



# **Fair Access to the Legal Profession**

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## **FAIR ACCESS TO THE LEGAL PROFESSION**

### **Background**

1) In late 2012, and throughout early 2013, The Campaign for Fair Access to the Legal Profession (CFALP) along with the Scottish Young Lawyers Association (SYLA) and Trainee and Newly Qualified Association (TANQ) campaigned about numerous matters relating to fair access to the legal profession. CFALP were invited to address the March meeting of the Society's Council and, in doing so, made four recommendations to Council. These were:

- a) To adopt a clear policy aim that the route to qualification should not be dependent upon an individual's ability to fund their professional education and training.
- b) 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 report back to Council with recommendations within a defined timescale.
- c) 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.
- d) That the Society should consider how and when it might be possible to monitor the socio-economic diversity of the profession and those aspiring to enter it.

2) The Society's Council broadly accepted these recommendations.

- a) At its April meeting the Council adopted a fair access principle<sup>1</sup> which was: *"The Council of the Law Society of Scotland acknowledges the importance of fair access to the solicitor's profession. In acknowledging this principle, the Society will commit to embedding considerations of fair access to the profession in all long-term strategic planning and all relevant decision-making"*.

The Society's Senior Management Team has considered a proposal on how to embed fair access to considerations on a day-to-day basis and this is being implemented.

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<sup>1</sup> It should be noted that the Milburn Report of 2009 recommended that all statutory and approved regulators should embed the social mobility and fair access agenda into forward strategic plans.

- b) In response to the second recommendation, the Council acknowledged that fair access is about more than just access to the Diploma in Professional Legal Practice (Diploma) and also agreed that there was a lack of available evidence about fair access. The Council asked the Education and Training Department to consider all aspects of the route to qualification in terms of fair access and report in November. This paper "*Fair Access to the Legal Profession*" is the initial output of that work.
- c) The Council agreed that the Society should continue to lobby government for improved funding for all Diploma students. The Society has done so in conjunction with colleagues on the Joint Standing Committee for Legal Education<sup>2</sup>.
- d) The Council agreed that the Head of Equality and Diversity and the Registrar's Team should consider if and how socio-economic data could be collected. This matter is ongoing.

#### **Fair access in a wider context**

- 3) From the research the Society has undertaken it is clear that social mobility which includes fair access to the professions is rightly a matter of fundamental importance in Scotland. Advancing equality of opportunity is widely viewed as a significant function of public goods such as higher education.
- 4) Higher education has long been regarded as an important mechanism for improving social mobility and thereby unlocking the talents in society.
- 5) The UK has one of the lowest rates of social mobility in Europe. Moreover, the rate of social mobility within the UK has declined since the "baby boomer" years<sup>3</sup>.
- 6) In this paper, we explore whether, and to what extent, existing education and training practices constitute initial and continuing barriers to access and are hence a potential constraint on fair access to the legal profession.

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<sup>2</sup> Membership of the Joint Standing Committee for Legal Education is comprised of representatives from The Law Society of Scotland, the Faculty of Advocates, the Judicial Institute, the Heads of Law Schools group, the Diploma Co-Ordinating Group and three lay members. The Committee is chaired by Lord Eassie.

<sup>3</sup> Opening Doors, Breaking Barriers: A Strategy for Social Mobility  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/221007/HMG\\_SocialMobility\\_acc.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221007/HMG_SocialMobility_acc.pdf)

- 7) The Society should, however, acknowledge that there are many types of barriers to fair access which are outwith its control.
- 8) The UK Government emphasises the importance of *“making life chances more equal at the critical moments for social mobility”*. These *critical moments* are:
- I. The early years of childhood
  - II. Readiness for primary school
  - III. GCSE (Standard Grade) attainment
  - IV. Choices at 16+
  - V. Entry into training and apprenticeships
  - VI. Access to higher education and professional training
- 9) Whilst there may be weaknesses and strengths with such an approach, the *“lifecycle analysis”* is at least a useful one. Such an analysis shows that (i) there are areas of life where the Society cannot act but where others can act (ii) that those areas impact upon fair access to the profession and highlight that the Society is an inheritor of inequality (iii) there are areas where the Society is well-placed to act (iv) there are areas where the Society, in conjunction with other organisations, is well-placed to act.
- 10) The Society should do what it can to improve fair access to the legal profession – either on its own or in conjunction with other organisations. This should include making it fundamentally clear that responsibility for social mobility resides elsewhere in some cases and that those responsible – the UK Government, the Scottish Government and the primary and secondary education sectors – should do what they can to improve social mobility and, consequently, fair access to the legal profession.
- 11) Many in the profession will agree that the Society has a moral obligation to promote fair access. It also has a regulatory objective *“to promote an independent, strong, varied and effective legal profession and encouraging equal opportunities to the profession”* under the Legal Services (Scotland) Act 2010<sup>4</sup>.

