overreach, given the present regulatory arrangements.
- How much standardisation does the Society intend to impose? Undesirable variation in standards needs to be distinguished in part from retaining flexibility in curriculum, and in teaching/assessment approaches. Within reason, variation in these may be legitimate and even desirable as legal services markets become more segmented and differentiated in the skills and services they deliver (particularly between corporate and private client spheres of work).⁴⁶ An element of course and assessment heterogeneity may work to the benefit of both the profession, and trainees.
- Whether common assessment is to be restricted to 'setting questions', or whether the Law Society proposes taking over the examining process or requiring greater monitoring for the 'questions' it sets?
- Whether the CEE will focus exclusively on assessing knowledge, or will it seek to assess some element of the skills training currently provided by the PCLL?
 - If the former, given the weighting of skills to content on the PCLL, this seems to offer a narrow/limited assurance of consistency, and may not sufficiently address the (perceived) quality assurance problem
 - If the latter, unless the Society merely defines the task, leaving the rest of the assessment process to the existing infrastructure, the CEE will require investment in its own marking and quality assurance processes. If the latter, it would also be useful to know what measures the Society proposes to put in place to train examiners and to assure consistency in its own assessment processes – this seems to us an important issue in terms of cost and proportionality (see further section 6.7).
- Core assessment decisions, such as whether the Law Society proposes a particular weighting in favour of its component of the assessment, or intends its component of assessment to be compensatable or not, will make a material difference to the effects of the CEE on overall performance, pass rates, and student behaviours on the PCLL.

We take the view that answers to these questions should be available before any binding policy decision is made on CEE implementation. With this caveat in mind, we now turn to a number of

⁴⁶ In Australia and the UK, for example, this has led the regulators to permit some tailoring of vocational training to the needs of specific large commercial firms, or consortia of firms.

relatively generic or high level potential benefits and risks associated with an approach such as the CEE.

The main benefits of a proposed CEE could include:

- As noted above, greater consistency and uniformity in assessment outcomes across the range of PCLL providers. This benefit is more likely to be achieved if appropriate process management systems and safeguards are in place (as discussed in section 6.7)
- Some greater centralised control over the curriculum and its development
- If performance data are published, potentially increased availability in market-relevant information, and accountability of providers to the profession and to society (eg analysis of comparative performance data in the CEE assessments).⁴⁷

The major risks identified are:

- By requiring the separation of an element of the assessment from the teaching, the CEE threatens the core ‘congruence’ between teaching and assessment, and potentially reduces teacher ‘ownership’ of the programme. We discuss this further in 6.7
- Teachers are likely to compensate by ‘teaching to the test’. Research across a range of education systems notes that this often has a narrowing effect on the curriculum, as both teachers and students focus strategically on assessment, often at the expense of both deeper and broader learning
- Similarly, if the CEE creates significant change in, and particularly increase of, the content demands of the PCLL, it may have unintended consequences on student learning behaviours, and assessment outcomes across other parts of the course, and may even have trickle-down effects on the academic stage. It is important that the CEE is not developed in isolation from the rest of the PCLL
- Partial centralisation in a model like this may add to rather than reduce coordination problems within the education and training system, since it increases the dispersed nature of decision-making. Management of this risk will depend fundamentally on the systems and processes adopted.
- A loss of flexibility in curriculum and teaching/assessment design can also undermine learning innovation. In any multi-provider system there needs to be some assessment of the trade-off between flexibility, innovation and standardisation.
- Risks to quality or access to the profession caused by pitching the standard of CEE too high or too low (these risks may be exacerbated by a lack of teaching congruence)
- Possible loss of congruence with Bar training

It is notable that many of the risks here cited are *process* risks. They do not necessarily undermine the argument that some greater degree of common assessment could foreseeably increase uniformity of outcomes. However, the greater the formal separation of the CEE from the rest of the PCLL, the more

⁴⁷ There are significant risks associated with this, however, as raw performance data can be a very crude indicator, and may be misleading unless analysis accounts for a range of demographic and prior education variables that may better explain performance outcomes than does choice of provider. Most common law systems outside the US have so far eschewed the use of performance data for this purpose.

likely it is that key process risks, such as the loss of congruence between teaching and assessment, and increased teaching to the test, will outweigh the consistency benefits.

For the avoidance of doubt, we therefore reject the idea of a CEE as the only test of competence to be required of prospective trainee solicitors at the end of or after the PCLL. This model is potentially a worst of all worlds, since it would

- increase training costs for students;
- duplicate assessment with the PCLL leading, in effect, to a system of double jeopardy for students;
- distort the PCLL as a consequence of additional pressures to teach to the CEE;
- lead potentially to the creation of a secondary training market in CEE preparation courses (adding further to costs and quality risks).

On the other hand, we take the view that there is no fundamental principled or risk-based ground to reject the *limited* introduction of a common examination for core courses which can be assessed through written means during the PCLL. This does not incorporate the skills-based training elements of the course (except relevant written skills).⁴⁸

It is crucial, however, that if common assessment is introduced, it is fully integrated into the PCLL, not imposed from the outside. Adoption of a top-down model of curriculum control, in this context, is potentially disproportionate, counter-productive, and unnecessary.⁴⁹

6.7 Managing Processes

How well any CEE achieves its objectives would also depend crucially on a range of assessment design decisions, and the proper management of a number of systemic risks associated with ‘outsourcing’ assessment.

To understand the issues involved, it is necessary first to recognise that as a matter of good educational practice, assessment should satisfy three conditions:

- a) **Validity:** an assessment is valid when there is proper alignment between the assessment task and the knowledge, skills or attributes it claims to test. There are three key components to validity:
 - i) face validity, ie the transparency and relevance of the assessment from the perspective of the person taking the test
 - ii) consequential validity, ie the assurance that the assessment reflects and underpins the whole learning and teaching process, rather than encourages an instrumental learning (or teaching) ‘to the test’
 - iii) professional or practice validity, ie the extent to which the assessment properly reflects what is actually done in the practice environment

⁴⁸ To be effectively standardised, centralised skills-based assessment would in our view require a very different and more sophisticated and expensive assessment model, as discussed in section 7

⁴⁹ CityU in its response to the CEE Consultation mooted such a model, and we note that all of the PCLL providers have subsequently noted their willingness to work with the Law Society in developing a proportionate and workable solution.

- b) Reliability: refers to the capacity for an assessment tool to produce accurate, consistent and reproducible results. If consistency is a key objective of the reforms, then reliability is of considerable importance. Reliability is a function of both assessment design and marking practices. In professional education settings it may be argued that there is a public as well as private interest in assessment reliability, since assessment also benchmarks competence to enter the final stage of training.
- c) Fairness: relates to, but is also broader than, validity; it thus involves perceptions of the assessment's 'authenticity',⁵⁰ its diligent construction, appropriateness of standard-setting, and the procedural fairness and integrity of its administration. Fairness is increasingly regarded in the assessment literature as a crucial feature of effective educational practice.⁵¹ It may be particularly important in the context of professional courses because:
- i) Students tend to be academically (very) able, and highly experienced in taking examinations. They are thus able to form accurate perceptions of an assessment's fairness;
 - ii) Fairness may also be regarded as a 'public interest' matter in high stakes professional examinations, since assessment must assure stakeholders of both the intrinsic quality and propriety of assessment processes.

Centralised assessment can, and should increase assessment reliability. If not well managed, however, it may significantly reduce validity and fairness. If assessment is to be seen as valid, reliable and fair, it must therefore demonstrate the following features:

- A high level of congruence between what is taught and what is assessed
- A good level of congruence between the curriculum and the appropriate norms and activities of professional practice
- Robust assessment design, which uses appropriate assessment tools to minimise the risks of inaccuracy and inconsistency in outcomes
- Robust setting of assessment standards; transparency with regard to what students are expected and should be able to achieve;
- Examination processes that ensure that marking is consistent with those standards.

The specification of more detailed outcomes and written standards (as discussed in Section 5) will do much to improve and assure congruency. A valid, fair and reliable common assessment framework is most likely to be established in a collaborative setting in which the professional bodies continue to work closely with the PCLL providers, not by what appears to be the current process of remote decision-making and formal consultation by the Law Society.

⁵⁰ This term is used to reflect the relatively subjective quality of fairness, which is why we say it goes beyond the more objective norms of face and practice validity. An authentic assessment amounts to a fully defensible assessment *process* – see, eg, S.M. Downing, 'Assessment of Knowledge with Written Test Formats' in G. Norman *et al* (eds), *International Handbook of Research in Medical Education* (Kluwer, 2002).

⁵¹ See, eg, C. Gipps and G. Stobart, 'Fairness in Assessment' in C. Wyatt-Smith and J.J. Cumming (eds) *Educational Assessment in the 21st Century: Connecting Theory and Practice* (Springer, 2009); P. McCoubrie, 'Improving the Fairness of Multiple-Choice Questions: A Literature Review' (2004) 26 *Medical Teacher* 709

We also express very strong reservations, for reasons of both congruence and fairness, over any suggestion that examination setting and assessment process for the CEE should be taken wholly or substantially out of the hands of the teaching institutions. We note in this context the continuing difficulties the Bar course in England and Wales appears to have experienced following the move to centralised assessment, including widespread student concerns regarding the fairness of certain assessments (particularly Professional Ethics), and risks of arbitrariness in curriculum interpretation and question selection.⁵²

6.8 The CEE as a PCLL Alternative

There has been some discussion of the CEE as an alternative entrance route to the PCLL (we will refer to this as the ‘altCEE’ here to distinguish it from the Law Society’s current proposal), and indeed there still appears to be some public confusion as to whether this option is still under consideration. It is notable that this model has attracted interest, and in principle support, from a number of groups, including law students.⁵³

The proposal undoubtedly has some merit. It would reduce the bottleneck created by the PCLL, but it must be recognised that this is not a panacea. It will primarily add to pressure on the training places in the profession. It is ultimately the market that determines access, and, as noted, there are already (marginally) more PCLL places than there are training opportunities. Nonetheless there are those who would argue that it is fairer for the market to act as a gatekeeper, than for the PCLL to be the primary hurdle.

If sitting the altCEE is not contingent on any formal course requirement, failure rates are likely to be extremely high, certainly relative to the PCLL. If there is sufficient demand (which is likely), a secondary market in altCEE preparation courses would evolve, adding additional costs and quality risks. If an altCEE were to be adopted, consideration should be given to whether that secondary market should be anticipated, and whether and if so by whom that market should be regulated.

The benefits and risks arising from the consequent greater marketisation of training implicit in a larger PCLL/CEE system should also be considered. Competition can be healthy in driving innovation and standards, but there are risks to standards too, notably, insofar as pass rates may become a proxy for provider quality, leading to a ‘race to the bottom’ of grade inflation. Rigour in maintaining assessment comparability and standards would be essential in a mixed system such as this.

⁵² See Annex 7. Much of the reporting is relatively anecdotal, but note, for example, the BPP University submission (p.5) to the SRA, *Consultation Responses*. above n.21:

“The BPTC team has found that, where the boundaries of the curriculum have been drawn too widely, it has led to arbitrary decisions being made by the BSB on the scope of the syllabus (for example, where the definition of a concept may be examinable but its application is not). This approach has encouraged selective rather than holistic learning amongst BPTC students.”

⁵³ See, for example, the various statements in support expressed in the Minutes of the LegCo Panel on Administration of Justice and Legal Services, 27th April 2015, LC Paper No CB(4)1283/14-15, pp. 9-10 at <http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150427.pdf>; including from the Law Student Society at City University, and of the Alumni Association, Hong Kong Shue Yan University.

There are also risks that any altCEE would be seen by legal employers as a second class route for students who have ‘failed’ to gain admission to the PCLL. The likelihood of this is necessarily difficult to predict, but it is possible that an altCEE might do little to advance actual employability in practice.⁵⁴ For this reason too, standards on an altCEE would require careful monitoring and pegging to the PCLL to try and reduce such risks.

Three other important points should be noted with regard to such a pathway:

- The assessment would have to cover the same range of core competences as the PCLL; it could not therefore simply be a conventional examination, it would have to encompass a full range of skills assessments. This would make it a very substantial set of assessments to design and deliver, and any such development would also be contingent on the production of consistent outcomes and standards, as identified in Section 5.
- A decision would also have to be made regarding content currently addressed in PCLL electives. Would it be sufficient for the altCEE to cover merely the core competences, or would this make it too ‘PCLL-lite’ in the eyes of regulators and employers?⁵⁵ If an altCEE also required assessment of electives, this would obviously increase the cost and scale of the endeavour;
- An altCEE, by definition, would not address the current debate regarding variability of PCLL standards. It could in fact add to the scale of the ‘problem’ by introducing a fourth pathway.

Consequently, we take the view that the benefits of an altCEE could easily be overridden by the risks and cost burden, particularly as the ability of existing professional institutions to manage the additional monitoring and assessment burden is questionable. The potential for further variability in standards (particularly if a substantially unregulated market of examination preparation providers were permitted) with possibly limited gains in employability remains a matter of concern.

Whether there is a greater need to assure the quality and consistency of training contracts as well as the PCLL, and whether a CEE might alternatively be better positioned at completion of the training contract, is addressed in Section 7 of this Report.

6.9 Conclusions and Recommendations

Our recommendations in this section reflect three major reservations regarding the CEE debate so far. First, that the discussion has been conducted in very abstract, ‘in principle’ terms. CEE proponents have offered neither substantive evidence as to the mischief, nor concrete proposals for change. Secondly, we do not think that the decision-making process has been well-managed. It lacks transparency, and in seeking stakeholder endorsement of a CEE in abstract terms, has failed to enable meaningful debate and consultation, contrary to the public interest. Thirdly, we express strong reservations in terms of potential overreach by the Law Society, insofar as (i) the proposed CEE seeks to impose Law Society control not just on the standard of entry, but also the market mechanism governing access to the profession, and (ii) in the context of what is perhaps best characterised as the

⁵⁴ This concern was widely raised in the LETR research phase, and was also influential in the SRA’s decision to create an overarching SQE, rather than multiple pathways.

⁵⁵ Again in the context of the SRA Consultation on the SQE a large number of employers and employer groups (see, eg, City of London Law Society submission) highlighted the importance of LPC electives in shaping the workplace value of what is otherwise a generalist qualification.

joint stewardship of the PCLL, the unilateral imposition of a CEE is itself contrary to the legitimate expectations of the Bar, and possibly other stakeholders in vocational legal training.

We do not consider that there is strong evidence of a need for a CEE. Insofar as a lack of uniformity in outcomes is plausible, we accept that a degree of common assessment across the PCLL would, likely, enhance uniformity. However, we stop short of making a formal recommendation to that effect, in the light of the substantive changes recommended in Section 5, and the alternative proposal for a single School/Institute in Section 2. We encourage the Law Society, Bar and PCLL providers to work together to review the effectiveness of assessment in the context of those recommendations. We note also that, if a degree of common assessment is considered desirable, there needs to be substantial work undertaken on constructing a model and assessing the risks thereof, before any final implementation decision is taken.

Accordingly, we recommend:

Recommendation 6.1:

That a moratorium be called on current CEE development while (i) a further Benchmarking exercise for PCLL is completed (see Recommendations 5.4 and 5.5), and (ii) a decision is made either to create a new School of Professional Legal Studies (Recommendation 2.1), or agreement is established between the Law Society, Bar and PCLL providers to progress any PCLL-associated CEE model (either as an interim or continuing solution).

Recommendation 6.2

If the key stakeholders (Law Society, Bar and PCLL providers) agree that an element of common assessment is desirable, that a cross-stakeholder working group under the auspices of SCLET should be convened to oversee the development. Membership of the group should include equal representation from the Law Society, Bar and PCLL providers, and at least one educationalist from outside the PCLL, with experience of high stakes professional assessment design. The chair of the group should also be independent of the above key stakeholders.

