

## **Date of Council Meeting – 22 March 2013**

### **Title – Fair Access to the Legal Profession**

This paper has been jointly produced at the invitation of the President of the Society by the Campaign for Fair Access to the Legal Profession, the Scottish Young Lawyers' Association and the Trainee and Newly Qualified Society.

#### **Executive Summary**

All with the ability, character and motivation to be lawyers should be able to compete equally and on merit to enter the profession. Personal or family economic circumstances should not be a factor working to exclude those from less privileged backgrounds. This is not just good business sense; a more diverse and representative profession will provide better access to justice and underpin a legal system that recognises and balances the needs and interests of all sectors of society.

The current route to qualification requires completion of the Diploma in Professional Legal Practice (DPLP). Studying the DPLP full-time costs over £13,000, of which students must contribute at least £10,000. Most aspiring lawyers must make this investment in the knowledge that a significant proportion of DPLP graduates ultimately fail to find a traineeship. These costs and risks present very significant barriers to entry to the profession that disproportionately affect those from less privileged backgrounds.

The Law Society of Scotland should commit explicitly to creating a route to qualification that does not create barriers to those from less privileged backgrounds. The Law Society of Scotland should undertake further reform, building on the PEAT concept. The remit of the reform should be to deliver a route to qualification that maintains the highest standards of legal education and training, provides legal employers with economically valuable and competent trainees and newly qualified lawyers but which eliminates the current financial and structural barriers to fair access.

#### **Recommendations**

Council is invited to decide:

- To adopt a clear policy aim that the route to qualification as a solicitor should not be dependent on an individual's ability to fund their own professional education and training.
- To establish a review with a remit to identify, investigate and evaluate options for reform of the route to qualification capable of delivering this policy whilst meeting the needs of the profession and legal employers; and to report back to Council with recommendations within a defined timescale.

Council is invited to further decide:

- To continue to lobby the Scottish Government to extend means-tested student maintenance loans to students studying the DPLP as the only short-term solution to the fair access issue.
- To instruct the Society's staff to monitor and report on the socio-economic diversity of the profession generally; and of those at key stages in the process of entering the profession.

## Aim

This paper invites Council to adopt an explicit policy stating that access to the profession should not be dependent on personal or family wealth (“fair access”); and to initiate a review of the route to qualification aiming to eliminate the financial and structural barriers to fair access.

## Strategic Fit

The Society’s Equality and Diversity strategy focuses on the protected characteristics as defined in the Equality Act 2010 and does not address socio-economic diversity. However, the proposals in this paper would be entirely consistent with the Society’s current Diversity Statement:<sup>1</sup>

As the professional body for solicitors in Scotland, the Society has responsibilities to the profession, to the public as a whole, and as an employer. To represent and protect these truly diverse groups, the Society recognises the need to:

- value the contribution from all who make up the population of Scotland
- take strength from the widest experience, knowledge and understanding it can access - both within and outwith our Society membership
- go beyond legal compliance by integrating diversity into all that we do
- promote the core values of diversity to the profession as a whole

## Conflicts of Interest

Any reforms proposed following adoption a fair access policy will inevitably affect the providers of legal education and the recruitment and training procedures of all legal employers, all of whom are represented on Council.

## Why Fair Access?

The need for fair access is driven by at least three imperatives:

**The role of the legal profession in society.** A fair legal system is fundamental to a modern, democratic society based on the rule of law. Whether as judges deciding cases or as solicitors advising and representing fellow citizens, the legal profession is the single most important part of the legal system and its institutions. If this system is to fairly balance the interests of all, especially where there is unmet legal need, the profession must be accessible to, build connections with and win the trust of, every section of society. This needs the profession to reflect and be representative of society; this will not be possible if the route to qualification excludes or disadvantages those from poorer socio-economic backgrounds.

**Corporate Social Responsibility.** The Scottish legal profession is an important part of the Scottish economy and a major provider of highly skilled and high status employment for some of Scotland’s most talented young people. The profession has a corporate responsibility to promote social justice and social mobility.

**Benefit to the Profession.** Artificial limits on the pool of talent mean that law firms lose talented graduates to other professions. Equally, lack of diversity within the profession stifles innovation and hinders a broad understanding of the varied needs of clients or customers.