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<sup>4</sup> <http://www.legislation.gov.uk/asp/2010/16/section/1>

12) The focus of the Society's concerns should be on three matters:

- (i) That the entrance standard to the profession is set at an appropriate level;
- (ii) That any barriers on the route to qualification can be justified objectively in light of that standard; and
- (iii) That the person who has the grades, has the skills, and has the will but does not have the money can become a solicitor.

13) It may be that those three matters, from time to time, conflict with each other.

14) The Society should consider very seriously the consequences of the introduction of any policy or course of action when considering these matters.

For instance, if the introduction of a policy leads to more people doing the Diploma and there is not a concomitant rise in the number of traineeships does that really equal fairer access?

15) There will doubtless be disagreements about how best a commitment to fair access can be realised effectively via policy. There will also be disagreements over which areas should be prioritised.

For instance, consider the following three individuals:

- a) The first is concerned with access to the profession and may argue that fair access to the Diploma is what matters. If everyone who has the grades, skill and will can access the Diploma fairly (presumably by extended loans or reinvigorated grants) then after that point the market decides who should become a trainee solicitor.

Such an individual might prefer a system where we see many more Diploma graduates than there are traineeships (and many more Diploma graduates than we presently have).

- b) A second individual, equally concerned with access to the profession, may argue that the above is well-meaning but wrong-headed and that the Society should aim to lessen the disparity between Diploma numbers and traineeships. Such an individual would be more likely to support, for instance, the introduction of an aptitude test

before the Diploma or, even, a formal limit on the numbers of people who could undertake the Diploma each year.

- c) A third individual, equally concerned with access to the profession, may argue that there are other matters which concern access to the profession. She may focus her attention on the disproportionately low number of individuals from lower socio-economic groups undertaking the LLB; the requirement for five Highers (which some schools do not offer the opportunity to study thereby limiting the possibility of access to numerous professions<sup>5</sup>); the effects that a four-year degree has on such individuals even before Diploma finance becomes an issue; and the link between being able to undertake an internship with a firm and getting a traineeship.

16) The examples above are used to show that whilst the majority in the profession will agree on fair access to the profession being a principle worth supporting there will be many competing – and often diametrically opposed – views on how best fair access is realised.

17) The economic circumstances the profession finds itself in at a given time may change the focus of those concerned with fair access.

For example, in 2008 there were more people who wanted to do the Diploma than there were funded spaces on the Diploma. In 2012 there were more spaces on the Diploma than there were people who wanted to do the Diploma.

In 2008, those concerned with access to the profession may have asked for more Diploma places.

In 2012, those concerned with access to the profession are more concerned with how those who study the Diploma finance themselves and, also, those who are consciously opting not to do the Diploma because of their financial situation.

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<sup>5</sup> The Department is unsure why such limiting occurs. It is suspected, given discussions with Widening Participation experts at Universities, that such limiting might occur where schools are unable to offer certain Highers; there may – in some schools – be time-tabling clashes which mean it is impossible for students to take all the subjects they wish to take. Moreover, it may be the case that there are insufficient pupils wishing to take a particular subject especially at a school which does not traditionally send pupils to university or to professional degrees. This means the student has to (a) attend college (b) not take the subject (c) go to another school – none of which is ideal. It is something of which those involved in contextualised admissions at universities do take account.

## Definitions

18) Equality, diversity, and social mobility are distinct, but related concepts. When considering fair access to the legal profession the focus from outwith the Society has generally been on social mobility. This paper will, to varying degrees, consider equality, diversity and social mobility.

19) *Equality* focuses on the legal obligation to comply with anti-discrimination and equality opportunity standards framed in the Equality Act 2010. Equality protects people from being discriminated against on the basis of nine protected characteristics.

20) *Diversity* definitions vary. Broadly, however, diversity can be understood as an approach that complements equality approaches, by focusing on cultural rather than behavioural change. Diversity policies are designed to recognise, value and reward human difference.

21) *Social mobility* refers to the ability of individuals from disadvantaged backgrounds to move up in the world. It is akin to the notion of equality of opportunity. *“Mobility is a tendency towards greater equality of chances of access, for individuals of all social origins, to positions differently located within the social division of labour<sup>6</sup>”*.

Fair access, in the terms of the debate about entrance to the legal profession, is essentially the same as social mobility. Those concerned with fair access though might not solely be concerned with the ability of individuals from disadvantaged backgrounds to “move up in the world” but, rather, be concerned with the ability of individuals from other backgrounds to be able to access the legal profession. It is possible to conceive of an individual who is not from a disadvantaged group but who, for a variety of reasons, cannot access the legal profession.