Recommendation 6.3

That any working group created under Recommendation 6.2 shall be charged with developing a model or models for the purposes of stakeholder consultation, revision and implementation. Without unduly constraining the terms of reference of the group, any model devised should include a basic risk analysis; worked arrangements for setting and review of common papers, examining arrangements and recommendations as to the structure and powers of any examining board. It will be for the working group to agree any revised implementation date for the scheme of common assessment.

Recommendation 6.4

That, subject to Recommendation 2.1, if any system of common assessment is adopted, PCLL providers are involved in paper setting, and examination arrangements. A joint examination board of all PCLL providers, together with Law Society and Bar Association external examiners, should be devised to oversee results and report on assessment processes.

7. THE TRAINING CONTRACT, PUPILLAGE AND THE OVERSEAS QUALIFYING EXAMINATIONS

Hong Kong shares with UK legal systems the inclusion of a substantial period of workplace training as a requirement before qualification as a solicitor or barrister. In this section we provide, first, an overview of the existing system of training contracts and pupillages, in the context of developments since the Redmond-Roper Report. We then explore the case for retention (or otherwise) of the existing periods of training; we consider whether the level of regulatory prescription and oversight in place is appropriate to this stage of training, and whether there should be any final assessment of competence before formal admission to the profession. Finally, we then look separately at the examination requirements for overseas-qualified lawyers seeking to re-qualify to practice in Hong Kong.

7.1 The current system of workplace training in Hong Kong

We begin by looking briefly at the current regulatory arrangements for solicitors and barristers respectively.

7.1.1 Training contracts

The regulatory framework for trainee solicitor training is laid down by the Legal Practice Ordinance and associated training rules.¹ Training contracts are normally entered into for a two year period, though the Law Society has discretion to reduce time served under the contract by up to six months, to take account of prior relevant experience.

Training requirements are broadly defined. Trainees are expected to receive training in at least three areas of work derived from a specified list of practice fields,² and to practise a range of skills: communication, legal research, drafting, interviewing, negotiation, advocacy, and practice support. They must also complete at least 15 points (hours) of continuing professional development (CPD) in each year of training. Trainees entering training after October 2008 have also been required to undertake two core and one elective module of trainee solicitor 'Risk Management Education' (RME).³ Training principals and trainees must certify that work has been undertaken in the three practice areas and the skills areas, and that CPD and RME obligations have been completed before admission. The relationship between employing solicitor and trainee is also governed by a standard form contract, approved by the Society. Contracts not in the approved form will not be registered by the Society.

These formal rules are supplemented by guidance. This applies primarily to recruitment practices, and (more relevant in the present context) to the basic training required in prescribed areas and skills. The latter guidance is issued by the Society in the form of a 'Training Checklist'. This is described as

¹ See Legal Practice Ordinance, ss.8AA-13A (regulatory powers of the Council of the Law Society and Solicitors' Disciplinary Tribunal with respect to trainee solicitors); s.73(1)(a)(i) (power of the Council to make rules governing the training and employment, etc, of trainee solicitors); ss.20-23 (general and specific restrictions on employment of trainee solicitors, and powers to discharge or terminate a training contract)

² HKLS response, Annex...

³ Legal Practitioner (Risk Management Education) Rules

“providing general guidance” which is intended to “enhance consistency in the process of training”.⁴ It is not part of the documentation that has to be submitted or signed-off at the end of the training contract, nor (given its status as guidance) is there any sanction for non-compliance with the checklist as such.

7.1.2 Pupillage arrangements

Before admission to the Bar, an intending barrister must complete a minimum of one year of pupillage under the supervision of an experienced barrister, and satisfy continuing education requirements laid down by the Bar Council.

The period of pupillage is divided into a first and second six months, with the first six focused on learning by observation and undertaking work for the supervising barrister (pupil master). At the end of the first six the pupil may apply for a limited practicing certificate, which permits them to take on work on their own account, whilst also remaining under the supervision of a pupil master. All work undertaken during the pupillage period should be recorded by the pupil in a logbook (in prescribed form).⁵ There is a normal expectation that pupils should spend at least three months of approved pupillage on criminal work and three months on civil work.⁶ Beyond this, areas of work are not prescribed in the way they are by the Law Society (unsurprisingly, given the nature of practice at the Bar), though pupil masters are under a professional obligation to “take reasonable steps to ensure that the pupil is exposed to work of sufficient quantity and diversity”.⁷ Limited guidance on the minimum pupillage requirements is also published in the Bar’s *Code of Conduct*.⁸

The current continuing education scheme is laid down by the Advanced Legal Education (ALE) Rules, which came into force in 2003⁹. To complete the ALE Programme, a pupil must obtain a total of 14 ALE points by his or her attendance at courses. A distinction is made in the scheme between core points (in required subjects) and general points; allocation of these has changed over the life of the scheme. Currently, all pupils must obtain a minimum of four core ALE points as part of their 14 points, of which at least two core points must be in Advocacy, one core point in Drafting, and one core point in Professional Conduct. Pupils are obliged also to maintain a record of all ALE courses attended during pupillage.

Satisfactory completion of pupillage must be certified by the pupil master. Logbooks are expected to be monitored by pupil masters, and are also submitted as part of the training record, with pupils warned that issuance of a practicing certificate may be delayed where the contents of a logbook are deemed inadequate.

7.2 Regulatory trends in other jurisdictions

As observed in Section 3, Hong Kong and the UK stand out from the general trend in having both long practical legal training courses, and long periods of pre-admission workplace training. In terms of

⁴ See ‘Information for Trainee Solicitors’ (effective 4 May 2015) included as Appendix 4 of the Hong Kong Law Society’s First Response.

⁵ Para 11.20 and Part III of Annex 13. Hong Kong Bar Association, *Code of Conduct*, available at <http://www.hkba.org/content/code-conduct>

⁶ *Id.*, para 11.3.

⁷ *Id.*, para 11.9(c)

⁸ Part II of Annex 13, *id.*

⁹ *Barrister (Advanced Legal Education Requirement) Rules* (Cap. 159AB), made under Section 72AA of the Legal Practitioners Ordinance.

identifying trends in key comparators, we therefore focus here on regulation in England and Scotland. We reflect more generally on the duration of training across jurisdictions in 7.3.1, and on the use of final tests of competence in 7.6.

We start therefore by reviewing the English system, where regulation of both training contracts and pupillages has undergone some significant reform over the last decade, notably in terms of more formalised authorisation and monitoring arrangements.

7.2.1 Regulating training contracts in England and Wales

The English system of training contracts was revised in 2000 and again in 2011 and 2014. The basic structure of a two-year training period has been retained through all of these iterations, though the Solicitors Regulation Authority (SRA) has made some fundamental changes to what is now called the “period of recognised training”, namely:

- The removal of the technical requirement for a prescribed mix of contentious and non-contentious experience, provided that trainees achieve a sufficient range of work of each type to satisfy the (new) Practice Skills Standards.¹⁰
- The abolition of the standard form ‘training contract’ as a regulatory basis for the training relationship. This in turn has had several ramifications:
 - Crucially, it has enabled the SRA to introduce a system of qualification by “equivalent means”, whereby an individual may be admitted as a solicitor on the basis of other assessed learning and work-based learning that achieves the knowledge and skills outcomes required of a trainee solicitor;¹¹
 - It has removed the general obligation on firms to register their training contracts with the SRA. Rather, firms need only tell the SRA when a period of recognised training commences for a specific trainee.
 - It has removed the SRA’s role in determining whether a period of recognised training should be terminated – this is now a matter for the training organisation and trainee alone.
- The training principal can be either a solicitor or barrister. Previously, he or she had to have been a solicitor and had four consecutive¹² practice certificates.
- The minimum salary for trainees has been abolished and replaced with a requirement only that firms meet the (lower) statutory minimum wage;¹³

¹⁰ The standards prescribe skills and offer indicative activities in the following areas: Advocacy and oral presentation; Case and transaction management; Client care and practice support; Communication skills; Dispute Resolution; Drafting; Interviewing and advising; Legal research, and Negotiation.

¹¹ This has so far been used to admit to the profession over 100 graduate paralegals, who had already completed the Legal Practice Course but had been unable to obtain training contracts – LawCareers.Net, ‘Over 100 paralegals have now qualified as solicitors without doing training contracts’ (18 November 2016), at www.lawcareers.net/Information/News/Over-100-paralegals-have-now-qualified-as-solicitors-without-doing-training-con

¹² This was amended largely on diversity grounds, given the impact on prospective training principals who had career breaks (eg) for maternity, on health or disability grounds, or for carer responsibilities

¹³ The rationale for this was that it might encourage smaller firms to take on trainees. No research has, however, been undertaken to assess its actual impact. The change caused much controversy, and the Junior Lawyers Division (JLD) of the Law Society continues to press for a minimum salary to be reinstated.

The new regulations have not, however, disturbed four other key features of the English scheme. First, there is still a requirement that trainees work in at least three ‘distinct’ areas of English and/or Welsh law and practice. In contrast to Hong Kong, however, there is a more extensive and non-exhaustive list of what these areas could be. Secondly, trainees are required to undertake an assessed “Professional Skills Course” involving 48 hours of training in three core areas – Advocacy and Communication Skills; Client Care and Professional Standards, and Business and Financial Skills. This is followed by a further 24 hours of elective study. Beyond this there is no requirement on trainees to undertake CPD before admission. Thirdly, ‘training establishments’ must be *authorised* to provide training.¹⁴ The process is based on a pro-forma application and is not onerous, but it does hand a degree of control to the regulator, since it enables it to set conditions on or remove authorisation at a later date, if standards of training at the firm prove inadequate or the firm otherwise breaches its obligations as a training establishment. In 2013-14 about 44% of SRA-regulated entities were authorised to provide training.¹⁵ Lastly, alongside authorisation, the SRA retains the power to *monitor* training, by undertaking both ‘triggered’ and random inspection visits to firms.¹⁶ The purpose of monitoring is not purely compliance-based, it also has a developmental function, seeking to identify existing best practice, as well as provide guidance on improvements. The first stage in the monitoring process involves training principals and trainees completing questionnaires as to the ways in which the training requirements are met. This is followed by an on-site visit and written report by an SRA-appointed ‘inspector’ who is also a solicitor with substantial experience in providing training.¹⁷ However, there are no published figures on the number of such inspections undertaken, or their outcomes. It is notable that there is, similarly, minimal public information on the professional bodies’ authorisation and monitoring roles and activity in Hong Kong.

As noted in section 3.6, further reforms to the English regime are underway, in the context of the planned move to a two-stage Solicitors Qualifying Examination (SQE). It is anticipated that the second stage assessment will commonly be taken during or shortly following the period of recognised training.¹⁸ This would indicate a marked shift in the approach to workplace training, since it could create a final, standardised, assessment of professional competence. We return to this idea more generally, below.

¹⁴ See Solicitors Regulation Authority, *Authorised Training Provider Information Pack* (12 December 2016), <http://www.sra.org.uk/trainees/resources/authorised-training-provider-information-pack.page>

¹⁵ Solicitors Regulation Authority, *Education and Training: A report on authorisation and monitoring activity for the period 1 September 2013 to 31 August 2014* (22 May 2015) <http://www.sra.org.uk/sra/how-we-work/reports/education-training-report.page#>

¹⁶ The current system of monitoring was introduced by the Law Society of England and Wales in 2000 and adopted by the SRA with the transfer of regulatory powers to the latter in 2007-08.

¹⁷ See above n.15.

¹⁸ In its 2016 consultation paper the Solicitors Regulation Authority stated this was its ‘expectation’, but the position requires further clarification, which is unlikely before the publication of draft regulations. If, alternatively, SQE 1 can be taken during or at the end of the degree stage, and SQE 2 thereafter, following a preparation course, the system could be little different, structurally, to that which operates today.

7.2.2 Pupillage regulation in England and Wales

The basic structure of pupillage in England remains the same as in Hong Kong. Pupillage must be undertaken for a period of not less than twelve months, divided into two six-month blocks: the non-practising period and the practising period. Prescribed training courses in Advocacy and Practice Management must also be undertaken during pupillage.

Several regulatory reforms to the pupillage system have been introduced over the last decade or so. Since November 2006, chambers have been required to become ‘authorised training organisations’, and individual pupil supervisors must also be registered with the Bar Standards Board (BSB). Following recommendations of the Bar Standards Board Pupillage Working Group in 2010, pupil supervisors must also undertake initial supervisor training (provided by the Circuits and four Inns of Court) before undertaking any supervision.¹⁹ Supervisors may be de-registered for cause, or where they have not supervised a pupil in the last five years. Under the Bar Code of Conduct, chambers, not just supervisors, are under obligations to make proper arrangements for pupillage, and to ensure pupils are treated fairly. Monitoring of chambers’ pupillage arrangements is integrated into the BSB’s new model of risk-based supervision, which was introduced in 2013.²⁰

Indications at present are that the Bar Standards Board’s post-LETR reform programme (‘Future Bar Training’) is likely to leave the substance of pupillage relatively untouched, though the Board has acknowledged a need to increase its “oversight of pupillage as a regulator and [take] steps to ensure the consistency of the outcomes at the end of pupillage.”²¹ It is not yet apparent what this might involve.

7.2.3 Notable developments in Scotland

If we turn briefly to arrangements in Scotland,²² we can see that this jurisdiction also requires trainee solicitors to complete two years of supervised practice, but has a more distinctive approach to the workplace training of advocates. Trainees²³ at the Scottish Bar must first undertake a 21-month period

¹⁹ Bar Standards Board, *Review of Pupillage: Report of the Working Group* (May 2010) www.barstandardsboard.org.uk/media/1383787/pupillage_report.pdf (chaired by Derek Wood QC). However, the Working Party’s recommendation for quinquennial refresher training for supervisors was not implemented.

²⁰ Chambers are being risk-banded with those that are adjudged ‘low impact’ (and hence low risk) being subjected to light touch supervision, involving periodic thematic monitoring of certain risks, with more intense supervision only being triggered by a specific query or risk event. Higher impact chambers will be monitored more regularly by questionnaire and, potentially, chambers visits. See: Bar Standards Board, *Report: Risk-based Supervision Consultation* (2013) www.barstandardsboard.org.uk/media/1543151/supervision_consultation_report.pdf

²¹ Bar Standards Board, *BSB Policy Statement on Bar Training* (23 March 2017) www.barstandardsboard.org.uk/media/1825162/032317_fbt_-_policy_statement_version_for_publication.pdf.

²² This section draws largely on discussions of the Scottish system in chap. 6 of the LETR Report.

²³ Note that from hereon in this report there are points where, for the sake of brevity, we use the term trainee generically to encompass both those training to enter the barristers and the solicitors profession, and also to avoid the complexity of introducing jurisdictionally-specific terms like ‘devil’.

of traineeship in a solicitors' office, followed by a nine-month period which combines short skills-based courses with a period of pupillage (called 'devilling') under supervision. This arguably has some advantages over other models which separate the workplace training of solicitors and barristers, since it enables trainee advocates to earn for at least the first phase of workplace training, and may help build relationship with those who might in the future be instructing solicitors. It also possibly better enables trainee advocates' to appreciate the larger litigation process, from the perspectives of both solicitor and barrister. On the other hand, it does require law firms to sink costs into the training of advocates, and it also extends the duration of the training process. Other key differences with the English and/or Hong Kong models include:

- There are no prescribed 'seats' for trainee solicitors, and no substantive (legal knowledge-based) outcomes for training, recognizing that "substantive and relevant legal knowledge' ...could vary massively depending on the nature of the training firm or the area of law that the trainee is working in."²⁴
- Since 2010, relatively detailed training outcomes have been prescribed for the PEAT2 (training contract) phase in relation to core skills and attributes - professionalism; professional ethics and standards; communication, and business, commercial, financial and practice awareness.²⁵ These cross-cutting outcomes were designed in conjunction with the re-design of the Diploma in Legal Practice (PEAT 1)²⁶ and thus link the two phases of vocational training more thematically as a three-year process than has been the case with the English model.
- Trainee solicitors must complete a minimum of 60 hours of trainee continuing professional development (TCPD) over the two years. A minimum of 40 hours must be provided by authorised TCPD providers. Trainees cannot be admitted unless and until this requirement is complete.²⁷
- The Scottish system has gone further than either England or Hong Kong in modernising and standardising recording and reviewing training. Individual progress towards the PEAT 2 outcomes must be assessed (internally by the firm) through quarterly performance reviews.²⁸ These reviews then form part of each trainee's online training record. This also includes a reflective log or training diary, and personal record of TCPD.²⁹
- While there is no further test of competence for trainee solicitors, trainee advocates must pass exams set by the Faculty of Advocates covering Evidence, and Practice and Procedure, including aspects of oral and written advocacy. Only if successful in these examinations is the trainee admitted as an advocate.