## The Decline in Available Student Support

The Diploma in Legal Practice was introduced in the early 1980s. Originally, fees were funded by

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<sup>1</sup> <http://www.lawscot.org.uk/about-us/equality--diversity>

a Government grant; support for living costs was available through a second, means-tested grant. This allowed those from all socio-economic backgrounds to complete the DLP.

The assistance did not keep pace with rising costs or the rising numbers on the DLP / DPLP.<sup>2</sup> The maintenance grant, by then of little value in real terms, was scrapped in 2010. The fees grant was capped at £3,400 and then, in 2012, became a Postgraduate Tuition Fee Loan (PTFL). The change recognised the increased number of DPLP students<sup>3</sup> but the £3,400 cap remains.

### Costs and Risks of Current Route to Qualification

For 2013/14, course fees and materials are between £6,000 and £7,000, dependent on institution. Living costs depend on individual circumstances but a conservative estimate is the Scottish Government's 'student minimum income guarantee' (used to set the maximum maintenance loan for undergraduates). This is £7,250 per year.<sup>4</sup> The total cost of the DPLP is therefore over £13,000. Allowing for the PTFL, £10,000 or more must be contributed by the individual student.

Limited charitable and bursary funding may be available to some students. A very few of the largest firms contribute to the costs incurred by their future trainees. Professional and Career Development Loans (PCDL) are available but represent commercial debt at commercial rates of interest, making them a significant financial risk even for the minority of DPLP students who have a traineeship offer before the start of the course.<sup>5</sup>

Over the past 5 years, 24% of DPLP graduates failed to find a traineeship;<sup>6</sup> this equates to over 40% of those who commence the DPLP without a traineeship offer.<sup>7</sup> As pre-DPLP traineeship offers are generally restricted to large commercial firms, this uncertainty particularly affects those aiming to work in sectors such as criminal defence, smaller or general practice firms or law centres. These risks represent a significant additional barrier to all but the most financially secure.

### Alternatives to reform

Without reform, the current DPLP and traineeship structure will remain with their inherent financial barriers. The level of personal contribution required will only increase as course fees and living costs continue to rise. Alternatives to reform of the route to qualification might include:

**Increased Support from Government.** A return to the original 1980s student funding model for the DPLP would eliminate the financial barriers without any structural changes to the route to qualification. A more limited, but still very significant improvement, could be achieved simply and cheaply by the Scottish Government allowing DPLP students a fifth year of access to maintenance loans; this concession already exists for those training to become architects and teachers.<sup>8</sup> However, significant political or public support for increased spending on legal education and training is unlikely, especially when other elements of the education and justice budgets are being cut. And whilst law plays an important public role, the profession itself is predominately in private practice. This inevitably raises objections

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2 Until 2012, assistance was limited to 300 students. The DPLP has exceeded this number since at least 2000.

3 Each PTFL costs the Scottish Government only 31% of a grant of the same value. Part of the money released by the change to loans was used to remove the limit on the number of students supported.

4 <http://www.scotland.gov.uk/News/Releases/2012/08/student-support22082012>

5 According to Society statistics, 15% of qualifying trainees do not gain NQ posts within 6 months. The PCDL is normally repaid over five years typically at a rate of several hundred pounds per month.

6 <http://www.lawscot.org.uk/education-and-careers/studying-law/currently-studying-the-llb-/information-about-traineeships->

7 The Society estimates around a third of DPLP students hold a pre-DPLP traineeship offer. Assuming all of these start traineeships, the 24% of all DPLP students is drawn only from the two-thirds without pre-DPLP offers. This equates to 44% of those students.

8 CFALP has been lobbying the Scottish Government on this issue for more than a year. Despite support from politicians of all parties and NUS Scotland, among others, the Scottish Government has consistently refused to increase support to DPLP students.

from some to the state funding the training of lawyers other than those it will itself employ.

**Increased Support to Students from the Profession.** In Scotland, it appears fewer law firms contribute towards the training of their prospective trainees than elsewhere. Whilst more firms taking this approach would be welcome, many firms are not, and will never be, in a position to recruit prospective trainees 18 months in advance and invest significant sums in their training without any compensating immediate benefit to the business.

**Improve Uptake on the Alternative Routes to Qualification.** The Society exams provide a non-LLB route to qualification. This is a valuable route for those who elect not to attend University and demonstrates that work-based legal education can work. But it is unlikely to be an attractive alternative to University for significant numbers of school leavers who could otherwise obtain a University place.<sup>9</sup> The part-time DPLP provides a useful option for a small number of students and again models how full-time work and professional education and training can be compatible. However, for many graduates, working - probably in non-graduate employment - for two years to pursue a qualification that others achieve in one will be extremely unattractive compared to other graduate career options.