22) Social mobility policies, therefore, are generally directed towards reducing disadvantage, which is usually defined by reference to some concept of class or socio-economic status.

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<sup>6</sup> Goldthorpe, J.H. *Social Mobility and class structure in Modern Britain*. 2<sup>nd</sup> ed. Oxford, Clarendon Press (1987)



## **Section 1: School and access to the LLB**

23) Early years education and most school education is outwith the scope of this review but the Society and profession should bear in mind that the legal education system is an inheritor of existing inequality.

24) For instance, by the age of 11, educational attainment is already a significant predictor of later life chances<sup>7</sup>. This continues throughout educational life: *“The diversity of students in terms of social and educational origins within UK Higher Education as a whole does not appear to match policy rhetoric. The most advantaged 20% of young people are up to six times more likely to enter HE than the most disadvantaged 20%. These differences are further skewed in the most selective disciplines<sup>8</sup>”*.

25) Secondary school attainment and the decisions which people make between 14-16 are hugely important in shaping whether or not they go on to higher education.

For example, in England and Wales, 38% of disadvantaged students gained five ‘good’ GCSEs (including English and Maths) compared to 65% of other students.

26) According to Chowdry et al *“Poor attainment in secondary schools is more important in explaining lower HE participation rates amongst students from disadvantaged backgrounds than barriers arising at the point of entry into HE<sup>9</sup>”*.

27) Access to the LLB does matter – those who do not start, or cannot start, the LLB are untroubled by whether or not they can access the Diploma or get a traineeship. Moreover, if there are low numbers of students from lower socio-economic groups commencing the LLB we shouldn’t be surprised if that is reflected at Diploma level.

28) Throughout the Society’s researching of this issue, concerns were raised by some about how the legal sector – both academic and professional – treats further education students.

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<sup>7</sup> *Widening Participation in Higher Education: Analysis using linked administrative data*. Institute for Fiscal Studies. Chowdry, H. et al (2010).

<sup>8</sup> *Higher Education’s many diversities: of students, institutions and experiences; and outcomes?* Brennan, J, Osborne, M (2008).

<sup>9</sup> *Widening Participation in Higher Education: Analysis using linked administrative data*. Institute for Fiscal Studies. Chowdry, H. et al (2010).

Individuals who have undertaken a Higher National Certificate (HNC) or Higher National Diploma (HND) can currently enter directly into second or third year, respectively, of a degree programme. This is because an HNC is taught at the same Scottish Credits and Qualifications Framework (SCQF) level as the first year of a degree programme and an HND at the same level as second year.

University law schools have not historically taken HNC students – only HND in Legal Services students. However, such HND students have not been articulated onto third year but have been required to start in first year and complete either a three year ordinary degree or a four year honours degree, as would normally be the case. This is because of the fact that, generally speaking, universities deliver the professional subjects in the first two years of study. The consequences of this are that HND students studying for an honours degree are required to study for 6 years. As government funding only extends to 5 years of a degree programme, the student must fund the extra year themselves.

Moreover, it is thought by some who have undertaken a HNC/HND in Legal Services that many of the larger firms will not employ them as trainees due to either (a) a lack of understanding of what a HNC/HND is; or (b) because such candidates do not generally have as strong school grades.

### **How to raise attainment and aspiration?**

- 29) There are socio-cultural issues involved with widening access. Aspirations, knowledge and perceptions of higher education, and parental views of education all impact upon widening participation.
- 30) Most law schools in Scotland do have some form of widening participation (see paragraphs 61 and 62 for further information). These are arranged differently from university to university but most widening participation activities are designed to increase knowledge of, and change attitudes towards, higher education. This, in turn, raises aspirations.
- 31) There are issues of evaluation and comparable data but evidence suggests that such programmes do have positive impacts.

32) According to Leatherwood<sup>10</sup>, the aspects of these interventions which appear to be most effective are:

- a) Partnerships and collaborations
- b) Full and resourced involvement of schools, colleges and higher education establishments
- c) Starting early – and sustained interventions
- d) Co-ordinated processes and enthused staff
- e) Immersive experiences (visits, summer schools)
- f) Information sessions on applications and finance
- g) Subject-specific sessions/activities
- h) Mentoring

33) The dominance of the Higher and A-Level at entry is an important means by which inequality is embedded into the admissions system, particularly in high-demand subjects such as law.

34) There are incentives for universities not to lower entrance standards. Many university rankings will include the entrance requirements for a course. The Complete University Tables 2014 shows three Scottish universities in the top 10<sup>11</sup>. It is likely they would drop in the rankings – which would have consequences for the law schools, their reputations and the students at those law schools – if they lowered their entrance requirements.