²⁴ See the Law Society of Scotland Handbook, 'PEAT Stage 2 Training Plan' (2013) at [www.lawscot.org.uk/media/225806/peat%20%20training%20plan%20\(2013\).pdf](http://www.lawscot.org.uk/media/225806/peat%20%20training%20plan%20(2013).pdf)

²⁵ See the Law Society of Scotland trainee outcomes statement at www.lawscot.org.uk/media/225803/peat%20%20outcomes.pdf

²⁶ Discussed in Section 5.

²⁷ See further Law Society of Scotland, 'TCPD – FAQs for trainees' www.lawscot.org.uk/education-and-careers/the-traineeship/during-your-traineeship/tcpd-faqs-for-trainees/

²⁸ SRA guidance encourages quarterly performance reviews, but does not prescribe them.

²⁹ This also facilitates monitoring; the PEAT2 training record is held centrally (but securely) by the Law Society, and standardised software means that, for example, the basic work of checking TCPD hours is entirely automated.

This survey enables us to draw the following conclusions with regard to developments across the three, similarly structured, jurisdictions. We return to these topics, as indicated, later in this section.

- There is no consistent approach to assessment in this final phase of professional training – at present the Scottish advocates’ training stands out as having a substantial requirement. The English Professional Skills Course (PSC) also builds an element of assessment into this phase, which is likely to increase with the implementation of the SQE. See further section 7.5
- Each of these jurisdictions requires some element of CPD or structured (course-based) training. However, loading varies substantially. Though differently structured, it is notable that the English PSC and Scottish solicitors’ TCPD regimes set quite a high bar of 72 hours and 60 hours respectively, as compared with the 42 hours expected of trainee solicitors, and 14 hours for pupils in Hong Kong. See further section 7.3.2
- As noted in respect of the earlier stages of training, England and Scotland have gone further than Hong Kong in developing core competence statements for this final phase of training. Such statements may be useful in better assuring consistency of training, and in enhancing the development of a proper training continuum between the PCLL and workplace training. See further sections 7.3.1, 7.3.2 and 7.4.
- There has been some increased focus in England and Scotland on setting explicit standards for the authorisation of training firms/chambers, and on monitoring the outcomes achieved (though all are relatively light-touch as compared, say, to the medical profession). This has not, so far as we can assess, been entirely matched by comparable developments in Hong Kong. See section 7.6
- There has also, particularly in England, been some compensatory move to deregulate aspects of the training process. We particularly note the move away from prescribed training contracts and the rather more liberal approach to ‘seats’ being adopted in the UK solicitors’ professions. See sections 7.6 and 7.7

7.3 Issues arising

7.3.1 *The length of training*

Strikingly, there is little consistency internationally with regard to the duration of workplace training, even within the common law world. Thus, looking beyond the UK, for example:

- in Australia, workplace training is either integrated into the professional legal training course, generally for a short period of between one and three months, or, in some states, an extended period of workplace training still exists as an alternative to completing a professional legal training course.
- The Canadian provinces similarly vary in approach. Ontario³⁰, for example, requires a US-style Bar examination, followed by either a ten-month (or part-time equivalent) articling placement or, since 2011, study on an approved ‘Legal Practice Program’ which combines a four month practical training course with four months of work placement.³¹ British Columbia, on the other

³⁰ See Law Society of Upper Canada, ‘Lawyer Licensing Process’ at www.lsuc.on.ca/licensingprocesslawyer/

³¹ This alternative was introduced in response to a perceived ‘crisis’ in the shortage of training positions, and has recently been extended for another two years.

hand, requires graduates to complete a 10 week Professional Legal Training Course and nine months of articles.

- Singapore, also requires trainees to undergo a normal period of six months under a ‘practice training contract’ after completing Part B of the Bar Examination and before full admission.³²
- In South Africa, trainees may either complete a one year (full-time) professional training course and one year of articles, or two years of articles and a short intensive skills course (of five weeks).³³

This does highlight the fact that Hong Kong and the UK jurisdictions engage in relatively long vocational training periods, particularly for trainee solicitors. This has in the past been justified by the relatively shorter period of undergraduate study (particularly in England), but the relative complexity of academic legal education in most jurisdictions (ie comprising a greater mix of undergraduate/graduate programmes of varying duration) likely reduces that point of difference.

In sum, we are inclined to agree with the Redmond-Roper Report that there is no particular magic to the period of time served. If Hong Kong wishes to continue to benchmark itself against the UK, then the two-year training contract and 12 month pupillage are as good a starting point as any.

More to the point may be the underlying question whether the final period of vocational training *should* be based primarily on time-served? Time-served has the virtue of simplicity, but it also suffers from two problems in its present form. First, by itself, it offers only a limited proxy for competence. The risk of a time-served model is that it ultimately allows competence to be the default assumption: ‘if X has spent two years in the office doing *a, b, c*, we can assume that s/he is competent at *a, b, c*.’ That few individuals ever ‘fail’ the training contract or pupillage may add to doubts about the consistent rigour of the process. Secondly, a time-served model prevents firms from promoting to qualified status those who are in fact functioning at a level of competence, or better, before the end of the training period. It may thereby limit flexibility for employers in developing and deploying staff, and somewhat restrict the performance incentives for trainees.³⁴ We turn to these issues again in considering the case for and against a more structured competency-based approach in 7.4, below.

7.3.2 Adequacy and consistency of training and supervision

At its best, workplace training provides an important and high-value transition from the classroom into practice.³⁵ At the same time, however, there is some evidence of longstanding problems in both

³² Rule 14, Legal Profession (Admission) Rules 2011 S 244/2011 (Singapore)

³³ See Law Society of South Africa, ‘Becoming an attorney’ at <http://www.lssa.org.za/about-us/about-the-attorneys-profession/becoming-an-attorney>.

³⁴ Though, in firms where there are lower retention rates, the competition for retention in itself will likely provide that extrinsic motivation to perform well.

³⁵ Note the growing volume of US literature critical of the absence of regulated workplace training requirements in the US system. Professor Roy Stuckey thus observes:

“There are probably some new lawyers in the United Kingdom who do not have the requisite knowledge, skills, and values to represent common people with common problems effectively and responsibly, but it is almost guaranteed that most lawyers who are admitted to law practice in the United States are not well-prepared to represent common people with common problems. They may be ready to begin law practice in large law firms or governmental agencies that have the time and resources to finish preparing them for practice, but they are not ready to undertake professional responsibility for individual clients’ legal problems.”

the UK and Hong Kong regarding the failings of workplace training *when it is not well done*. While it should be in the self-interest of law firms and chambers to develop the competence of new entrants, the risk of perverse incentives (particularly where there may be a low conversion rate from training to newly qualified positions in firms or chambers), or of a culture of minimal or ‘creative’ compliance with training regulations cannot be discounted.

The risk is not merely hypothetical, though reliable evidence is sparse, and somewhat dated. English data relates more to the solicitors’ profession, there is little equivalent information regarding the Bar.³⁶ Complaints from trainees in England and Wales gathered by the Trainee Solicitors Group, and its successor the Junior Lawyers Division, from the late 1990s through to the mid-2000s, pointed to significant failings in the system. These included training contracts not being registered; instances of inadequate training provision, and relatively widespread problems of bullying and harassment of trainees.³⁷ Research conducted for the Law Society of England and Wales by Goriely and Williams, also pointed to the persistent reliance by firms, in making recruitment and retention decisions on ‘ascriptive’ features (put more colloquially, accidental or innate characteristics) than on a rational standardised approach to evaluation and appraisal.³⁸ This is not merely a matter of good recruitment practice: as is increasingly acknowledged, fair entry to the profession advances legal legitimacy and the inclusiveness of the administration of justice.³⁹ Variability in the quality of training was also highlighted in some responses to the LETR Report, though the latter could not quantify the scale of the problem. Similarly, in its latest response to the Solicitors Regulation Authority’s training reforms, the Junior Lawyers Division has expressed continuing concern “about the quality of qualifying work experience and the lack of regulation of the same”.⁴⁰

R. Stuckey, ‘The Evolution of Legal Education in the United States and the United Kingdom: How one system became more faculty-oriented while the other became more consumer-oriented’, (2004) 6 *International Journal of Clinical Legal Education* 101 at 147.

³⁶ Wood Report [ref]

³⁷ See, eg, summaries in A. Boon, *The Ethics and Conduct of Lawyers in England and Wales*, 3rd edition, (Hart, 2014),

³⁸ T. Goriely and T. Williams, *The Impact of the New Training Scheme*, Law Society Research and Policy Planning Unit, Research Study No. 22 (The Law Society, 1996), pp 124-5. It is likely that formalised performance appraisal has become far more the norm, at least in larger firms since this work was conducted. We also acknowledge that some reference to ‘whether one’s “face fits” is likely, if not inevitable, in most recruitment processes. Problems continue to arise, however, where (eg) concepts like ‘talent’ or ‘merit’ or ‘fit’ are used to disguise patronage and ascriptive judgements that operate in ways that are intrinsically unfair or discriminatory: see further H. Sommerlad, ‘The Social Magic of Merit: Diversity, Equity and Inclusion in the English and Welsh Legal Profession’ (2015) 83 *Fordhan Law Review* 2325; cp. also S. Kumra, ‘Gendered Constructions of Merit and Impression Management Within Professional Service Firms’ in S. Kumra et al (eds) *The Oxford Handbook of Gender in Organizations* (Oxford UP, 2014), 269; R. Dinovitzer, ‘The Financial Rewards of Elite Status in the Legal Profession’ (2011) 36 *Law & Social Inquiry* 971.

³⁹ See, eg, A.K. Zimdars, ‘The Competition for Pupillages at the Bar of England and Wales (2000-2004)’ (2011) 38 *Journal of Law & Society* 575. Given that, as Zimdars also observes (p.581), “no contemporary Western society has yet broken the link between ascribed characteristics and educational attainment” it is also reasonable to consider this a matter for education and training policy, not exclusively professional recruitment.

⁴⁰ The Law Society of England and Wales, *SRA Consultation – a new route to qualification: New regulations. Response of the Junior Lawyers Division* (July 2017), p.1, <http://communities.lawsociety.org.uk/junior-lawyers/policy/sra-a-new-route-to-qualification-new-regulations/5062446.article>

Information on the situation in Hong Kong is even more scarce. The Redmond-Roper Report noted “severe” concerns that training was sometimes of poor quality or non-existent.⁴¹ Regulatory reforms since then may have ameliorated the worst excesses, but we think it unlikely that such problems no longer exist. The university law schools in their joint response “raised the concern that insufficient attention has been paid in the past to the final traineeship phase of legal education”, and these views are echoed in responses to our consultation.⁴² However, the relatively public form of consultation adopted for this review has meant that it was unlikely to uncover evidence of training malpractices, as trainees/pupils (understandably) would be unlikely to come forward for fear of negative consequences. Given the absence of better data, it is difficult to determine a proportionate regulatory response.

Nonetheless, we take the view that the relative absence of meaningful core competencies does raise questions about the ability of the system to produce a *consistent* standard of training at this final stage. We do not wholly accept the Hong Kong Law Society’s position on the pre-eminent need for flexibility at this stage.⁴³ As noted in our earlier discussions on the PCLL and CEE, there is a balance at all stages that needs to be achieved between flexibility and consistency. The Law Society’s case for flexibility, rightly, stresses the differences in terms of substantive practice areas at the stage of workplace training, but that seems also to overlook the importance of developing, *to a consistent level of competence*, core skills and attributes. In England, the LETR noted that many larger law firms were already using competence and outcome-based frameworks for training and professional development, with a strong emphasis on generic skills and attributes.⁴⁴ The Law Society of Scotland approach similarly focusses on core professional communication skills, advocacy, negotiation, ethics and professionalism, and business and financial awareness - capabilities that can be specified independent of any given field of law.⁴⁵

Three specific skills/knowledge gaps have been highlighted in consultation responses;⁴⁶ we note these here, with some observations as to possible ways forward, without seeking to overload training at this stage with more specific training requirements. First there is the problem of conducting litigation and advocacy in Chinese. While we have noted the greater focus on developing practice competencies in Chinese legal language at earlier stages in education and training, we consider that there may be scope still for the professions to contribute to this very specific need at the final stage of training, particularly in the context of criminal court practice. Secondly, the growing importance of ADR and arbitration is a general thread in a number of responses, and while we do not think there is a strong case for extending core training for all trainee solicitors in this area, there may be a case for increasing available

⁴¹ Redmond-Roper Report, p.222.

⁴² See HKU first response (pp.31-32) which notes also the absence of “structural quality assurance mechanisms” at this stage of training; concerns and existence of “anecdotal evidence” regarding possible inconsistencies in training are expressed in responses from Mr Allen Che, and CUHK (first response, p.10).

⁴³ See p.11 of the Society’s first response (section IV, para. 11).

⁴⁴ See, eg, the synthesis of post-qualification competence frameworks presented as Annex 3 to LETR Briefing Paper 1/2012, *Knowledge, skills and attitudes required for practice at present: Initial analysis*, www.lettr.org.uk/wp-content/uploads/012012-competence-frameworks-analysis.pdf

⁴⁵ Note that such an approach would help address the Hong Kong Law Society’s concern as to the sufficiency/consistency of legal skills training on the PCLL, discussed above at 5.4.1.2. See also the first response from the Department of Justice (December 2015) para 23, which, consistently with this proposal, calls for increased skills training, particularly for trainee solicitors.

⁴⁶ See, eg, Department of Justice, first response.

electives within trainee CPD, not least to develop early awareness and experience in this growing area. By contrast, given the scope (and need) for the independent Bar to contribute to ADR practice, we would invite the Bar to consider building experiential components of training in mediation and mediation advocacy more expressly into the core ALE requirements. Thirdly, we also reference for the Law Society's consideration, the Department of Justice's concern that criminal practice, and criminal advocacy in particular, is insufficiently supported in current trainee solicitors' training.⁴⁷

We do not think that, in the context of an increasingly segmented legal services market there is great value in specifying required areas of substantive law, provided that trainees have a sufficient breadth of training, and can meet the core competencies required.

We do not intend to make a specific recommendation as to the number of hours of trainee CPD or ALE that should be required. We suggest, however, that CPD requirements should be closely linked (as they are in Scotland) to the core competencies identified for the training contract or pupillage, and any necessary adjustment to hours is made accordingly.

7.3.3 Adequacy of external monitoring

It is notable that, as we have seen, the Solicitors Regulation Authority and the Bar Standards Board in England both require training organisations to be authorised, and have explicit monitoring powers built into regulation. How much these powers are actually used may, however, be moot.⁴⁸ There appears to be no obligation on the regulator to report its monitoring activity publicly, which obviously limits our ability to comment more substantively on their use.

The provision of monitoring powers seems sensible. Without effective internal and external oversight, the value of workplace learning can be seriously undermined, to the extent that the absence of proper monitoring has been cited by some commentators as a justification for abolishing the requirement entirely.⁴⁹ The importance of meaningful audit powers was also highlighted by the LETR Report, including the power to access or call for training records, and to make visits to training organisations.⁵⁰

If we take the English model as a benchmark, there appears to be at least a *prima facie* case for calling on both the Hong Kong Law Society and Bar Association to make greater use of such powers. However, as more recent developments in England also demonstrate, design thinking has in some respects moved on since the early 2000s. Monitoring is still important, but the actual degree of external monitoring required also depends fundamentally on other structures and characteristics of the training system, particularly the design and extent of any formal assessment of training outcomes. In short there is a potential trade-off between formalised and particularly standardised assessment and the need for monitoring. To address this properly we need therefore to step back and look at the issue

⁴⁷ See Department of Justice, id, para 23(iv). The Department also notes (para 26) that, in its view, pupil barristers could be made more aware of the prosecutor understudy training made available through the Prosecutions Division.