It is unlikely that any of these options can be relied upon to deliver a comprehensive solution to the financial barriers created by the current route to qualification.

### **Possible Options for Reform**

This paper aims to establish the need for reform, not determine the nature of those reforms. It is accepted that formulating reforms will not be a simple or straightforward process. Options for reform will need to be identified through discussions with stakeholders and comparisons with other professions or jurisdictions, prior to being carefully investigated and evaluated. Comprehensive dialogue will also be required with all relevant stakeholders including legal employers of all types and current and potential providers of legal education and training.

Nonetheless, the options below demonstrate there are alternatives worthy of investigation as part of such a review. These include:

**Integrated DPLP and Traineeship.** LLB graduates would be recruited directly by legal employers. They would then complete a modular DPLP by block release over the course of a longer traineeship. A flexible system may allow different employers to strike a different balance between a trainee's training commitment and business contribution, accepting this may influence the time taken to qualify. A training model similar to this underpins qualification as an accountant.

**Include DPLP Outcomes in Undergraduate Education.** Several other professions (including medicine, dentistry and engineering) rely on an undergraduate degree including both academic and skills-based learning. Bringing law into line with these other professions, perhaps through a five-year LLB, would bring all legal education into the more generous undergraduate student support regime.

### **Relationship with Previous Reforms**

The last, and only recently implemented, review of the route to qualification resulted in the

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<sup>9</sup> This falling numbers taking this route probably reflect the social and political premium now attached to university level education for the brightest pupils regardless of socio-economic status. The Grange Report (2006) found 17% of solicitors aged 36-45 qualified via the Society examinations but only 5% of those under 35. On the 2012 DPLP at the Edinburgh Centre for Professional Legal Practice, only 1 of 133 students had qualified via the Society examinations.

Professional Education and Training (PEAT) concept. This documented the outcomes to be delivered by the DPLP and Traineeship (PEAT Phase 1 and 2 respectively). The further review proposed does not seek to re-open PEAT. In contrast, a clear set of outcomes for legal education and training provides a necessary framework for reform addressing the structure and funding of the route to qualification, rather than its start and end points.

### **Possible Review Process**

Any review will need to be careful, thorough and comprehensive. Equally, careful definition of remit and a clear plan, with timescales, will be required to drive a process that can deliver within a reasonable time.

The exact structure of any review is a matter for Council, as advised by the Society's executive staff. However, it is proposed that any working group coordinating the review should include those able to represent aspiring lawyers as well as those representing legal employers. The groups authoring this paper would be keen to contribute to any review.

It is proposed that any review includes a scoping period in which the working group would: establish the remit and boundaries of the review; list stakeholders and consultees; identify alternative qualification models and cross-jurisdiction or cross-profession comparators for further investigation; and create a firm project plan for the review with reporting timelines. On completion of this scoping activity, the working group could report to Council and gain approval to continue to the main phase of the review.

Any review will inevitably take a significant period of time if it is to provide a comprehensive and robust analysis of the options for reform and make credible recommendations to Council for change. Formulating a more precise estimate of time may be possible during any scoping period but it is anticipated that, after allowing for a scoping period of 9-12 months, the review may take 18-24 months to complete. Implementation may well require a further 2-3 years given the challenges of making major structural changes to the system of training across the profession.

### **Further recommendations**

This paper also recommends the following:

**Continued Lobbying on DPLP Funding.** The implementation of any reform will inevitably take a number of years. Until this is complete, the current system will continue. The Society should continue to lobby the Scottish Government to resume its previous role in assisting those from the poorest backgrounds to undertake the DPLP. Although the political difficulties of making this argument have already been discussed, the Society will have considerably more moral authority in making this argument as a short-term solution to the fair access crisis if the Society has itself committed to long-term reform that will generate a sustainable solution that does not depend on state funding.

**Monitoring.** The Society should monitor the socio-economic diversity of the profession and, particularly, the profile of those training to enter the profession. It is suggested that the socio-economic background of those applying for entrance certificates and those applying for full practising certificates should be monitored. Ideally, the Society would cooperate with the Universities to ensure a comprehensive picture can be created of the profile of aspiring lawyers all the way from LLB, through DPLP and into the profession.