35) Entry requirements to law courses are typically high. This is both *prima facie* justifiable and understandable in terms of the rigour of the degree course. Some people who want to do the law degree won't be able to do so due to these requirements<sup>12</sup>. Most in the profession – and wider society – would agree that this barrier is justifiable even if they acknowledged there were inherent inequalities in school age education<sup>13</sup>.

36) Higher Education Institutions (HEI) consider applications from potential students against their own admissions criteria. As suggested in paragraph 35, HEI tend to rely heavily on

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<sup>10</sup> *Approaches to widening access in England*. Professor Carole Leatherwood. Institute for Policy Studies. London Metropolitan University.

<sup>11</sup> <http://www.thecompleteuniversityguide.co.uk/league-tables/rankings?s=Law>

<sup>12</sup> Though they may be able to access a legal career via the accelerated degree in due course.

<sup>13</sup> Those interested in this matter should read the Legal Education and Training Review's literature review chapter 7 Current Equality, Diversity and Social Mobility Issues. <http://letr.org.uk/>

prior educational attainment to select students, as it is seen as the best available evidence to indicate whether an individual will succeed in higher education.

Such an approach can overlook the potential of some pupils such as those from low attainment rated schools.

- 37) Contextualised admissions, as part of a wider access strategy, can help to alleviate that problem. Contextualised admissions use a range of factors (including comparative school and socio-economic data) to establish relative achievement of potential applicants.

*“If the academic achievement of an individual is put into context, relative to the overall attainment level of the school at which the individual attended, this may allow Higher Education Institutions to identify the individual’s real potential to achieve. Take two potential students, for example, one from a very low attaining school and another from a relatively high attaining school. If these two individuals achieved the same exam results it could be argued that the achievement of the individual from the low attaining school has achieved relatively higher (in comparison to their peers)<sup>14</sup>”.*

- 38) A law school using contextualised factors will recognise that applicants have differing backgrounds and experiences and that they do not all have an equal opportunity to demonstrate their potential. They may look at a range of factors such as whether the applicant:

- a) Attends a school where a relatively small proportion of pupils progress to higher education or where the level of performance in examinations is below average;
- b) Has spent significant time in care;
- c) Has parents or guardians who have not previously attended university;
- d) Has experienced serious disruption to their formal education (for health or familial reasons or for reasons associated with disability);
- e) Lives in an area of deprivation as identified by the Scottish Index of Multiple Deprivation (SIMD) (see below);
- f) Has participated in an access programme.

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<sup>14</sup> [http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S3/SB\\_11-07.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S3/SB_11-07.pdf)

39) Most law schools in Scotland, though not all, use a system of contextualised admissions although the exact nature of contextualisation differs between universities.

40) As outlined in paragraph 15 subsection C, some school pupils are denied the opportunity to take five Highers.

41) As per the students who have undertaken a HNC/HND in Legal Services, there may be problems for those LLB students admitted using contextualised admissions further on the route to qualification as a solicitor most obviously when applying for traineeships with organisations which rely on school grades as part of their recruitment processes.

### **How do universities measure fair access?**

42) According to the Scottish Government<sup>15</sup>, the SIMD identifies small area concentrations of multiple deprivation across Scotland in a consistent way. It allows effective targeting of policies and funding where the aim is to wholly or partly tackle or take account of area concentrations of multiple deprivation.

43) The SIMD ranks small areas (called datazones) from the most deprived – ranked 1 – to the least deprived – ranked 6,505. People using the SIMD will often focus on datazones below a certain rank. The education sector, and much debate around fair access to the (legal) professions, focuses on SIMD20 (i.e. the 20% most deprived datazones in Scotland) and SIMD40 (the 20%–40% most deprived datazones in Scotland).

44) The Post-16 Education (Scotland) Act 2013<sup>16</sup> seems to be moving away from SIMD. In section 9B it refers to “*persons belonging to any socio-economic group which they<sup>17</sup> reasonably consider to be under-represented in such education*”. SIMD is still used in the Scottish Funding Council’s (SFC) “*Learning For All*” report and the Outcome agreements between the Scottish Government and the universities.

45) According to Universities Scotland<sup>18</sup>, up until S4 (when schooling is compulsory) pupils from the 20% most deprived areas of Scotland (SIMD20) constitute 20% of the school population. In post-compulsory education, this proportionate share drops to only 15% in S6.

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<sup>15</sup> <http://www.scotland.gov.uk/Topics/Statistics/SIMD>

<sup>16</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/56717.aspx>

<sup>17</sup> “They” refers to the Scottish Government.