⁴⁸ One study in 2004 noted that the (then) Law Society used its monitoring powers to review training in between 200 and 250 firms annually, ie about 1 in 20 firms authorised to take trainees - J. Webb, M. Maughan, and W. Purcell, *Project to support implementation of a new training framework for solicitors qualifying in England and Wales: Review of the training contract and work-based learning* (November 2004), available at www.researchgate.net/publication/254150587_Project_to_support_implementation_of_a_new_training_framework_for_solicitors_qualifying_in_England_and_Wales.

⁴⁹ S. Mayson *The Education and Training of Solicitors: Time for Change* (Legal Services Institute, 2010)

⁵⁰ LETR Report, para 6.71

of monitoring more contextually, in the light of other recommended changes, which we do in 7.4 and 7.5, following.

7.3.4 Access, regulation and remuneration

As numbers of would-be entrants to the profession increase in the wake of our recommendations in Section 5, the pressure on training contracts and pupillages are likely to increase. We take as a fundamental starting point that access to the profession is primarily a matter for the market. This leads us to make two key recommendations for this stage of training.

First, as a matter of equity and access, there should be no direct regulatory constraints on numbers, nor should anything be done artificially to raise standards for the purpose of controlling numbers. Number control is not the proper function of professional regulation.

Secondly, and conversely, we recommend that the Law Society and Bar Council undertake an internal review of regulation to assess whether, and if so, to what extent, specific training regulations governing the training contract or pupillage arrangements act as an unnecessary barrier to access, and whether regulation may be reduced in ways that facilitate access to or availability of training. We take the view that, overall, both schemes are reasonably permissive, but there are points of detail that may warrant review in the wake of developing international practice (including trends toward the liberalisation of training regulation) highlighted in this section, and other changes recommended by this review. A number of specifics that might be considered as part of such a regulatory review are identified in section 7.8, below.

A further factor to consider in limiting or enabling access to the profession is the level of remuneration available to trainees.⁵¹ We address this separately in the context of the training contract and pupillage respectively.

As we have noted, in 2014 the Solicitors Regulation Authority removed the minimum salary for trainee solicitors in England. This was a controversial decision, and one that was not, in our view, as well evidenced as it should have been at the time. It is moreover disappointing to note that there has been no apparent effort to monitor its impact subsequently. In an international context of growing student indebtedness we remain of the view that, if the social diversity of the profession is to be maintained, let alone enhanced, then some relatively modest salary protection may assist those from less affluent socio-economic backgrounds to enter the profession. In this context, it is notable that the Australian national Legal Services Award 2010 includes law graduates and clerks within its ambit⁵² and sets salary minima above the national minimum wage. The Law Society of England and Wales also stands by its own equality impact assessment, undertaken in 2012. This foresaw a negative impact of removing the minimum salary on entrants from more modest backgrounds. Consequently, the Society continues to recommend a minimum salary, though this is, of course, not enforceable.⁵³ Accordingly, we would recommend the retention of the Hong Kong Law Society's minimum salary.

⁵¹ Highlighted in the responses from HKU (p.32) and HKU SPACE (p.9).

⁵² The award includes paralegal and clerical staff, but does not include qualified lawyers within its ambit. For further information see, eg, Law Institute of Victoria, 'Awards and salaries' www.liv.asn.au/Professional-Practice/Practice-Management/Running-Your-Practice/Awards-and-Salaries-for-Your-Practice

⁵³ See Law Society of England and Wales, 'Recommended minimum salary for trainee solicitors' (15 November 2016) <http://www.lawsociety.org.uk/support-services/advice/articles/recommended-minimum-salary-for-trainee-solicitors/>

Pupils in Hong Kong are not paid, although the Bar Association does encourage pupil masters to remunerate pupils for work undertaken. Internationally, it appears that in most jurisdictions where there is an independent Bar on lines similar to Hong Kong, pupillage continues to be unpaid (this is the situation, eg, in Scotland, the Republic of Ireland, Northern Ireland and South Africa). By contrast, the English Bar took the step of introducing minimum pupillage awards in 2003. The Bar Standards Board now stipulates that all pupillages must carry a minimum award of £12,000 for a 12-month pupillage. However, the reality is that some pupillages will carry awards well in excess of that figure with average awards in commercial and chancery sets now closer to £40,000, and up to £60-£70,000⁵⁴ in the largest chambers, which see themselves competing for talent directly with the top global law firms and with finance careers in the City of London.

Overall this has contributed to a substantial reduction in the annual supply of pupillages from around 900 before the reforms to consistently in the region 450-500 subsequently.⁵⁵ On the positive side, this has substantially increased the transition rate from pupillage to tenancy,⁵⁶ so that, in other words, it is harder to get pupillage, but for those who do the chances of a viable career are greater. This appears to be a relevant concern in Hong Kong. While the fundamental risks and challenges of self-employment cannot be avoided, the proportion of pupils who fail to progress in Hong Kong is relatively high.⁵⁷ Lack of funding is a likely significant factor, though we also cannot discount the possibility that poorer quality training under pupillage places some at a further disadvantage.

On the negative side, the English experience also points to two specific risks. First, in terms of diversity, there is evidence that the funding rule has in fact skewed the choice of pupils towards more, not less, privileged candidates.⁵⁸ This is less counter-intuitive than it may sound; recruitment has become more competitive, consequently markers of distinction – elite university, and a high honours degree – have likely become more, not less, significant in decision-making. These we know from research tend still to be correlated in the UK (and elsewhere) to the possession of higher socio-economic status. This is a matter the Bar has taken seriously, and the English Inns of Court in particular are investing significant resources in activities to encourage a more diverse body of applicants to the Bar.⁵⁹

Secondly, the Wood Report recognised that the funding rule could have a disproportionate impact on smaller chambers, which simply could not afford to fund pupillages and were, to some extent, put at a degree of risk thereby in terms of succession planning and chambers development. While these risks to smaller chambers should not be overlooked, the Report did not consider that this was sufficient ground to abolish the funding rule, or even to recommend a greater use of waivers from the rule. We agree; it cannot be a proper function of the regulator to design regulation to protect specific practices. Moreover, the Wood working party particularly noted its concern that “if the turnover of work in chambers is insufficient to fund a pupillage it may also be insufficient, by the same token, to provide a pupil with adequate training.”⁶⁰ In terms of assuring quality of training this seems an important consideration.

⁵⁴ See, eg, Target jobs, ‘How much will you earn as a pupil barrister’ (n.d. 2017)

<https://targetjobs.co.uk/career-sectors/law-barristers/advice/339950-how-much-will-you-earn-as-a-pupil-barrister>

⁵⁵ Though this reduction is not entirely a consequence of the funding reforms. The effect of the continuing contraction of legal aid and related reforms, and of market forces more generally on the supply of training cannot be discounted - see BSB Pupillage report, 66

⁵⁶ Id, 64-5

⁵⁷ [HKBA statistics]

⁵⁸ R. Macey-Dare, ‘The Economics of Pupillage’ (2007). Available at SSRN: <https://ssrn.com/abstract=967619> or <http://dx.doi.org/10.2139/ssrn.967619>

⁵⁹ See, eg, the study of Inner Temple’s Pegasus scheme [ref]

⁶⁰ Wood Report, above, p.93

We note that the Bar Association has established a pupillage reform committee. We welcome this development and encourage this body to resolve as a matter of some priority whether it will institute a system of paid pupillages. We do not, however, wish unduly to constrain the committee's work by making specific recommendations on this matter. The committee will be better placed than us to assess the broader policy and financial ramifications any such decision has for the Bar Association. We do commend the careful work of the English Bar Council and Bar Standards Board to the Association, as an aid to its deliberations. As the English experience demonstrates, this is not a straightforward matter. The likelihood is that unpaid pupillages deter an unknown number of applicants (including those of high academic quality) from considering the Bar, and may contribute to the difficulties that a significant proportion of young barristers experience in establishing and maintaining themselves in the early years of practice. At the same time, initiating pupillage funding will likely reduce, perhaps significantly, the number of pupillages available at a time when pressure of graduate numbers is increasing. Moreover, by itself the change may not do much for equity and diversity in the profession, or at least not without a greater professional commitment to outreach work, and possibly creating additional provision for equity-based scholarship funding from the Bar.⁶¹

7.4 Bringing it all together: Is a competency-based system the solution?

We have previously discussed, in section 3.4, the rise internationally of competency-based systems of (legal) education and training. As part of that discussion, we noted the tendency to use 'competence' to define a threshold of ability at a particular stage or point of education/training, and have considered the merits of using outcomes and standards to strengthen the coherence and consistency of legal education and training at the academic and vocational stages. Should the same logic extend to workplace training in law: should a competency framework be developed for this final stage of (initial) education and training? For the sake of clarity, by a competency framework we mean:

- A set of generic competences and standards for workplace training
- A system of assessment
- Some quality assurance or monitoring mechanism

Historically and comparatively speaking there is certainly no reason why a competence model could not be adopted. Indeed, competency-based approaches were initially developed to enable the standardisation and assessment of workplace learning. This is their original function.⁶² The competence approach, has, moreover become increasingly dominant in a range of professional settings, including medicine,⁶³ and accountancy.⁶⁴

⁶¹ As in England, ameliorative measures might include scope for a discretionary waiver of any funding rule, whereby chambers can make an exceptional economic case, or there may be scope for non-regulatory solutions, such as some special or discretionary funding to small chambers from the Bar itself (though we acknowledge that the scale of the Hong Kong Bar vis a vis its English counterpart may mean that such funding options are less viable).

⁶² R. Harris, B. Hobart & D. Lundberg, *Competency-based Education and Training: Between a Rock and a Whirlpool* (Macmillan, 1995), ch. 2.

⁶³ See, eg, W-C Leung, 'Competency based medical training: review' (2002) 325 *British Medical Journal* 693; J. Frank et al, 'Competency-based medical education: theory to practice.' (2010) 32 *Medical Teacher* 638.

⁶⁴ J. Boritz and C. Carnaghan, 'Competency-based education and assessment for the accounting profession: a critical review', (2003) 2 *Canadian Accounting Perspectives* 7; E. Gammie and Y. Joyce, 'Competence-based approaches to the assessment of professional accountancy training work experience requirements: the ICAS experience.' (2009) 18 *Accounting Education* 443

7.4.1 Why and how?

A final assessment of competence may help address a number of the issues discussed in this review. It could be used to assure greater consistency of standards at the point of qualification. Monitoring of training could be facilitated by more standardised (and measurable) outputs from trainees. It could (but need not) also provide a means of breaking away from reliance on time-served as a proxy for competence. As the LETR Report speculated, following a competence-based approach, it would be possible to remove the time-served requirement entirely, or replace it with a minimum period of service after which an individual could be admitted, provided they had achieved all the specified competencies. It could be used as part of a process of deregulating and extending the range of training opportunities that 'count', and hence reducing the impact of the traditional training contract/pupillage as a barrier to professional qualification.

In terms of process, however, the move to a competence-based model is not simple. It requires support and investment in developing and testing a workable model. In the legal training context, the potential to develop a uniform workplace competence framework was explored in both the English Law Society's Training Framework Review (TFR) and the LETR. The TFR recommendations to develop an alternative training pathway fed into an SRA-led pilot programme on work-based learning (WBL), which sought to test the feasibility of an alternative competence-based system to the traditional training contract.⁶⁵ It has not been progressed in the UK post-LETR, largely because the SRA's own thinking has moved on, to favour external, standardised, assessment.⁶⁶

The WBL project nonetheless offers an important case study. The project had two objectives: to develop an approach to training that produced learning outcomes that were more consistent and reliable and was better quality assured, and to attempt to widen access and reduce the training contract bottleneck.⁶⁷ The WBL model required trainees to construct a portfolio⁶⁸ evidencing the work they had undertaken over the training period, this was assessed (either internally by the firm or via an external assessment organisation) against a set of competencies set by the SRA. Two pilot strands were developed to test the model, one working with 'conventional' trainees in law firms, and the other with graduate paralegals in a variety of organisations. The project undoubtedly demonstrated improved learning outcomes over the traditional training contract. These were summarised in the LETR Report:

SRA's WBL pilot independently indicated that WBL provided a more rigorous and more clearly evidenced pathway to competence than the traditional form of training contract. WBL pilot candidates who were employed as trainees reported having to do more work and meet higher levels of evidence than colleagues on standard training contracts. Although initially this was a

⁶⁵ Webb et al (2004) above, n.46. BMG Research, *Final Evaluation of the Work-based Learning Pilot* (August 2012), www.sra.org.uk/sra/news/wbl-cpd-publication.page

⁶⁶ See sections 6.3.2 and 7.5.

⁶⁷ J. Brannan and J. Ching, 'Working it out with WBL' *LawCareers.Net*, 30 November 2010, www.lawcareers.net/Information/Features/30112010-Working-it-out-with-WBL

⁶⁸ In education and training terms a portfolio involves the production of a 'claim to competence' together with a body of 'evidence' in support of that claim. The claim to competence provides a narrative explaining how training outcomes have been met, drawing on the evidence provided. Evidence generally may comprise a variety of relevant material including specific work product (eg document drafts); the trainee's reflection on their learning and development (sometimes called 'reflective' or 'learning' 'logs' or 'diaries'); appraisal reports and action plans; CPD records, etc.

source of resentment, by the second year of the scheme they were generally more enthusiastic about the WBL approach. Their confidence had increased, they felt they had achieved more than colleagues, and were better able to evidence those achievements. There was also some indication from the reports that it empowered trainees, particularly paralegals, to request development opportunities because they could point to outcomes they needed to meet.⁶⁹

At the same time, the pilot project highlighted some potential challenges with this kind of approach. The need for assessment inevitably created a greater workload for trainees and firms, which could be challenging for smaller organisations. This was not helped by the fact that the specific competence framework designed by the SRA was overly detailed, with 37 separate competencies identified. Despite the positive outcomes, the wider profession's response to the pilot was somewhat muted. As the BMG Report concluded:

“At the present time, the sector is likely to see the WBL approach not as a competitor to, or replacement of, the traditional approach to the training of solicitors but as a variation which has specific value in specific circumstances and should be developed and promoted as such.”⁷⁰

Overall, the advantages of a competence-based system that seeks properly to define and assess, rather than assume, competence are:

- It provides employers and users of legal services with the assurance of a proper evaluation of competence at the point of qualification
- It offers greater (demonstrable) consistency in training outcomes than a time-served model
- It creates scope to build - as with the Scottish model – a better continuum of outcomes across the three stages of training
- It provides a basis for closer alignment of training to the desired outcomes specified by the regulatory body
- It may provide scope for permitting a broader range of training to ‘count’, akin to the ‘equivalent means’ model developed in England
- If qualification is determined by actual satisfaction of outcomes, rather than time-served, there may be:
 - A system that better reflects the educational reality both that learners develop at different rates, and that different practice environments may be more or less effective at developing individuals’ capability.
 - Greater scope for incentivisation of high-performing trainees
 - Greater flexibility for employers in promoting and deploying effective performers

Risks and challenges associated with a final competency model are:

- The existing model is well-understood and embedded – it may be difficult to overcome resistance to change from within the profession
- The higher impact, in terms of sunk costs and time, on firms and trainees of failure at the end of a lengthy training process

⁶⁹ LETR Report, para 6.64 (citations omitted).

⁷⁰ BMG Research, above, p.16.

