

## 'Do you consider that the current system of legal education and training can provide the lawyers that this country needs?'

### **Introduction**

Lawyers are those in the profession that practice law and included are solicitors (members the Law Society) and barristers (members of the Bar). Both solicitors and barristers have different roles. Solicitors generally start the procedure of a case, interviewing and advising clients and drafting legal documents before briefing a barrister on the case. Barristers generally advocate, representing the clients in court and previously there was no direct access to a barrister by the public. However, recently wider direct access to the bar has been granted and the roles of solicitor and barrister have merged, which I will discuss further on in this essay. Lawyers play an important role in this country and they should be skilled with legal knowledge, efficiency, cost-effectiveness and the quality to serve all members of the society well. In this essay I will discuss whether the current system of legal education and training can provide the lawyers that this country needs.

### **The current system of educating and training lawyers**

Both solicitors and barristers follow a different route in their training to become a lawyer, however both routes consist of three main stages; academic, vocational and professional. The academic stage of training is the same for both solicitors and barristers and is the attaining of a degree. It is common to have a law degree although for non-law graduates a one-year Common Professional Exam will be undertaken before the next stage of the process by both prospective solicitors and barristers. At the vocational stage is where the two lawyers divide and the separate routes begin. Solicitors after their degree will undertake the one year Legal Practice Course designed to teach them the practical skills of advocacy, client interviewing, negotiation, drafting documents and legal research. After passing, they must then find a place at a solicitors firm, for a two-year paid apprenticeship under a training contract. This is known as the professional stage before they enroll with the Law Society and are now qualified solicitors. However, after the prospective barristers degree students will join as a member of one of the four Inns of Court and the vocational stage begins. Here, they undertake a one-year Bar Vocational Course and 12 dining sessions and on completion are 'called to the bar' by their inn. Following this is the professional stage where they will carry out a pupillage; shadowing a barrister for a year. After pupillage, they must find a tenancy in chambers and will become a qualified barrister.

### **Do lawyers possess the legal knowledge and skills?**

There are various criticisms of the training of lawyers and their practice as qualified solicitors and barristers. The first is that those graduates with a non-law degree only study one year of formal law for the conversional Common Professional Exam. The Omrod Committee, which reported on legal education in 1971, thought that the main entry route should be via a law degree, but in practice 25 per cent of solicitors will not have taken a law degree.<sup>1</sup> It suggests that this one year course, only focusing on six subjects, could not possibly cover what a three

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<sup>1</sup> OCR Law for AS – Jacqueline Martin 2008

year degree would. On the other hand, having graduates from various fields of degree might bring diverse skills and knowledge beneficial to their role as prospective lawyers.

Another criticism came from the report of the Royal Commission on Criminal Justice in 1993 on the lawyers' performance involving criminal work. The Commission found that defense cases were not sufficiently prepared for due to an amount of the work being delegated to unqualified, unsupervised staff. The Commission also felt that the standard of advocacy was low due to poor training and oppose that barristers be given the opportunity to take on cases during their second period of six month pupillage. Although it recognizes advocacy training is increasing for both solicitors and barristers it recommends more improvement is needed.

Besides criticisms, the number of cases brought against solicitors for negligence also gives rise to concern. It is a solicitor that holds a contract with the client and therefore both parties can sue the other for breach. It is illustrated in Griffith's v Dawson 1993 that a client is able to sue their solicitor for negligence both in and out of court work. In this case the solicitor failed to make the correct application in divorce proceedings. Consequently, the claimant lost out financially and the solicitors were forced to pay her £21,000 in compensation. These rights to sue also extend to others outside of the contract as seen in White v Jones 1995. In this case a father wanted to leave £9,000 to each of his daughters in his will; however the solicitor failed to draw up the will before he died. As a result, the daughters did not inherit their money but were able to sue the solicitor for the £9,000 they each lost. Since the case of Hall v Simons 2000 the House of Lords decided that advocates, both solicitor and barrister, will now be liable for negligence also. With increasing consequences such as these it could be argued that lawyers will be more responsible, recognizing the laws they are governed by however these previous examples prove that in some areas lawyers have lacked the necessary skill.

### **Are lawyers cost-efficient and effective?**

One major argument is that lawyers could be much more cost-efficient if the profession was not divided into solicitors and barristers. By training both lawyers separately two different roles are created when they could easily be undertaken by one. The effect of this division is high costs for clients having to pay for both solicitor and barrister to forward their case. There have been some improvements in reducing cost, for example prior to 1994, clients only link to a barrister was through a solicitor and therefore they had to pay both fees although direct access was granted under a system Bar Direct, reducing these litigation costs. However, direct access to a barrister is still not available for criminal cases or family work resulting in clients having to pay both lawyers expensive fees.