<sup>18</sup> <http://www.universities-scotland.ac.uk/uploads/WideningAccess%20July12.pdf>

46) There are problems with SIMD as a measurement<sup>19</sup>. For instance, the high-earning family in a large house on the periphery of an otherwise deprived area and the low-income family in a small home living on a far lower income nearby may come to be treated identically. There have been news stories in the recent past about privately educated school pupils living in SIMD20 and SIMD40 datazones and being eligible for some widening participation programmes<sup>20</sup>.

There are issues in identifying deprivation by SIMD category in rural areas as datazones are larger and where SIMD is not a robust indicator of disadvantage. There are areas of Scotland in which there are no SIMD20 datazones (eg the Shetland Islands).

Research by the Joseph Rowntree Foundation showed that young people's aspirations for education and jobs were high; that they wanted to go to university and attain professional and managerial jobs in greater numbers than the labour market could fulfil<sup>21</sup>. The Joseph Rowntree Foundation also found that places with shared statuses of deprivation could be very different in their social make-up and how this played out in people's life experiences. Moreover, aspiration varied between similarly disadvantaged areas. This research suggests that SIMD does not necessarily correlate to low aspirations and, therefore, using it as a single measure of widening participation makes generalisations about attitudes in disadvantaged communities which can be unhelpful.

Some who focus on widening participation at the law schools in Scotland prefer to use a blend of measures looking at whether individuals are accessing educational maintenance allowance, whether they are the first in their family to go to university, and the performance of their school (and the performance of the individual compared to the performance of the school) rather than SIMD.

47) Even with those caveats in mind, it is useful to consider how law is performing against the Scottish Government's current criteria.

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<sup>19</sup> [http://www.heraldscotland.com/mobile/news/education/university-access-plan-for-deprived-areas-boosts-private-school-pupils.20773348?\\_af7d99b15fb7ed714c14f8f0dd7cccc977308b622](http://www.heraldscotland.com/mobile/news/education/university-access-plan-for-deprived-areas-boosts-private-school-pupils.20773348?_af7d99b15fb7ed714c14f8f0dd7cccc977308b622)

<sup>20</sup> Such pupils may not necessarily have wealthy backgrounds: they may have access to bursaries, for example.

<sup>21</sup> <http://www.jrf.org.uk/sites/files/jrf/young-people-education-attitudes-summary.pdf>

In January 2013, *The Herald*<sup>22</sup> published a piece noting that fewer than one in 12 entrants to the LLB come from deprived backgrounds.

The piece highlighted figures that only 8% of LLB entrants in 2010/2011 were from the 20% most deprived backgrounds compared to 13% for all university entrants. Figures from the SFC suggested 22.5% of students came from the 40% most deprived areas in 2011/12 (falling from 22.9% the previous year).

The Society asked all LLB providers for similar figures going back over five years to see an overarching trend. Whilst the Society has received most of this data it has not received it all, and therefore, cannot present this data at this time. The Society intends – as an addendum to this work – to publish this data in early course.

48) The National Union of Students (NUS) submitted a Freedom of Information (FOI) request to the SFC regarding the SIMD make-up of 2010/11 LLB entrants and the figures they received suggested that 10.4% of LLB students commencing their degree in 2010/11 were from SIMD20 postcodes.

49) However, as George Kerevan<sup>23</sup> noted in *The Scotsman*, *“the failure of working class children to take greater relative advantage of the mass expansion of university places from the 1990s onwards lies outside higher education altogether – at secondary level where many pupils still fail to gain the necessary entry qualifications or learn the skills for advanced study. Only 10.5 per cent of pupils from the 20 most deprived areas in Scotland obtain the normal minimum entry requirements for university compared to 48 per cent from the least deprived 20 per cent”*.

Kerevan’s comments are backed up by a table put together by Universities Scotland below.

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<sup>22</sup> <http://www.heraldscotland.com/news/education/legal-careers-access-row.19739877>

<sup>23</sup> <http://www.scotsman.com/news/blame-schools-for-universities-lack-of-poor-kids-1-2864365>

Table 1: Highest qualifications obtained by Scottish State School Leavers by SIMD decile (2010-11)

SIMD Decile	Percentage achieving 5+ SCQF Level 6 (Highers) %	Percentage achieving 1-2 SCQF Level 7 (Advanced Highers) %	Percentage 3+ SCQF Level 7 (Advanced Highers)%	Total = % school leavers likely to be qualified for direct university entry
Most deprived 20%	4.9%	5.2%	0.45%	10.55%
20-40%	8.25%	9.25%	0.7%	18.2%
40-60%	10.2%	14.55%	1.7%	26.45%
60-80%	13.05%	19.05%	2.85%	34.95%
Least deprived 20%	17%	26.9%	4.65%	48.55%

50) In March 2013, both the SFC and the Higher Education Statistics Agency (HESA) released figures which showed that the Scottish university sector as a whole is struggling to widen access<sup>24</sup>.