- Added cost/complexity of the training system drives smaller practices out of the training market
- A potential reduction of standards if the competence level is set too low
- Additionally, if a final competency model is used to reduce the reliance on time served:
 - Employers may seek to ‘game’ the system by shortening or lengthening training periods served according to business imperatives rather than a proper assessment of competence
 - There may be a loss of quality if minimum training periods are reduced too much and/or the co

Some of these risks may be moderated by a centralised assessment regime, discussed in the next subsection, after which we summarise our main conclusions on the training contract/pupillage stage.

7.4.2 What might be assessed or evaluated?

Workplace training is not more of the same, it is qualitatively different from the PCLL and degree. In thinking about what we assess and how, we need to consider what is the main function of workplace training, and how it differs from classroom-based training and development.

Is the training contract or pupillage the end-point of training, designed to establish the final baseline competence to be admitted, or is it preparation for lifelong professional learning? This matters because these different foci may require a rather different emphasis on the outcomes and processes of training. A competence benchmark (positioned as ‘stage 3’ of legal education and training) would tend to focus more substantially on the historic outcomes (knowledge, skills, values) achieved, whereas a system that treats the training contract/pupillage primarily as ‘stage 4’, the beginning of a professional career, logically would focus more on the development of future practice-development capabilities and attributes.

In practice, we think this is often not well-distinguished in training schemes, but we also acknowledge a key difficulty: that it may in fact be something of a false dichotomy. Workplace training, located as a bridge between classroom-based learning and authorised practice is actually both ‘stage 3’ and ‘stage 4’.⁷¹ The real issue is therefore one of balance between historic competence and future capability.

This leads to the second issue: what makes workplace learning different (and how is it different)? Workplace learning provides an environment in which, in ‘stage 3’ terms, trainees learn to deploy knowledge, skills and values in a real, and therefore richer and more complex, transactional setting than the classroom; it is an environment in which they may begin to specialise in an area or areas of work that will dominate at least the next part of their career. It is also a process, in ‘stage 4’ terms, of socialisation into the professional environment, and ways of working in a specific firm or chambers. These generic elements of workplace learning can be described in terms of seven discrete areas of professional competence:

- To demonstrate competence in a relevant area or areas of practice (technical knowledge)

⁷¹ Though at the risk of over-complicating the metaphor, the foundations for the bridge are already being laid down in the vocational stage course – see p.87, above.

- To perform a range of legal tasks (task skills – client interviewing/conferencing, legal research, drafting and advocacy⁷²)
- To manage a range of tasks within a job (task and project management skills – including time management)
- To respond to uncertainties and breakdowns in routine/normal activities (task/project contingency management)
- To work effectively for and with others (team and professional relationship skills)
- To identify and deal with embedded issues of ethics, professionalism and professional regulation ‘in context’ (ethical and regulatory risk management)
- To reflect on and understand the limits of one’s own competence and to address one’s own personal⁷³ and professional development needs (self-management)

These areas can and should be translated into a set of specific competencies which would provide a framework for assessment or evaluation. While there are undoubted differences between the expectations of pupillages and training contracts at the level of the more specific competencies, we consider that, these generic areas of competence are applicable across the profession as a whole.

7.5 Should there be a final ‘assessment’ of professional competence?

A move to a competency-based model would facilitate, though does not necessitate, more formalised assessment. A more neutral term for starting this discussion might be ‘evaluation’. Current training regimes already require an evaluation of trainees – a supervisor has to certify that a trainee is competent to practice. Currently, the criteria on which this evaluation is based, and whether it is an itemised or holistic judgment is largely a matter for the supervisor, not for the regulator. Is this adequate? A case can be made both for and against a more structured, or even centralised, assessment of competence. In considering the options here we start again with the distinction between distributed and centralised assessment regimes. This reflects the fact that there are critical differences in terms of the intensity, proximity and desired consistency of evaluation between these two modes.

Learning may be mapped against generic outcomes but, as workplaces do differ, these outcomes will inevitably be interpreted (by the learner) and applied in ways that are quite situationally specific. There is, in terms of (intra-organisational) reliability and face validity,⁷⁴ a consequently persuasive argument for a distributed system that embeds both learning *and assessment* in the workplace through mechanisms of competence- or outcome-based evaluation. Self-assessment, eg, through the use of learning portfolios, performance observation, appraisal and review are commonly-used and

⁷² We have reservations about assessing actual negotiation skills at this stage, as it is difficult to simulate fairly and effectively, particularly in a high stakes assessment context. Moreover, in many modern practice settings, we suspect it involves a skills set that would be above ‘day one’ expectations.

⁷³ Growing understanding of the impact of stress and work related ill-health in legal professions highlights the extent to which the ability – and willingness - to identify problems coping with the environment or workload are also critical to maintaining professional standards – see, eg, the wellbeing studies cited in section 3. While this needs in part to be treated as the collective responsibility of the profession, in managing client expectations and ways of working, there is also an element of personal risk management involved.

⁷⁴ See discussion of these terms in section 6.

well-understood tools for evaluating such workplace learning. However, judgments made within such a localised system may well lack a high degree of inter-organisational consistency and reliability.

If sector-wide consistency of standards is considered important at this stage, then centralised assessment might be a more appropriate solution. This point is, however, as the Law Society's evidence indicates, moot. Moreover, relatively few legal systems operate a genuinely final (centralised) assessment of professional competence. The US Bar Examination is the main exception (though it is not actually an assessment of *workplace* competence). The Solicitors Regulation Authority proposal for the Solicitors' Qualifying Examination, Stage 2⁷⁵ does, potentially, fulfill this function. Unlike the first stage of the SQE it is skills-based, adopting a model akin to the standardised clinical assessments widely used in medical training and currently used (seemingly successfully) by the Qualified Lawyer Transfer Scheme (QLTS) for overseas lawyers seeking admission in England and Wales.⁷⁶

This approach, at least arguably, has several key benefits:

- If managed by a single assessment body,⁷⁷ with robust standards and assessor training protocols, it has the potential to greatly increase the consistency of final training outcomes
- It obviates the need for more standardised or unified assessment at the PCLL stage
- It reduces the need for the regulator to concern itself with the quality of the training environment
- Since it provides a benchmark standard for 'day one' competence, it could provide the basis for a unified assessment regime for conventional trainees, those seeking to qualify by 'equivalent means', and overseas lawyers seeking admission.

The arguments against centralised assessment are also not trivial, though some of these risks can be moderated by careful design:

- There are significant issues/risks in terms of assuming an overly-standardised training experience. Assessment may therefore require candidates to 'jump through hoops' that do not fairly reflect their workplace experiences and needs – see eg the Scottish pilot discussed in Annex 7.⁷⁸

⁷⁵ See section 3.6, above

⁷⁶ E. Fry, J. Crewe, and R. Wakeford, 'The Qualified Lawyers Transfer Scheme: innovative assessment and practice in a high stakes professional exam' (2012) 46 *Law Teacher* 132. The QLTS as a whole has two elements, a multiple choice test (MCT) comprising 180 questions covering Part A of the Solicitors Regulation Authority Day One Outcomes, with the Objective Structured Clinical Examination (OSCE) assessments structured around three thematic practice areas: Business, Property, and Civil and Criminal Litigation – see <https://qlts.kaplan.co.uk/the-assessment>.

⁷⁷ There are obvious risks to introducing multiple assessment bodies at this stage, both with regard to consistency of outcomes, and safeguarding of standards, (eg if assessment providers are left free to compete on elements such as pass rates and costs).

⁷⁸ The English QLTS and SQE1 knowledge outcomes are broad – roughly equivalent to the core knowledge expected to be developed over the course of the LLB and Legal Practice Course. If assessment of the PCLL is maintained, we do not think this breadth of coverage is necessary and desirable for domestic candidates.

- Evaluation tends to be constituted as a small number of ‘high stakes’ assessment events, so that individuals are assessed on a ‘snapshot’ performance, not on development through multiple tasks over time⁷⁹
- It follows that an assessment regime does not necessarily support or develop the self-management and ‘reflective practice’ capabilities also valued by many professional training regimes⁸⁰
- If assessment at this stage is not properly calibrated at a higher level, there is some risk of mere duplication of assessment with the PCLL
- Particularly given the assessment culture in Hong Kong, the creation of a final assessment would likely lead to the creation of a secondary training market in final assessment preparation courses, increasing costs of training, and questions as to whether such courses also require regulation
- It may be felt that this model puts the burden of achieving competence too much on the trainee, when there may be substantial (one-off or continuing) failings in the training environment.

Quality assurance and workplace monitoring are also key, and interrelated, variables. A move to more formalised assessment obviously also implies some degree of quality assurance – either of the assessment *product* itself (as in conventional external examining, for example) or by monitoring the training *process and environment* that underpins the assessment. The former is likely to be less resource intensive than the latter. In practice, there is a degree of trade-off in terms of workplace monitoring: the more externalised/standardised the assessment is, the less need for monitoring of the workplace, but the less standardised the assessment is, the greater the justification for external monitoring of the training environment.

7.6 Structural recommendations regarding competency and assessment of workplace training

If workplace training matters, it should do so demonstrably, and a stronger focus on proper outcomes, evaluation and assessment sends a message to training organisations, supervisors and trainees that this is much more than serving time. Some greater element of evaluation, or at least more robust monitoring also seems warranted from a public interest/consumer safety point of view. We therefore conclude that there are two main ‘assessment’ options available.

For the solicitor’s profession, while numbers are likely sufficient to justify the cost of developing an independent assessment process,⁸¹ we take the view that the case for a ‘CEE’ at the point of qualification likely remains a step too far, both in terms of potential risks and development costs arising, as well as likely cultural resistance. We doubt that such a scheme could be made financially viable for the Bar, given the limited numbers involved, and return to a more proportionate solution.

⁷⁹ The QLTS assessments, originally were completed over a 7 day period; the system has been somewhat relaxed so that the MCT test results can now be ‘banked’, and the OSCE attempted at a different sitting.

⁸⁰ Emphasised, for example, by the Law Society of Scotland PEAT2 reforms. These self-management capacities were also highlighted in the CPD context by the ACLEC *Second Report* (1997) and were central to the LETR Report’s framing of ‘continuing competence’ – see paras 5.83-5.87, and 6.94-6.95.

⁸¹ By 2012 QLTS numbers were running at about 500 per year.

An alternative approach would be to require more structure and better recorded workplace training through a set of outcomes, assessed by portfolio. The model proposed is akin to the Scottish PEAT2 model. Portfolio assessments could be conducted (as the English WBL pilots demonstrated) either by the firm/chambers, or by an external assessment organisation, or some combination of the two. This model, in our view, has some capacity to enhance the consistency of training outcomes, though not to the extent of a fully centralised assessment. It would also strengthen the focus on those ‘stage 4’ capabilities and the potential of this training stage to act as a foundation for more constructive and developmental lifelong professional learning. We recommend this approach to the profession as a more structured design than the present system, but less intensive approach than the centralised model previously discussed.

In the context of any relevant practice areas, we suggest candidates should be assessed discretely in the following skills:

- Client Interviewing
- Advocacy/Persuasive Oral Communication
- Case and Matter Analysis
- Legal Research and Written Advice
- Legal Drafting
- Task and self-management skills
- Ethics and professional standards/regulation

As regards the necessity for demonstrating further competence in substantive law areas, our view is that, given the diversity of modern legal practice, it is not be helpful, and trainees should be permitted to demonstrate competence in the context of any areas, provided, that the professional regulator is satisfied that a sufficient diversity of work is available, and has been undertaken.

If this new route is to be pursued, we would recommend that proper consultation is undertaken on these and other matters of detail.

As with any process of regulatory reform, the options are in fact myriad. There could also be other options to consider. For example, the Law Society might adopt a two-track scheme that authorises organisations that reach certain training standards to oversee their own internal training regime, while requiring a more centralised process for trainees in organisations that do not (or do not wish to) meet those training standards. This might offer a more targeted, risk-based, approach, to training regulation. The obvious disadvantage would be the greater regulatory and administrative complexity and, possibly, increased administrative cost, including loss of some economies of scale.

In terms of monitoring, the Hong Kong Law Society was contemplating additional steps to enhance authorisation and monitoring at the time of the Redmond-Roper Report. Those changes were commended by the Redmond-Roper Report, but not all of the 1999 proposals appear, in fact, to have been implemented.⁸² The Society’s willingness and capacity actively to monitor training organisations, not just training records needs to be revisited. The potential to reduce monitoring and administration

⁸² See the discussion in Redmond-Roper at pp. 217-8.

costs by developing a system of online portfolio and training record tools, as the Law Society of Scotland has done, should also be considered.

Additionally, for the Bar, we also consider that there needs to be some greater standardisation and management of pupillage arrangements. Although practice varies,⁸³ the existing structure still defines the relationship primarily as one personal to the supervisor and pupil, whereas there needs to be a greater regulatory recognition that chambers have a role, and some responsibility, particularly if a move to more funded pupillages is adopted. We also recommend that the current minimum pupillage and logbook requirements are replaced. A set of generic training competencies, based on the above guidelines, should be produced with pupils expected to demonstrate the steps taken to achieve those competencies through a training log or portfolio.

7.7 Qualifying arrangements for Overseas Lawyers

Alongside most developed jurisdictions, the Hong Kong system has formal transfer arrangements enabling foreign-qualified lawyers to practice in Hong Kong under local title. Since most applicants have substantial experience in their home jurisdictions before applying, and tend often to be moving into established positions, the transfer pathway performs a different function from the PCLL/workplace training route. Nonetheless, as one would expect, given Hong Kong's position in the global legal services market, this is a relatively significant pathway into the profession, and one that is important to maintain if Hong Kong is to sustain its position as a global gateway to China.⁸⁴ Law Society and Bar each manage their own transfer arrangements

7.7.1 The Overseas Lawyers Qualifying Examination

By far the largest numbers of foreign lawyers are admitted via the Overseas Lawyers Qualifying Examination (OLQE) which has been conducted by the Law Society since 1995. The majority of applicants for the OLQE are drawn from common law jurisdiction, notably the UK, the USA and

⁸³ As noted in the interview with the Bar Association, larger chambers are more likely to operate a more formalised application system, with applications considered by a pupillage committee. However, this does not preclude the operation of what Mr Edward Chan SC described as a "dual system". This implies that even in the larger chambers some pupils might be accepted on the basis of a more individual approach to, or prior connection with, a potential pupil master. The equity implications of this are readily apparent.

⁸⁴ See, eg, the evidence on this point from both the Law Society and Mr John Burge, chair of the OLQE Committee. Hong Kong's position as the most open legal market in Asia likely plays an important role in maintaining its market position, with all but one of the global top 50 law firms having a significant presence. In this regard Hong Kong is still significantly ahead of Singapore, its chief competitor as the main Asia hub location for international law firms – see 'Singapore closes in on Hong Kong as key Asia Pacific hub', *Top Lawyer Firm*, 19 July 2017, <http://top-lawyerfirm.com/2017/07/19/singapore-closes-in-on-hong-kong-as-key-asia-pacific-hub>

Australia, though increasing numbers from mainland China are also applying.⁸⁵ Over 1800 lawyers have successfully completed the OLQE over the last 20 years.⁸⁶

The examination is organised around six 'Heads'. These are: (I) Conveyancing, (II) Civil and Criminal Procedure, (III) Commercial and Company Law, (IV) Accounts and Professional Conduct, and (V) Principles of Common Law. After many years' discussion, a sixth Head for Hong Kong Constitutional Law was introduced in 2015. With the exception of Head V, OLQE examinations are open book. Head V (which is taken by only a small number of candidates from non-common law systems) is based on an oral examination, all others are written. The assessments are knowledge-based; there is no direct assessment of practical lawyering skills.

Examination formats involve relatively conventional hypothetical problem questions, though it is clear from examiners' comments that the answers generally sought are practical rather than academic in orientation. Unlike the US Bar or English QLTS assessments, there is no use of multiple choice testing (MCT). The standard across the OLQE is set at that of 'day one' qualification as a solicitor. There is no course requirement, though there are commercial training providers that offer OLQE preparation courses. The Law Society makes freely available a very detailed information pack,⁸⁷ which includes the syllabi, all past examination papers, and Examiners' reports⁸⁸ for the last three years.