Another disadvantage of this division is for prospective lawyers who must choose very early on whether they wish to be a solicitor or barrister. The training processes teach different skills and therefore if in the future, for example, a solicitor decided they have a talent for advocacy rather than their current skills, it is too late and too expensive to change branch of profession. If the two training processes were fused together then talent and expense would not be wasted and the system would be more effective.

One last criticism is the distinction between barristers and QC's. QC's are members of the Queens Counsel and have been qualified barristers or solicitor advocates for at least 10 years and some annual salaries top £1m. A House of Lords report in 1998 found that the fees for QC's were excessive in some cases and accused barristers' clerks of reaching for the highest fees. The report called on Lord Chancellor to give clear guidance on what should be considered

a reasonable fee for a QC.<sup>2</sup> In 1999, the Law Society called for the abolition of QC's however Lord Chancellor defended it as the highest quality barrister available for the public's choice.

This evidence further emphasizes the fact that the legal profession is not as cost-effective as it could be. I believe that if the two divisions were to fuse then they would be forced to lower prices as competition would have risen. This would improve cost-efficiency of lawyers for the public.

### **Are lawyers accessible and representative?**

There is much evidence to suggest that the current system of the legal profession is not accessible or fairly representative of society for both prospective lawyers and potential clients. I will now discuss how both students and groups of the public are severely disadvantaged due to the financial costs and competition in the current system.

Although the number of those students taking the route of training is rising each year the financial costs of the stages prevents many from continuing after a degree. The biggest cost for solicitors is the Legal Professional Course ranging from £6,000 to £10,000 with the barristers Bar Vocational Course, totaling higher between £8,000 and £11,000. Those non-law graduates will have to pay, in addition, between £3,000 and £7,000 for the conversional Common Professional Exam. This is all on top of university and living costs. Despite the various ways of raising the money, for example via scholarship or loans, these high costs discourage or even prevent those prospective lawyers, particularly from less privileged backgrounds, from taking the steps and qualifying as a lawyer. As a result of this the profession has remained very middle-class and elitist based. Consequently, this does not represent the society and paints an off-putting image to the public.

Besides the financial struggle that faces prospective lawyers, entry to the profession is highly competitive. Taking the LPC or BVC does not guarantee lawyers a training contract or pupillage and the over-supply of applicants means many will lose out. Research shows that out of all candidates applying for a pupillage after taking the BVC, only 45-50% will be successful. This means that for every one pupillage available, six candidates will be applying. This fierce competition means even those students who have met or exceeded the entry standards can lose out in both professions after investing so much money at the previous stages. This evidence highlights the lack of accessibility to the profession for prospective lawyers.

As well as the struggle for students the accessibility of lawyers to groups of the public is also difficult. A survey undertaken by the Law Society in 2001 found that the public perceive lawyers as formal, expensive and predatory.<sup>3</sup> This is understandable considering that a solicitor's fee can range from between £100 per hour of those in small local firms to £600 per hour for the top city firms. Despite the funds available under the Legal Services Commission the limits for eligibility are very low and therefore many of the public do not qualify for legal funding or their case is not eligible for this. Consequently, many are forced to drop their case, particularly in civil claims for their lack of finance to pay these expenses. This lack of access to those who are not financially able reflects badly on the legal profession and the current system. Although solicitors are required to give clients written information about the fees they will possibly have to pay, under the Law Society's Written Practice Standard the majority of complaints are based upon the lawyers' failure to provide this.

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<sup>2</sup> AS Law – Elliott and Quinn 2002

<sup>3</sup> AS Law – Elliott and Quinn 2002

In addition to the unrepresentative middle-class and elite majority the legal profession is also unrepresentative of women and ethnic minorities. There has been an increase in the number of women studying the law and as a result women now make up 30% of the Bar and 42% of solicitors. However, despite this women remain a severe minority in the higher positions, with only 10% of QC's being female, for example. The reason suggested for this is that women are earning less than their male counterparts, both at starting salary and yearly earnings, also emphasizing the injustice of the system. However, ethnic minorities are also increasing in numbers in the profession and amounting to 10% of all lawyers. Although, they have increased in the higher positions the profession still remains highly unrepresentative. The current profession remains white, male middle-class dominated.

### **Are lawyers really needed?**

Although lawyers are the obvious choice for many legal circumstances, much of their work can in fact be undertaken by non-legally qualified people, just as effectively. One example is the Citizens Advice Bureaux which role is to provide free information and advice on legal matters. These volunteers and legal executives gain so much experience that often they can take on work without the supervision of those legally qualified and therefore are able to perform the same function as solicitors but for free.