As per Table 1, SFC found that fewer than one in 10 Scottish students came from the most deprived neighbourhoods.

The SFC found that this has remained “flatlined” over the past six years – despite the abolition of tuition charges in 2008. For the year 2011/12, The SFC found that 9.1% of the 20,852 Scottish residents at Scottish universities are from the 20% most deprived zones whilst 22% are from the 40% most deprived zones.

51) Little of this is new. Research undertaken in 2003 showed that Universities and Colleges Admissions Service (UCAS) data from Scotland demonstrated little change in social class composition between the mid-1990s and 2000 (Anderson, Murray and Maharg 2003<sup>25</sup>). Higher education participation rates have increased in the last decade (as have participation rates in Scots Law given the provision from post-1992 universities from 2001 onwards). Most general studies, however, cast doubt on the extent that this has meaningfully reduced the social inequalities embedded in the higher education system.

<sup>24</sup> <http://www.bbc.co.uk/news/uk-scotland-21881440>

<sup>25</sup> Anderson, S., Murray, L, and Maharg, P. (2003) Minority and Social Diversity in Scotland, Report to the Scottish Executive.



52) HESA indicated that only 26.6% of students in Scotland are from lower socio-economic groups compared to 30.7% across the UK as a whole. In England, the figure is 30.9%, in Wales, 29.1% and in Northern Ireland 39.1%.

*Table 2: Comparisons of numbers of students from lower socio-economic groups in the Home Nations*

<b>Nation</b>	<b>Percentage of students from lower socio-economic groups</b>
Northern Ireland	39.1%
England	30.9%
UK as a whole	30.7%
Wales	29.1%
<b>Scotland</b>	<b>26.6%</b>

53) The NUS stated in a publication in earlier 2013 “*Scotland already has the worst rates in the UK on widening access to students from poorer backgrounds*”<sup>26</sup>.

54) A useful comparison is between Table 2 above and Table 3 on pages 21 and 22 which compares tuition fees in the Home Nations. The nation with no tuition fees for home students performs worst in numbers of individuals going to university from the poorest backgrounds.

55) Wyness notes that according to the Institute for Fiscal Studies that in England poorer students are less likely to go to university than richer students but those with comparable A Level grades to richer students are not<sup>27</sup>.

56) Since 2011, Scottish universities have been obliged to submit their plans on widening access to the SFC as part of their Outcome agreements. The Post-16 Education (Scotland) Act 2013 is intended to assist widening access. The Act allows the SFC to impose financial penalties on institutions deemed to have achieved insufficient progress

<sup>26</sup> Scottish Government Debate: Tuition Fees. NUS Scotland MSP briefing

<sup>27</sup> *Widening access for pupils from social disadvantaged backgrounds: the role of fees, loans and grants*. Gail Wyness, Centre for Economic Performance, London School of Economics: [http://www.docs.hss.ed.ac.uk/education/creid/Projects/34v\\_j\\_ESRCF\\_TT2\\_PPT\\_Wyness.pdf](http://www.docs.hss.ed.ac.uk/education/creid/Projects/34v_j_ESRCF_TT2_PPT_Wyness.pdf)

in relation to widening access, and makes provision for extra university places for widening access initiatives and articulation.

### **Private schooling**

57) According to the Independent Schools Council, the independent sector educates around 6.5% of the total number of school children in the UK. In Scotland, it is estimated that fewer than 5% of the school population are educated in private school.

58) The Sutton Trust found that over 48% of the entrants to the UK's 30 most selective universities are privately educated.

59) Across Scottish universities 12% of students in 2011/12 were educated in the independent sector. To focus on three examples of universities which offer the LLB: the University of Edinburgh takes 30% of its students from private schools whilst the Universities of Glasgow and Aberdeen recruit 20% of students from private schools (this is across the university as a whole – it may rise and fall for certain courses and will also include non-Scottish-domiciled students)<sup>28</sup>.

60) The recent publication by the Society “*Profile of the profession*” showed that around 29% of the solicitor profession were privately educated whereas 72% of the profession were educated at a state secondary school. There is a slight overlap as some attended both types of schools<sup>29</sup>.

### **Addressing fair access**

61) As mentioned in paragraphs 29 to 32, there are numerous schemes in place to try to ensure that access to the LLB is fair. Each LLB providing university has a widening participation scheme in place although there are differences of approach between the universities. Initial access is an extremely important matter but progression and transition are important too.

62) SIMD data (outlined above) is somewhat useful but data concerning whether or not SIMD20 and SIMD40 students complete the degree is perhaps even more important, as is the degree classification they eventually receive.