In terms of evaluation, we have received very few comments specifically on the OLQE. The Law Society has indicated its satisfaction with the OLQE system, while, in both his written and oral submissions, the Chairman⁸⁹ of the Society's OLQE Committee took the view that the examination was working well and required no further or significant change. The Society also informed us that it conducts an annual survey of candidates taking the OLQE.⁹⁰ This indicates that candidates are "generally satisfied" with the operation of the Examination.⁹¹

Three elements of the assessment are, however, somewhat troubling. First, there has been unusually wide variation in overall pass rates, from a low of 39% in 2003 to a high of 79% in 2010, though since 2006 the overall pass rate has not dropped below 57%, and has tended to hover between the mid 60s and high 70s.⁹² By comparison, pass rates on the English QLTS multiple choice tests between February 2012 and July 2017 have been in the range 49%-59%.⁹³ New York Bar Examination pass rates for

⁸⁵ See, eg, OLQE Annual Report 2014, Annexure E. In 2014, out of 216 candidates, over two thirds (69%) were from these top three (58 from England and Wales; 51 from US jurisdictions, and 40 from Australia). A further 20 (9.3%) were from mainland China. In its evidence the Law Society (First Response, p.12) also noted that an increasing number of PRC candidates were seeking admission to practise in Hong Kong having first qualified in the US.

⁸⁶ Hong Kong Law Society, First response, p.12.

⁸⁷ Available on the Society's website at http://www.hklawsoc.org.hk/pub_e/admission/oversea.asp

⁸⁸ These vary in style, with some being more specific on candidates' performance, and others being essentially a set of short outline answers.

⁸⁹ Mr John Budge.

⁹⁰ First Response, p.13.

⁹¹ For avoidance of doubt, note that we have not had direct access to the summary survey data to confirm this.

⁹² OLQE Annual Report 2014, Annexure.

⁹³ Kaplan, 'Qualified Lawyers Transfer Scheme: Results' <https://qlts.kaplan.co.uk/results>. We have taken this as a better comparator than the skills-based OSCE, which also tends to have a higher pass rate than the MCT component.

overseas lawyers are generally even lower: in the range from 33% to 45% between 2004 and 2016.⁹⁴ Both of these assessments are highly standardised, and this may help account for the more consistent pass rates year on year.

Secondly, as the Chairman of the OLQE Committee observes, in many years the overall passage rate is actually *above* that of comparator jurisdictions. This rather begs the question whether the OLQE is rigorous enough, or necessarily assessing the right things. Unlike the QLTS, as noted, there is no assessment of skills, and to that extent the OLQE does not replicate the range of PCLL competencies. Traditional examinations, relying on hypothetical questions inevitably assess less breadth than standardised MCTs, and, when open-book, are relatively more prone to abuse.

Thirdly, the latter concern is rather borne out by the observation by Clifford Chance in its consultation response that OLQE examination questions could be changed more regularly, and the recurrent comments expressed by some OLQE examiners regarding the reproduction of ‘standard’ answers which appear to have been commercially produced.⁹⁵ As one of those examiners observes, this rather subverts the function of the assessment, particularly where patently memorised or pre-produced answers are awarded a passing mark.⁹⁶ From an examinee’s perspective, if you can pass on a ‘model’ answer, this is a rational strategy, particularly for candidates attempting multiple Heads. The syllabi are very wide, and this undoubtedly encourages the reported tendencies of weaker candidates to ‘cram’ and regurgitate information, question-spot, and demonstrate only limited legal or fact analysis.⁹⁷ It would be sensible either to refine the syllabi to better reflect the critical knowledge and skills of application to be assessed, or, if breadth matters sufficiently, to find a more reliable assessment method. Given the objectives of the OLQE, and advances in the design of objective (multiple choice) tests, we consider that a suitably rigorous system of objective testing could be devised. Administratively, responsibility for the OLQE rests with the Law Society. The Society has set up a distributed structure for managing the range of OLQE processes:

- Applications for sitting the OLQE, and applications for exemption from any Heads are considered and approved by the Foreign Lawyers Committee
- An OLQE Committee oversees the setting of standards, design of syllabi, examination formats and procedures, and the appointment of the Chief Examiner and Examination Panels
- The Chief Examiner and Panels of Examiners are responsible for marking and reviewing scripts
- The Standing Committee on Standards & Development and the Council have overall responsibility for oversight of the Examination.

⁹⁴ As compared with a range of 73%-85% for ABA law school graduates. These figures include those re-sitting. The Bar passage rate for overseas-educated first-time takers is higher at 43%-55%. See New York State Board of Law Examiners, ‘New York Bar Exam Pass Rates 2004-2016’ at www.nybarexam.org/ExamStats/NYBarExam_AnnualPassRates%20_2004-2016.pdf

⁹⁵ See, eg, Examiner’s comments for Head II (2016), and Head VI (2015, 2016)

⁹⁶ See, eg, Examiner’s comments, Head VI (2015)

⁹⁷ Examiners’ reports commonly highlight this as a major weakness – see eg reports for Head I (2015), Head II (2014) and III (2014, 2015, 2016)

This is commendable in ensuring that application and assessment processes remain independent, and in delivering a degree of oversight that is also independent of the examiners. We note, however, that there is no part of the process that is structurally independent of the Law Society. In terms of perceptions this arguably matters. References have been made to a ‘persistent impression’ amongst foreign lawyers that the examination is operated as a barrier to entry. This view has been robustly rejected by the Chairman of the OLQE Committee in evidence to us, and we have no information that points to the OLQE being abused in this way (indeed the high passage rates in some years suggest the contrary). Nonetheless there is potential tension, if not a conflict of interest, in terms of the Law Society’s role in representing the interests of domestic practitioners, as the Society itself has acknowledged:

“The increase of overseas lawyers and law firms, and those qualified through the OLQE may fill the gap in legal services for specialized areas in the practice of law in Hong Kong... but they also intensify the competition for work, and for the smaller local practices whose businesses and income may be more volatile to socio-economic changes, they may be put at a particularly disadvantageous position as they will inevitably be measured against their international counterparts in terms of experience, talent, network of offices, skills, specialization.”⁹⁸

The risk is not in our view sufficient of itself to justify major change to the OLQE, but it adds to the potential benefits of external assessment;⁹⁹ the OLQE could be delivered by the proposed School of Professional Legal Studies, and brought within the remit of an oversight body, such as SCLET (or any successor).

7.7.2 The Bar Qualifying Examination (BQE)

Overseas lawyers seeking admission to the Bar in Hong Kong must complete the Bar Qualifying Examination and undertake a normal minimum of 6 months’ pupillage.¹⁰⁰ The Examination itself involves taking up to five papers: Paper I – Contract and Tort; Paper II- Property (real & personal), Conveyancing and Equity & Trusts; Paper III – Criminal Law and Criminal Evidence and Criminal Procedure; Paper IV - Hong Kong Legal System, Constitutional and Administrative Law and Company Law, and Paper V – Civil Procedure & Evidence, Professional Conduct, and Advocacy. As in the case of the OLQE, there is an extensive information pack, and past examination papers (from 2008), together with other supplementary materials, are published on the Bar Association website. However, previous examiners’ reports are not in the public domain, and other than the information package, there is little publicly available information on the administration and oversight of the Examination. There is a Standing Committee of the Bar Association on the BQE, but we can find no readily identifiable public statement as to its functions, and it does not appear to publish any annual report of its activities.

The Bar Council has discretion to grant exemptions to candidates from sitting any paper or any section of a paper. Candidates from common law jurisdictions generally obtain automatic exemption from

⁹⁸ HKLS, First Response, p.17

⁹⁹ This is also recognised in the Law Society’s response, id.

¹⁰⁰ Subject to exceptional powers contained in s.16 of the Barristers (Qualification for Admission and Pupillage) Rules, which permits reduction of the period of pupillage to three months, where the Chief Judge, in consultation with the Bar Council, is satisfied that the candidate has “substantial experience of court advocacy”.

Paper I (akin to the OLQE approach to Head V). Other applications for exemption are assessed by the Bar Council on the merits.

All elements except Advocacy are assessed by open book written examinations. Aside from oral advocacy and the associated drafting of a Skeleton Argument, no practical lawyering skills are assessed by the BQE. A practical rather than academic approach to the examination is expected.¹⁰¹

The standard of the examination is pitched at that of a “competent junior barrister who having sufficiently prepared for the examination according to the reading list and syllabus would be able to pass”.¹⁰² This seems to us a rather ambiguous standard. It suggests the standard is pitched at a level above a pupil with limited practice rights, notwithstanding that successful candidates would normally be expected to complete between three and six months pupillage after completing the BQE. Just how junior is junior?

The numbers of BQE candidates are extremely small. The reasons for this are likely multi-faceted: self-employment may well be difficult or unattractive for incomers to Hong Kong, for a variety of reasons; the perceived difficulty of the assessment; the need to organize pupillage, and the existence of *ad hoc* admission rules¹⁰³ may also all play a part. Passage rates for each paper are shown in Table 7.1, below. These are variable and in some instances extremely low, however, given the numbers involved, no meaningful trends or inferences can really be drawn from these statistics.

Table 7.1: Passage rates for the BQE, 2005-14¹⁰⁴

Year	No. of candidates taking BQE	Passing Rate				
		Paper I	Paper II	Paper III	Paper IV	Paper V
2014	4	N/A	25%	100%	0%	50%
2013	9	0%	13%	50%	13%	50%
2012	5	N/A	0%	50%	25%	0%
2011	3	N/A	0%	100%	33%	100%
2010	3	N/A	0%	100%	33%	100%
2009	2	N/A	0%	50%	0%	0%
2008	1	N/A	0%	0%	N/A	N/A
2007	2	N/A	0%	0%	0%	0%
2006	3	N/A	66%	N/A	0%	N/A
2005	6	N/A	25%	100%	50%	100%

¹⁰¹ Id, para. 20

¹⁰² Hong Kong Bar Association, *Admission of Overseas Lawyers: Information Package 2017*, para. 18, www.hkba.org/sites/default/files/2017%20Information%20Package.pdf

¹⁰³ In 2016 there was a total of 32 applications for the admission of overseas counsel to practise as a barrister in Hong Kong on an ad hoc basis, compared with 34 in 2015. Nineteen of these were criminal cases. The total number of applications allowed by the Court was 20 (13 criminal cases). Statistics do not record what proportion of these are serial applicants. See Hong Kong Bar Association, *Report of the Standing Committee on Overseas Admissions 2016*, paras 1-3, <http://www.hkba.org/sites/default/files/Standing%20Committee%20on%20Overseas%20Admissions%202016%20%28E%29.pdf>

¹⁰⁴ Hong Kong Bar Association, Note for the Consultants (19 December 2015)

On the basis of the available data, there are only a limited number of observations we can make. Given the low number of candidates involved, there is also a very real limit to the kinds of change that are likely to be proportionate, without significantly increasing the cost of assessment, unless a more creative solution can be found. We note that the syllabi and reading lists in most instances are extremely wide and somewhat opaque (containing little by way of guidance, recommending multiple and overlapping texts, for example, in their entirety, with no commentary on usefulness). We would invite the Bar Association to review the scope of and information on the syllabi to better reflect the priorities for assessment. In the absence of any preparatory course, or supporting materials, the assessment demands are high enough without candidates having to worry about being assessed on recondite points of law or procedure.

7.8 Conclusions and recommendations

In this final substantive section of our report we have reviewed the training requirements for four distinct groups of entrants to the Hong Kong legal profession: trainee solicitors, pupil barristers, overseas lawyers seeking to re-qualify as Hong Kong solicitors, and overseas lawyers seeking general admission to the Hong Kong Bar. In this sub-section we lay out first a number of general recommendations to the professions, and then our specific recommendations in respect of each of those groups.

In sum, we note the strong cultural attachment to a significant period of workplace training that the Hong Kong profession shares, particularly, with the UK jurisdictions. We acknowledge that, at its best, this stage contributes significantly to the perception that training within the 'Anglo' tradition sets an international 'gold standard'. We do not recommend radical change to the timing or significance of this stage. Our key concern, however, is whether sufficient is being done to assure all prospective trainees (and the public), by good regulatory and assessment practice, that those admitted into the profession are enabled to operate at a competent and broadly consistent standard.

We are also of the view that the profession's regulatory resource should primarily be allocated to assuring the consistency and quality of the *outcomes* of the final stage of training. This requires those outcomes to be better defined, and more consistently evaluated and monitored. If this move to more outcome-focussed regulation is achieved, we consider that there can be some commensurate reduction in the burden of *process* regulation on both the regulator and the profession.

This section also considers arrangements for the assessment of overseas lawyers seeking admission to the Hong Kong profession. We note the importance of this route of access to the solicitor's profession in supporting the global competitiveness of Hong Kong as an international legal centre. By contrast the Bar Qualifying Examination remains a very marginal pathway to the Bar. Both assessments are extremely knowledge-heavy and skills-light. We are not convinced that either assessment represents a proper test of professional competence, and we therefore make a number of recommendations for their modernisation.

7.8.1 General recommendations in respect of the regulatory framework

Recommendation 7.1

That the Law Society and Bar each take steps to devise a proper set of outcomes for the final stage of training. These should build developmentally on the outcomes devised for the PCLL, and focus on the generic knowledge and skills required to demonstrate competence to practice (see Section 7.5).

The ultimate standard of training to be achieved should be set at the level expected of a 'day one' practitioner, ie, the standard expected of a newly admitted solicitor, or a barrister who has successfully completed the required period of limited practice.

Recommendation 7.2

We commend the work both professions have done in introducing trainee-specific continuing professional development/advanced legal education. Nonetheless, we recommend that, in the light of the revised outcomes established under recommendation 7.1, each professional body should review the scope and hours of trainee-specific training required to ensure a good fit with the desired outcomes.

Recommendation 7.3

That the Law Society undertakes a review of its regulation to determine whether there is scope to reduce the regulatory burden on training organisations, including:

- The need to maintain and register training contracts in standard form as currently prescribed by Trainee Solicitor Rules, Rule 8 and Practice Direction E2
- Whether the five year continuous practice rule for training principals should be retained, reduced, or eliminated [Legal Practice Ordinance, s.20(1)]
- The extent of reduction to the duration of the training contract permitted under Trainee Solicitors Rules, Rule 9A
- Secondment requirements for those undertaking a training contract in-house
- Regulation of secondments to law firms outside Hong Kong [Rule 9(4)]

Recommendation 7.4

That the Bar Council undertakes a review of regulation to determine whether there is scope to reduce the regulatory burden on barristers and chambers, including:

- Extent of restrictions on periods of approved pupillage [Section 10, B(QAP) Rules]
- The necessary minimum qualifying requirement for taking pupils
- Simplification of the duties of pupil masters [Rules 11.9-11.10, *Code of Conduct*]¹⁰⁵
- Pursuant to the move to outcomes, removal or substantial redrafting of the suggested minimum pupillage requirements (*Code of Conduct*, Annex 11, Pt 2)

Recommendation 7.5

That the professional bodies to publish clearer information on their websites regarding their role in the authorisation and monitoring of training, including overview reports of monitoring activity

¹⁰⁵ As these might largely be subsumed by reference to an obligation to provide training sufficient to achieve the outcomes prescribed.

undertaken, and identification of procedures for trainees to raise concerns with the relevant body regarding the conduct or adequacy of their training.¹⁰⁶

Recommendation 7.6

We recommend that the Law Society and Bar Association, in the light of any changes made in the wake of recommendations 7.8, 7.9 and 7.12, respectively, identify any additional steps that should be taken by them in order to ensure that monitoring of both the process and outcomes of the training contract or pupillage stage is adequate.

Recommendation 7.7

That the OLQE and the BQE should be brought within the reporting requirements and oversight of SCLET (or any successor body).