However, there are two theories that defend the importance of lawyers to this country. The first is 'functionalism' and the belief that professional lawyers maintain the structure of society with their high status. It is thought that lawyers at this rank obtain higher moral values and place public service before profit, more so than ordinary people. However, this is questionable considering the competition for high-paying city firms. The second theory is 'market control' supported by Richard Abel, Professor of Law at University of California. It suggests that having professionals avoids the competition of the sector as access to the market can be restricted by entry requirements and specialist expertise can remain. Richard Abel believes that professionals have purposely restricted competition so to keep the price of their service high. Abel has shown that the pass rate of the Law Society exams goes up when there is a shortage of jobs and down where there is a shortage of recruits.<sup>4</sup> Both theories support the fact that lawyers are needed for social and economic reasons.

### **Should the legal profession remain divided?**

As it is argued that the legal profession should remain, there is still the debate over whether this should stay divided or fuse together the roles of solicitors and barristers. Since the late 1960's the profession has been gradually merging together. The movement began when Lord Chancellor in 1966 gave extended rights of audience to solicitors. This movement progressed and the most important developments were made by the Courts and Legal Services Act 1990 and the Access to Justice Act 1999. These acts allowed solicitors and barristers to deal with a case from start to finish and therefore their roles were practically merged. Then in 2007 the Legal Services Act held that solicitors and barristers could work together in the same legal business. Since these changes the argument for fusion has been less dominant as there is less need for it.

However, there are various arguments for fusion that remain. As I have previously explained, the fusing of the two professions would prove more cost-efficient and effective and talent would not be wasted. Besides these there would be less duplication of work as only one lawyer

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<sup>4</sup> AS Law by Elliott & Quinn 2002

prepares and undertakes the case rather than two and this would therefore provide continuity. The process would also run more efficiently as the same lawyer would know all necessary points about their client and case and there is no risk that the barrister has missed these when he meets the client for the first time, on the morning of the trial.

On the other hand, there are various arguments against the fusion of the profession and benefits of it remaining divided. The first is the loss of the 'cab-rank rule'. Currently barristers are required to accept any case offered to them, regardless of wealth, power of opponents or strength of charges and this guarantees the independence of the Bar. This independence would be lost if the profession fused. The second argument is the loss of specialization. If the two roles merged then one lawyer would take on the entire workload and be unable to specialize in a particular area. One other argument is put forward by the 1979 Royal Commission who suggested that if fusion occurred the specialist skills of advocacy would be lost as solicitors do not have the expertise or practice to advocate on trials with a jury. This loss of specialized advocates might also make it difficult for Lord Chancellor to appoint to the Bench. Although, there would be far more candidates that are less specialized I believe this wider base would give the opportunity to appoint those unrepresented such as women and ethnic minorities and result in better diversity of the bench. In my opinion, the changes that are already in place, by the two Acts for example are enough to help the professions run efficiently together whilst remaining divided. However, should the professions fuse I feel it would be beneficial in saving the public expense and providing a greater base of candidates that could result in better diversity in the profession and ultimately the judiciary.

### **Possible reforms of the system**

Other than fusion of the profession there have been other reforms put forward to improve the current system in providing the lawyers that this country needs.

Michael Zander, for one, supports reform of the current training process for potential lawyers. He argues that the academic and vocational stages of training be better linked so that law degrees provide some of the practical skills of drafting documents and interviewing for example. In the Advisory Committee on Legal Education 1996 report it was suggested that students do not choose with branch of the profession they wish to follow until a later stage therefore saving talent. This would involve all students taking an 18 week Professional Legal Studies course after their degree before making the decision. The Committee also supported that funding be made available for the Common Professional Exam and vocational stage of training. A similar argument is being supported by the Charter 88 constitutional reform pressure group. I believe this financial help would grant wider access to those students who are not from privileged backgrounds and prevent the middle-class remaining a majority.

### **Conclusion**

As I have illustrated throughout this essay, there are many areas of the system that need reform and improving. Currently, the profession is unrepresentative and largely inaccessible to both prospective lawyers and the public, particularly due to financial reasons. The movement of fusion is serving to decrease these issues by allowing both solicitors and barristers to take over the whole process however reforms are needed, especially in the way the training process is carried out. I would not argue that the current system is completely inadequate as the public stay faithful of the profession and its status remains high in society. The oversupply of students wanting to enter the profession also emphasizes this. I also would not criticize the quality of legal education and training as on the whole it is successful however improvements are needed

regarding cost and access. I believe with further reforms, of the sort mentioned above, the system of legal education and training is capable of providing the lawyers this country needs.

### **Bibliography**

OCR Law for AS Textbook – 2008 Edition

AS Law by Elliot and Quinn Textbook – 2002 Edition

<http://www.barcouncil.org.uk>

<http://www.legaladvice-direct.com>

<http://www.prospects.ac.uk/p/4603.jsp>

<http://www.allaboutlaw.co.uk/advice.aspx?section=34&item=597>