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<sup>28</sup> <http://www.heraldscotland.com/news/education/concern-over-scots-student-drop-out-rate.20578992>  
<sup>29</sup> <http://www.lawscot.org.uk/media/680687/profile%20of%20the%20profession%202013.pdf>

- 63) Also important is the experience of candidates at university. For example, anecdotal evidence suggests that students who go to some universities through a widening participation route can take longer to adjust to years one and two of the degree but that by the time it comes to honours, this has evened out and they perform just as well – if not better – than their counterparts.
- 64) Schemes that universities put in place to assist transition from schools to university are therefore of the utmost importance.
- 65) More research requires to be undertaken relating to progression, and completion, within the Scots Law LLB. Such research may be part of the follow-up work to this project.
- 66) As outlined in the proposed programme of work, comparative and collaborative work between universities, the Society and professions should also be undertaken.
- 67) As well as the work at individual universities there is a new “*Access to the professions*” fund established by the Scottish Government; an Outcome agreement between the Scottish Government and accredited universities which places a requirement on universities to take more SIMD20 and SIMD40 students in return for funding; and the ability to transition from BA Law to LLB.
- 68) As outlined in paragraphs 37 and 38, some universities do use contextualised admissions for their law degree whilst others do not do so.
- 69) Anecdotal evidence suggested that there were differences between universities. For instance, one university noted that individuals who came through widening participation programmes were not more likely to drop out of university than other candidates whereas another university noted that individuals from the most deprived backgrounds were more likely to drop out of university than other candidates. This may relate to the differences in support offered to candidates from SIMD20 and SIMD40 backgrounds.

### **Starting the LLB and staying on it**

- 70) Having considered how people access the LLB above, we know that somewhere around 1,300 people commence accredited LLB courses across Scotland each year. As per paragraph 47, we will release actual numbers over the past 5 years when we have received them from all universities.

71) We know that a proportion of those who start the LLB do not intend to qualify as solicitor or as an advocate or, in some cases, do not intend to practise law in Scotland. We also know that many more decide over the course of the degree not to qualify as a solicitor or as an advocate or decide they would prefer to practise law outwith Scotland for a variety of reasons.

72) Some research has been undertaken on the intentions of those studying the LLB in England and Wales though this did not cover Scotland<sup>30</sup>. Such a research project in Scotland may be informative in due course. It may be that such a research project is a part of the follow-up to this report.

73) We also know that the attrition rate for LLB courses is somewhere around 20–25%<sup>31</sup>. The Heads of Law School, in a comment to the Society's Council March council meeting, estimated that around 950 people graduate each year from the LLB.

74) The Society is not aware of any nationwide research regarding the reasons behind LLB students dropping out of university.

### **International comparisons**

75) The Society has been asked to compare the route to qualification with other jurisdictions and other professions. Other comparisons can be found in sections 7 and 8.

76) As part of that comparative work, it is useful to compare Scotland against other nations when it comes to undergraduate finance. Although the Society is cognisant that many involved in widening participation do not believe funding is the biggest obstacle to accessing higher education it is clearly an obstacle.

77) As outlined in Table 3 (below), Scottish-domiciled undergraduate students do not pay fees (though Scottish universities can charge fees to students from the rest of the UK).

78) Within the European Union (EU), there is a wide diversity in fees policy. The nations with the highest fees are: England, Wales and Northern Ireland<sup>32</sup>. Some EU countries do not

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<sup>30</sup> <http://www.heacademy.ac.uk/assets/documents/disciplines/law/Hardee-Report-2012.pdf>

<sup>31</sup> Figures obtained from The Heads of Law School Group in 2011.

<sup>32</sup> On a pedantic note, Scotland would also feature in the "highest fees charged" due to the fees levied against students from the rest of the UK.

charge fees (Austria, Cyprus, Denmark, Finland, Greece and Malta). In Germany, two Lander charge fees but 14 do not.

79) Around the globe, in North America, Australia, and in large parts of the developing world, there has been a shift from the funding of higher education by the state, towards payments by the students.

80) As outlined in Table 2 above, the lack of undergraduate fees for Scottish-domiciled students does not seem to have led to greater participation rates from lower socio-economic groups (in fact, Scotland lags behind England, Northern Ireland and Wales).