7.8.2 Specific recommendations in respect of the training contract

In this section we have argued that, if an overarching objective of regulation is to assure consistency in core skills and associated competencies, then this requires not just a clearer specification of outcomes, but an enhanced system of evaluation, focused on the development of core professional skills and attributes, not underlying knowledge. We therefore recommend

Recommendation 7.8

That the Law Society take steps to introduce a more structured training portfolio for the training contract stage, along the lines identified in section 7.6. Some increased process regulation is likely to be required, particularly enhanced monitoring of the ability of training organisations to meet the training outcomes.

Recommendation 7.9

That the conduct of formal periodic (eg quarterly) training reviews is made a condition of any training contract. An agreed progress report from each periodic review should form part of the training record.

Recommendation 7.10

That the Law Society investigate the feasibility of introducing and maintaining an online portfolio template and training record for use by all trainees

7.8.3 Recommendations in respect of pupillage

Recommendation 7.11

The Hong Kong Bar remains too small to warrant the introduction of any centralised clearing house system for pupillage applications (as operates, for example, in England and Wales). Nonetheless, we have concerns as to the equity implications of the current, often informal arrangements.

¹⁰⁶ We recognise that this is a difficult and highly sensitive matter, and that trainees are likely to be very reluctant to question or complain, whether out of deference or for fear of the consequences, but this does not, in our view, obviate the need for such procedures.

We therefore recommend that a requirement be introduced for *all* pupillage vacancies to be advertised for an appropriate period on the Hong Kong Bar Association website. This may also have the benefit to chambers of reducing the number of speculative enquiries to which they must respond.

Recommendation 7.12

That the Bar take steps to enhance the consistency of pupillage outcomes by introducing a proper training portfolio requirement as per Section 7.6. This system would be supported by other regulatory enhancements, itemised in the following recommendations.

Recommendation 7.13

That chambers should be required to appoint a member as director of training, with oversight of training and supervision within chambers, including responsibility for assuring the quality and consistency of that training.¹⁰⁷ We would also see the director of training as an appropriate person to address internal concerns or complaints regarding the adequacy of training provided. We see this primarily as a consolidation and regulatory recognition of existing best practice rather than a major innovation.

Recommendation 7.14

That the Bar investigates the feasibility of introducing and maintaining an online portfolio template and training record for use by all pupils to record their training.

Recommendation 7.15

That the conduct of formal periodic (eg quarterly) training reviews is made a condition of pupillage. An agreed progress report from each periodic review should form part of the training record.

Recommendation 7.16

That the Bar *Code of Conduct* (Rule 11.20) is revised to make the existing requirement that training logs are completed at the end of periods of pupillage, a continuing requirement to maintain a training log and portfolio/diary throughout the duration of pupillage.¹⁰⁸

7.8.4 Recommendations in respect of the OLQE/BQE

Recommendation 7.17

That the format of the OLQE be substantially revised as discussed in section 7.7.1. Our preferred solution would be that, as a minimum, a substantial majority¹⁰⁹ of the knowledge-based component should be conducted by standardised objective testing (multiple choice tests). Consideration should

¹⁰⁷ Alternatively, particularly in smaller chambers, these responsibilities could be added to those exercised by the head of chambers under rule 7.3 of the Code of Conduct.

¹⁰⁸ We anticipate that this is the intention of the rule, but it does offer the unfortunate inference that one can pull it all together at the end; this may be true of the ALE record, but reflective logs/diaries need to be more contemporaneous.

¹⁰⁹ As with the US Bar Examination there may be a case for requiring some demonstration of written skills through, eg, short answer questions, and/or a letter drafting or memorandum writing exercise.

be given to assessment design and delivery being undertaken by the School of Professional Legal Studies proposed in Recommendation 2.1 of this report.

Ideally speaking, we take the view that some element of skills-based assessment, akin to the English QLTS, would also be desirable as that would equate the OLQE more clearly to the range of competencies tested in the case of domestic trainees. We do not make an express recommendation to that effect but encourage the Law Society to investigate whether this would be economically feasible, given the numbers involved.¹¹⁰

Recommendation 7.18

That consideration be given to an equivalent approach for the BQE, though we seriously doubt that this would be economically or administratively viable on the numbers involved. We invite the Bar to consider the possibility of some element of joint assessment with the OLQE, given that there is substantial knowledge overlap between the two examinations.

Recommendation 7.19

Whether or not recommendation 7.18 is implemented, we recommend that steps are taken to improve the quality of information surrounding the BQE, including:

- Some narrowing or refinement of the focus of syllabi
- Additional guidance on core topics and reading materials
- Publication of annual examiners' reports, including short outline answers to questions.

¹¹⁰ As a market comparator, we note that the current cost to candidates of the QLTS is in the region of HK\$45,000 (Sterling equivalent).

8. CONCLUSIONS

Introduction

The legal education and training system of Hong Kong in many ways is a reflection of the city and society it serves: it is a busy and sometimes confusing fusion of the modern and the traditional, the colonial and post-colonial, the European and the Asian. As we saw in Section 2, the system has grown rapidly but still reflects substantially its roots in the English common law tradition. This is a source of both its strength, and its weakness.

In reviews of this kind, there is, of course, a tendency to focus upon the weaknesses; this is a critical part of their role, but it is important too, to pause and focus on the strengths. Legal education and training in Hong Kong is, in many respects, a considerable success story. It is built on the foundations of a world class university system, supported by a profession that routinely commits considerable resources to the work of committee membership, teaching, examining and quality assuring that enables the system to function. The system has also demonstrated commendable responsiveness. Significant changes have already taken place in the wake of the 2001 Redmond Roper Review, though there remain a number of issues and pressure points, identified in the course of this process, where further work is required. Nonetheless, it has meant that the function of this review has been primarily to consolidate, sustain and strengthen; to protect the existing values of the system, to maintain the openness of the profession (which has been so crucial to the region's continued status as a global player on the legal stage), and to modernise where necessary.

In this section we therefore conclude our report by discussing three matters of substance:

- first, we reflect on our terms of reference and the underlying rationale for the focus adopted;
- secondly, we draw together our views on some matters arising regarding quality assurance and the role of SCLET that have fallen outside the discrete stages discussed in the earlier sections of the report, and,
- thirdly, we discuss briefly some developments in respect of continuing professional development (CPD) which may be relevant for the future. Although CPD falls outside the remit of this review, it remains of considerable importance, particularly in the context of a regulatory model which sees education and training as a lifelong tool for supporting and maintaining professional competence.

Finally, we also include, for ease of reference, a compilation of our recommendations.

8.1. Responding to the Terms of Reference

The terms of reference¹ have been addressed in an integrated and frequently implicit fashion throughout this Report, rather than expressly and sequentially. In reflecting on them here, we note that they directed us essentially to three tasks: to address whether the appropriate knowledge and

¹ See Section 1.

skills are being delivered to meet the challenges of legal practice and the needs of Hong Kong society in the 21st Century; to review the operation of, and make recommendations on the functioning of the legal education and training system *as a system*, and to ensure that there are robust quality assurance mechanisms in place.

The first of these has been, in many respects, the most difficult task. Legal professions globally are experiencing a period of profound change. Financial pressures on the cost of legal services continue to be exerted by clients and governments; new work practices and technologies are disrupting, in quite fundamental ways, the way in which legal services are being delivered; competition between service providers continues to increase, both locally and globally. Segmentation of the legal services market, and the decline in 'general practice' lawyering also raises challenging questions about the necessary scope of training and what constitutes 'core' (professional) knowledge. Yet, at the same time, while the context alters, we must not lose sight of the fact that much of the 'core' knowledge and skills is not contested, and remains fundamentally unchanged. Legal education and training must thus be responsive to the changes:

- to the importance of emerging areas of law within their jurisdiction,
- to the centrality of good communication skills (complicated in Hong Kong by the demands for multi-lingual competence),
- to the growing use and impact of technology on legal work,
- to the need for graduates to demonstrate greater commercial, and perhaps even broader contextual and 'social awareness',

and to the extent to which it is no longer enough (if it ever was) for lawyers to simply know the law. But it must also continue to provide a firm grounding in core legal knowledge and skills. Managing and maintaining this balance is not ultimately a task to be conducted by an external review once every ten or twenty years; it needs to be the normal business of each law school. It is critical that such institutions have an appropriate ethos towards change, and mechanisms in place that enable them to respond appropriately, and we suspect with increasing agility.

The size of the core academic curriculum, and the extent of potential overlap (notwithstanding differences in approach) between academic and vocational courses are, potentially the greatest constraints on innovation and agility. They are also amongst the most difficult to address, not least because of the strong attachments that academics and practitioners develop to their own fields. We have recommended some adjustments,² but these need to be considered the start, not the end of a larger process. It is for this reason that we recommend a greater intensity of evaluation and informal review at the local level.³ Work on developing a proper set of outcomes for training should also be considered a critical first step in re-evaluating and making transparent the relative functions and responsibilities of the workplace, the PCLL and the academic stage.⁴

Much of this review has focussed on issues of system design. As our brief review in section 2 demonstrates, the legal education and training system in Hong Kong did not emerge fully formed from a formal, rational, design process. Like most systems it has evolved from a mix of habit, imitation and

² See Recommendations 4.2, 4.4, and 5.7.

³ Recommendation 4.1.

⁴ Recommendations 5.4 and 7.1.

a degree of invention. Like most systems in our increasingly globalised environment, it is having to address the complexities created by growing student numbers within a marketised and commoditised education system, and by increased lawyer and student mobility. A more or less simple access point to the profession has thus been replaced by the need to accommodate multiple undergraduate and graduate pathways, overseas degrees, and part- and fully-qualified lawyers seeking to change jurisdiction. Many of the concerns and tensions regarding access, consistency and flexibility of training pathways flow from this increased complexity and scale. Our recommendations acknowledge that simplification of the underlying academic stage is not going to happen, consequently some structural change at the vocational stage is required, and a number of less and more radical options are identified and evaluated.⁵

This review has also sought to take seriously three other features of more modern ‘systems thinking’ in respect of education and training. First, it has sought to address the regulatory context, and the extent to which education and training regulation itself serves an important function in the assurance of professional competence. A regulatory lens, by addressing issues such as the public interest, and the proportionality of regulation also helps to focus discussion on the proper extent to which educational processes and outcomes require (external) control or oversight.⁶ Secondly, the review has sought to follow the approach signalled by a growing number of reviews internationally, including the MacCrate (1992), ACLEC (1996), Carnegie (2007) and LETR (2013) Reports⁷ in addressing the educational continuum and the range of ‘apprenticeships’ (to use the Carnegie Report’s terminology) that need adequately to be embedded across the training system.⁸ A better integrated approach is more likely to enable us to produce what the recent *Foundations* project calls the “whole lawyer”.⁹

In that same vein, this review has sought also to acknowledge the need to treat education and training as not just a set of stages at the start of one’s career, but the commencement of processes and habits of lifelong professional learning. This is reflected particularly in our recommendations regarding workplace learning,¹⁰ and the comments regarding continuing professional development that follow in 8.3. Thirdly, there is of course a strong relationship between system design and the need for quality assurance. As our terms of reference acknowledge, quality assurance is a critical part of the system. Good quality assurance processes enable change, and provide reassurance to a range of stakeholders. Crucially, it also provides to the professions a degree of oversight and control that is otherwise lost in the more distributed systems that operate today. A number of our specific recommendations reflect specific quality assurance needs¹¹ that have been identified. We say more about quality assurance at a system level in the section following.

⁵ Notably Recommendations 2.1, 5.1, 5.2, 5.4, 6.1, 6.2.

⁶ See, eg, the discussion in sections 3.1, 5.1, 5.4, 6.4 and 6.7.

⁷ See Table 3.2, above, and the associated discussion.

⁸ See Recommendations 4.4, 5.4, 5.7, 7.1, 7.2, 7.8 and 7.12.

⁹ Institute for the Advancement of the American Legal System, ‘The Whole Lawyer and the Character Quotient’ available online at <http://iaals.du.edu/foundations/reports/whole-lawyer-and-character-quotient>

¹⁰ See Section 7 and below.

¹¹ See Recommendations 4.1, 5.4, 5.5, 5.6, 6.4, 7.1, 7.2, 7.5-7.9, 7.12, 7.13, 7.15, 7.16, 7.19 and 8.1.

8.2 Quality assurance and accreditation: maintaining the system

We retain some concerns at the overall system of oversight of education and training in Hong Kong. As the Hong Kong Law Society notes in its first submission to us, there has been an international trend of enhancing regulatory frameworks and standards.¹² It is not wholly clear to us that the Hong Kong system has kept pace with good educational and regulatory practice.

The Redmond Roper Report, in chapter 16, observed that “the various parts [of the Hong Kong system] are in good hands. But when they turn their attention to the system as a whole, the consultants suggest that there are a number of issues which need to be addressed.”¹³ Notwithstanding the changes made since 2001, including the establishment of SCLE, we would largely concur with that conclusion.

As the CEE debate has, once again, demonstrated the current system rather lacks checks and balances. The spheres of autonomy granted to the universities and the profession are both useful, and a potential inhibitor on action at a systemic level. The exercise of independent advice is without doubt valuable at a system level, but we take the view, as did the Redmond Roper Report that it is not enough. A body is required with a degree of independence from key stakeholders, but on which their interests can also be represented. It must have some capacity for proper coordination and oversight of the system, as well as providing what Mr Justice Waung in the Redmond Roper consultations described as a “stabilising” effect. Whilst SCLET is undoubtedly an improvement on the former system of ‘oversight’, we take the view that its structure and practices mean that it still falls somewhat short. There are in our view four core difficulties, which have not yet been addressed:

- Its functions remain advisory rather than executive
- It is unwieldy and too easily rendered ineffective by stakeholders with ‘real’ power
- It lacks any proper accreditation function, and reporting processes are not wholly adequate
- It lacks the resources to undertake additional work that would help build greater capacity for (self-) renewal into the system

We are conscious that these criticisms re-open some of the debates that followed the Redmond Roper recommendations for a Legal Qualifying Council. We do not propose, however, that this takes from the professions the ‘frontline’ task of setting standards, or authority over admissions per se, nor their autonomy over workplace training. To put it simply, we propose a body that is more a Quality Council than Qualifying Council. Accordingly we would recommend that SCLET (or a successor body if preferred) should exercise:

- Authority to make recommendations in respect of and approve course outcome specifications and standards submitted by the universities or the professional bodies in respect of:
 - The core academic requirements for entry to the professions
 - The core vocational course requirements for entry to the professions
- Powers to require (as at present) annual reports from course providers in respect of all qualifying academic and vocational courses offered in Hong Kong. We recommend,

¹² First response, para 3.

¹³ Page 331.

additionally, that the format of these reports should be better standardised to enable SCLET to undertake comparative analysis of key trends, including

- Numbers of applicants to each course
 - Numbers of students admitted to each course
 - “Attrition” rates for each course (withdrawal and failure rates)
 - Actions taken by the institution in the course of the previous year to identify and address any significant quality issues arising
 - Any planned (structural) changes to the course
- A commitment to respond to each institutional annual report, including authority to make (non-binding) recommendations
 - The right to participate in any (internal) accreditation or review event for a qualifying course.

We repeat also our earlier observation, in section 5.4.3, regarding the delphic quality of accreditation and de-accreditation arrangements for the PCLL. This appears to be a significant gap in the Ordinance, which should be closed in accordance with Recommendation 5.6. We do not take a strong position on where these powers should be located. Accreditation functions could be performed by a joint committee of Law Society and Bar, as these are the responsible professional regulators. The function could alternatively be added to SCLET’s portfolio (an Accreditation Sub-Committee perhaps?), so long as an appropriate funding mechanism is agreed.¹⁴ We recognise that the exercise of any power to de-accredit is a sensitive matter. We do not see it as appropriate to the exercise of Executive authority alone, but could anticipate it being framed as a matter either for the decision of the Law Society and Bar Councils jointly (perhaps subject to approval by the Chief Justice, or the full SCLET Committee) or as a decision for SCLET itself, if stakeholders consider it appropriate to extend accreditation powers to that body. We make no express recommendation at this stage, but welcome views on an appropriate way forward.

We note also that SCLET, in its current form can be a large and somewhat unwieldy committee. The existing practice of working through sub-committees is sensible, in this regard. If our proposals are implemented, we would recommend that the work of evaluating and responding to annual reports and participation in accreditation events could be managed within a Quality Sub-Committee. If it does not already so operate (in any de jure or de facto sense), we also see merit in the development of an Executive Committee that might be better placed to actively drive the SCLET’s agenda for systemic development and renewal forward. Any such Committee should probably not exceed seven to nine individuals and should comprise the Chair and one representative from key stakeholder groups (including a lay member).

8.3 Future reform of CPD

Unlike the Redmond Roper process, continuing professional development was largely outwith our remit. This is, in our view, unfortunate. In the wake of the Redmond Roper recommendations, some significant progress has been made in this area, particularly with regard to trainee CPD (discussed in Section 7). The Law Society’s Academy of Law similarly is in many respects a flagship venture of the and the range and depth of its offerings seems impressive. The amount of free CPD offered to the

¹⁴ In the US and Australia, accreditation costs are borne by the institution seeking accreditation.

profession, particularly in relation to trainee CPD and Risk Management Education is commendable. The underlying hours-based scheme however, might be seen as rather restrictive and even dated in form, in an environment where more of the legal professions are (slowly) moving to more self-managed, needs-led systems. Elements of this new approach can be seen in (for example) New Zealand, Canada and the (English) SRA model of ‘continuing competence’,¹⁵ where the connection between training and the accumulation of hours or points has been broken to encourage a stronger focus on training that brings benefit, rather than being sanctions or target-based¹⁶ Where they exist, such schemes seem to be building genuine support. The value-added of such ‘benefits’-based schemes was well explained by the Law Society of England and Wales in its evidence to the LETR:

“The current inputs based model does not seem to promote the kind of activity that is beneficial in all cases. Whilst it is impossible to build a model that ensures that CPD will be valuable to all comers, a focus on what is being learnt from CPD, reflection on how to incorporate it into practice and planning for future activities, may all encourage a more productive culture. CPD has to be done in an effective manner; built in and reinforced over time and at a stretching level.

The Law Society believes that the key to effective CPD is to undertake it within a cycle of planning and objective setting in discussion with an employer or peers and reporting back on these to see what has been learnt, whilst reflecting on how this impacts the plan for the next cycle. In situations where this is not possible, the regulator must take direct responsibility for ensuring that a plan has been completed, and may take a further interest in ensuring that adequate reporting and reflection has been completed.”¹⁷

We note that there has historically been greater resistance to compulsory CPD from the Bar. This does leave the Hong Kong Bar a significant outlier in regulatory terms. The English and Australian Bars have had a formalised CPD scheme for many years. Within the region, the Singaporean and Malaysian Bars (though of course not entirely cognate institutions) introduced compulsory CPD schemes in 2007 and 2012 respectively.¹⁸ We consequently welcome the steps taken by Winnie Tam SC, the Bar Chairman in 2016 to initiate the work of a new Standing Committee on Professional Development, in order to, in her words “make a start on what is blindingly obvious as a basic requirement of our continued existence as a respected profession.”¹⁹

¹⁵ Discussed at some length in the LETR Report, chapter 6. See also SRA, ‘Continuing competence’ at <https://www.sra.org.uk/toolkit/>. The English Bar has, with effect from 1 January 2017, also moved to a more liberal (not hours-based) but still regulated approach to CPD as part of its post-LETR programme of work, see Bar Standards Board, ‘CPD for Established Practitioners’ at <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/continuing-professional-development-from-1-january-2017/established-practitioners-programme/>

¹⁶ C.A. Madden and V.A. Mitchell, *Professions, standards and competence – a survey of continuing education for the professions*. (University of Bristol, 1993); A. Friedman and M. Phillips, ‘Continuing Professional Development: Developing a Vision’ (2004) 17 *Journal of Education and Work* 361. See also J. Ching, ‘Solicitors’ CPD: time to change from regulatory stick to regulatory carrot?’ (2011) *Web Journal of Current Legal Issues* (3) <http://www.bailii.org/uk/other/journals/WebJCLI/2011/issue3/pdf/ching3.pdf>.

¹⁷ Cited in the LETR Report, para. 6.89

¹⁸ R. Chanda and P. Gupta, *Globalisation of Legal Services and Regulatory Reforms: Perspectives from India* (Sage, 2015), p.51

¹⁹ W. Tam SC, ‘Charman’s Report for 2016’, Hong Kong Bar Association, available online at <http://www.hkba.org/sites/default/files/Chairman%27s%20Report%20%202016%20%28E%29.pdf>, para. 17.

Whilst we can make no definitive recommendation as such, we warmly commend much of the work that has been undertaken, particularly in Alberta and England, to the Law Society and Bar Association and would strongly encourage them to consider the ways in which a benefits model might support them in maintaining their position and reputation among the world's legal professions.

8.4. Compilation of Recommendations

In this final section we present a complete list of the (provisional) recommendations made in this interim report, including two recommendations arising from the discussions in sections 8.2 and 8.3. Recommendation numbers reflect the sections of the report in which each recommendation is initially discussed. Explanatory notes included in the original locations are not replicated in this summary.

Recommendation 2.1

That consideration be given to the establishment for Hong Kong of a School of Professional Legal Studies, with a view to preparing candidates for entry to the legal profession and the practice of law.

Recommendation 2.2

That a separate Secretariat for the Standing Committee on Legal Education and Training be established, linking the provision of professional services to the Committee to the offices of the Legislative Council.

Recommendation 4.1

That the Universities should each review their academic offerings annually, with a view to ensuring that students undertaking the PCLL courses are not required to learn (and be examined upon) significant amounts of substantive law in the vocational stage already studied at the academic stage. Procedures should be put in place by the universities to control curriculum drift and unnecessary duplication between the academic stage and PCLL. This might be achieved (eg) by periodic meetings between programme directors and/or cognate subject convenors of the relevant academic and PCLL subjects.

Recommendation 4.2

That consideration be given to moving Conveyancing entirely to the Vocational stage, and that Civil Procedure should be re-named Dispute Resolution and (where necessary) broadened to include proper consideration of ADR and ODR processes.

Recommendation 4.3

That the Universities should further examine the employment experiences and performance of JD graduates to ascertain whether they are disadvantaged in recruitment, as has been suggested to the consultants, and to see whether there is any scope for ameliorating that situation.

Recommendation 4.4

That principles of legal ethics and professionalism are introduced at the academic stage. We do not consider that this requires a full subject of professional legal ethics, but encourage the universities to

consider how they might integrate ethics into programmes, as part of a subject or subjects, or pervasively across the core curriculum

Recommendation 5.1

That the PCLL should not be constructed as an artificial barrier to entry, though we also retain concerns about the risks and costs of moving to a wholly marketised system. Any change on that scale should require high-level support from the PCLL provider(s) and the profession. We welcome providers' agreement to increase PCLL capacity in the short term, and we encourage providers to explore longer term solutions, including those identified in Recommendation 2.1 or section 5.2.

Recommendation 5.2

That, unless moves are made rapidly to implement Recommendation 2.1, PCLL providers work together to increase the transparency of the admission process, and to develop consistent admission criteria across all three institutions. Revised admission criteria should reflect the factors identified in section 5.3.2

Recommendation 5.3

That consideration be given to grading the Conversion Examination to facilitate the comparison of home and overseas students in the admission process.

Recommendation 5.4

That the professional bodies work with the law schools to construct a proper, uniform, statement of outcomes and written standards for the PCLL. These should include reference to the matters discussed in section 5.4.2

Recommendation 5.5

That further consideration be given to whether the PCLL currently pitches the standard of competence at an appropriate level, and whether that is properly reflected in the passing standard for the course (Section 5.4.1.4)

Recommendation 5.6

That the system of PCLL quality assurance be strengthened to include a triennial review of the course (Section 5.4.3); this recommendation applies equally to any sole provider introduced under Recommendation 2.1. New regulation should be introduced to enable de-accreditation of a provider, including an independent appeal process against a recommendation of de-accreditation.

Recommendation 5.7

That (i) key stakeholders when devising the outcomes and written standards, and (ii) the PCLL providers more generally when developing electives, or considering the scope of the informal curriculum, or delivery of student support, identify and address a range of future needs/priorities. These include: education in professionalism; commercial awareness; understanding of new modes and technologies of legal practice; developing greater proficiency in Putonghua; developing lifelong learning/reflective practice capabilities; the need for enhanced careers advice and support.

Recommendation 6.1:

That a moratorium be called on current CEE development while (i) a further Benchmarking exercise for PCLL is completed (see Recommendations 5.4 and 5.5), and (ii) a decision is made either to create a new School of Professional Legal Studies (Recommendation 2.1), or agreement is established between the Law Society, Bar and PCLL providers to progress any PCLL-associated CEE model (either as an interim or continuing solution).

Recommendation 6.2

If the key stakeholders (Law Society, Bar and PCLL providers) agree that an element of common assessment is desirable, that a cross-stakeholder working group under the auspices of SCLET should be convened to oversee the development. Membership of the group should include equal representation from the Law Society, Bar and PCLL providers, and at least one educationalist from outside the PCLL, with experience of high stakes professional assessment design. The chair of the group should also be independent of the above key stakeholders.

Recommendation 6.3

That any working group created under Recommendation 6.2 shall be charged with developing a model or models for the purposes of stakeholder consultation, revision and implementation. Without unduly constraining the terms of reference of the group, any model devised should include a basic risk analysis; worked arrangements for setting and review of common papers, examining arrangements and recommendations as to the structure and powers of any examining board. It will be for the working group to agree any revised implementation date for the scheme of common assessment.

Recommendation 6.4

That, subject to Recommendation 2.1, if any system of common assessment is adopted, PCLL providers are involved in paper setting, and examination arrangements. A joint examination board of all PCLL providers, together with Law Society and Bar Association external examiners, should be devised to oversee results and report on assessment processes.

Recommendation 7.1

That the Law Society and Bar each take steps to devise a proper set of outcomes for the final stage of training. These should build developmentally on the outcomes devised for the PCLL, and focus on the generic knowledge and skills required to demonstrate competence to practice (see Section 7.5).

The ultimate standard of training to be achieved should be set at the level expected of a 'day one' practitioner, ie, the standard expected of a newly admitted solicitor, or a barrister who has successfully completed the required period of limited practice.

Recommendation 7.2

We commend the work both professions have done in introducing trainee-specific continuing professional development/advanced legal education. Nonetheless, we recommend that, in the light of the revised outcomes established under recommendation 7.1, each professional body should review the scope and hours of trainee-specific training required to ensure a good fit with the desired outcomes.

Recommendation 7.3

That the Law Society undertakes a review of its regulation to determine whether there is scope to reduce the regulatory burden on training organisations, including:

- The need to maintain and register training contracts in standard form as currently prescribed by Trainee Solicitor Rules, Rule 8 and Practice Direction E2
- Whether the five year continuous practice rule for training principals should be retained, reduced, or eliminated [Legal Practice Ordinance, s.20(1)]
- The extent of reduction to the duration of the training contract permitted under Trainee Solicitors Rules, Rule 9A
- Secondment requirements for those undertaking a training contract in-house
- Regulation of secondments to law firms outside Hong Kong [Rule 9(4)]

Recommendation 7.4

That the Bar Council undertakes a review of regulation to determine whether there is scope to reduce the regulatory burden on barristers and chambers, including:

- Extent of restrictions on periods of approved pupillage [Section 10, B(QAP) Rules]
- The necessary minimum qualifying requirement for taking pupils
- Simplification of the duties of pupil masters [Rules 11.9-11.10, *Code of Conduct*]
- Pursuant to the move to outcomes, removal or substantial redrafting of the suggested minimum pupillage requirements (*Code of Conduct*, Annex 11, Pt 2)

Recommendation 7.5

That the professional bodies publish clear information on their websites regarding their role in the authorisation and monitoring of training, including overview reports of monitoring activity undertaken, and identification of procedures for trainees to raise concerns with the body regarding the conduct or adequacy of their training.

Recommendation 7.6

We recommend that the Law Society and Bar Association, in the light of any changes made in the wake of recommendations 7.8, 7.9 and 7.12, respectively, identify any additional steps that should be taken by them in order to ensure that monitoring of both the process and outcomes of the training contract or pupillage stage is adequate.

Recommendation 7.7

That the OLQE and the BQE should be brought within the reporting requirements and oversight of SCLET (or any successor body).

Recommendation 7.8

That the Law Society take steps to introduce a more structured training portfolio for the training contract stage, along the lines identified in section 7.6. Some increased process regulation is likely to be required, particularly enhanced monitoring of the ability of training organisations to meet the training outcomes.

Recommendation 7.9

That the conduct of formal periodic (eg quarterly) training reviews is made a condition of any training contract. An agreed progress report from each periodic review should form part of the training record.

Recommendation 7.10

That the Law Society investigate the feasibility of introducing and maintaining an online portfolio template and training record for use by all trainees

Recommendation 7.11

The Hong Kong Bar remains too small to warrant the introduction of any centralised clearing house system for pupillage applications (as operates, for example, in England and Wales). Nonetheless, we have concerns as to the equity implications of the current, often informal arrangements.

We therefore recommend that a requirement be introduced for *all* pupillage vacancies to be advertised for an appropriate period on the Hong Kong Bar Association website. This may also have the benefit to chambers of reducing the number of speculative enquiries to which they must respond.

Recommendation 7.12

That the Bar take steps to enhance the consistency of pupillage outcomes by introducing a proper training portfolio requirement as per Section 7.6. This system would be supported by other regulatory enhancements, itemised in the following recommendations.

Recommendation 7.13

That chambers should be required to appoint a member as director of training, with oversight of training and supervision within chambers, including responsibility for assuring the quality and consistency of that training. We would also see the director of training as an appropriate person to address internal concerns or complaints regarding the adequacy of training provided. We see this primarily as a consolidation and regulatory recognition of existing best practice rather than a major innovation.

Recommendation 7.14

That the Bar investigate the feasibility of introducing and maintaining an online portfolio template and training record for use by all pupils to record their training.

Recommendation 7.15

That the conduct of formal periodic (eg quarterly) training reviews is made a condition of pupillage. An agreed progress report from each periodic review should form part of the training record.

Recommendation 7.16

That the Bar *Code of Conduct* (Rule 11.20) is revised to make the existing requirement that training logs are completed at the end of periods of pupillage, a continuing requirement to maintain a training log and portfolio/diary throughout the duration of pupillage.

Recommendation 7.17

That the format of the OLQE be substantially revised as discussed in section 7.7.1. Our preferred solution would be that, as a minimum, a substantial majority of the knowledge-based component should be conducted by standardised objective testing (multiple choice tests). Assessment design and delivery could be undertaken by the School of Professional Legal Studies proposed in Recommendation 2.1 of this report.

Recommendation 7.18

That consideration be given to an equivalent approach for the BQE, though we seriously doubt that this would be economically or administratively viable on the numbers involved. We invite the Bar to consider the possibility of some element of joint assessment with the OLQE, given that there is substantial knowledge overlap between the two examinations.

Recommendation 7.19

Whether or not recommendation 7.21 is implemented, we recommend that steps are taken to improve the quality of information surrounding the BQE, including:

- Some narrowing or refinement of the focus of syllabi
- Additional guidance on core topics and reading materials
- Publication of annual examiners' reports, including short outline answers to questions.

Recommendation 8.1

That the Standing Committee's oversight function be extended to enable it to undertake a more substantive quality assurance role as identified in section 8.2 of this Report.

Recommendation 8.2

In the wake of developments in mature continuing professional development schemes in the UK, Canada and New Zealand, (per Section 8.3), that the Law Society be invited to initiate a review specifically into its methods of regulating and monitoring continuing professional development. (The work on benefits models of CPD is also commended to the Bar's taskforce and Standing Committee on CPD).