Table 3: Tuition fees and student support in Scotland, England, Wales and Northern Ireland<sup>33</sup>

Country	Tuition fees	Maintenance support grant		Loan	Additional support grants
		Household income	Amount		
Scotland	No fees for Scottish domiciled students.  Universities may charge up to £9,000 to students from the rest of the UK (eg outwith Scotland).  Tuition fee loan available.  Repayment begins once earnings threshold reached.	£0-16,999	£1,750	£5,500	Additional means tested grants for (i) Lone parents (ii) Those with dependents (iii) Care leavers  Non-means tested for (i) Disabled students.
		£17,000 - £23,999	£1,000	£5,500	
		£24,000 - £33,999	£500	£5,500	
		£34,000 or above	£0	£4,500	
				<b>Loans (n.m.t)<sup>34</sup></b>	
England	Up to £9,000 (per annum). Tuition fee loan available.	£0 – £25,000	£3,354	Living at home up to: £4,375	Additional means tested grants:  <ul style="list-style-type: none"> <li>if qualify for Income Support or Housing Benefit (this will be instead of Maintenance grant)</li> <li>support from National Scholarship programme</li> <li>students with children, especially lone parents</li> <li>homeless students</li> <li>final year students</li> </ul> Non-means tested grant: <ul style="list-style-type: none"> <li>care leaver (one off bursary of £2,000)</li> </ul>
		£30,000	£2,341	Living away from home: up to £5,500	
		£35,000	£1,432	Living away from home, London: up to £7,675	
		£40,000	£523		
		£42,611	Up to £50		
		Over £42,611	No grant		
		Any grant received reduces the loan you can get.			

<sup>33</sup> Taken from ESRC Fellowship Project: Higher Education, the Devolution Settlement and the Referendum on Independence.

<sup>34</sup> Non means tested

		<b>Assembly learning grant</b>		<b>Loans (n.m.t)</b>	<ul style="list-style-type: none"> <li>disabled students</li> </ul>
Wales	Up to £9,000 (per annum). Tuition fee grant covers any amount above £3,575 for Welsh domiciled students studying within or outwith Wales. Tuition fee loan available up to £3,575	£0 – £18,730	£5,161	Living at home up to: £3,673	Additional means tested grants (special support grant) <ul style="list-style-type: none"> <li>single parent</li> <li>if parent is a student</li> </ul> Students can either get an assembly learning or a special support grant, not both Non-means tested grant: <ul style="list-style-type: none"> <li>disabled student</li> </ul>
		£18,371 to £50,020	Partial grant	Living away from home: up to £4,745	
		Over £50,020	No grant	Living away from home: up to £6,648	
Northern Ireland	£3,575 for Irish domiciled students studying in Northern Ireland. Tuition fee loan available.  Up to £9,000 charged to rUK students studying in Ireland	£0 – £19,203	£3,475	Living at home: up to £3,750	Additional means tested grants: <ul style="list-style-type: none"> <li>students with children or dependants</li> </ul> Non-means tested grant: <ul style="list-style-type: none"> <li>disabled students</li> </ul>
		£19,204 to £41,065	Partial grant	Living away from home: up to £4,840	
		Over £41,065	No grant	Living away from home (London): up to £6,780	

- 81) The Scottish Government has, alongside the Post-16 Education (Scotland) Act 2013, introduced what it describes as “*the best and simplest support package in the UK*”.
- 82) From August 2013, in addition to free tuition, Scottish-domiciled students with a family income of less than £17,000 per year<sup>35</sup> will receive an annual income of £7,250 through a combination of bursaries and loans.
- 83) Hunter, though, notes the amount of funding available to poorer students in grant aid has diminished and that there is very little difference in the overall funding package available to students from more and less socially advantaged backgrounds<sup>36</sup>.
- 84) The funding packages available to students from poorer backgrounds are considerably more generous elsewhere in the UK.
- 85) Scotland has adopted a universalist approach to higher education funding and treats (by and large) students the same irrespective of family background. This does not have a redistributive effect.
- 86) The view of many involved in widening participation is summed up by Gail Wyness<sup>37</sup> when she notes “*Fees matter – but upfront support (grants and loans) matters too*”. Wyness notes that whilst debt is far higher in England it should be noted that upfront support is also more generous.

### **Other matters**

- 87) Some people may have the grades but may find it difficult to complete full-time legal education (eg those with caring responsibilities or those who have to work to finance their degree).
- 88) Whilst most of Scotland’s largest population centres are within an hour of an LLB providing university, there are areas of Scotland where it might be very difficult for someone with – for instance, caring responsibilities – to undertake an LLB.

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<sup>35</sup> It should be noted here that the Government is focusing on income rather than SIMD.

<sup>36</sup> *Student Grants in Scotland: A case of the rocks versus the sun?*. L. Hunter 2013.

(<http://adventuresinevidence.files.wordpress.com/2013/06/student-funding-analysis-web-version2.pdf>)

<sup>37</sup> *Widening access for pupils from social disadvantaged backgrounds: the role of fees, loans and grants*. Gail Wyness, Centre for Economic Performance, London School of Economics: [http://www.docs.hss.ed.ac.uk/education/creid/Projects/34v\\_j\\_ESRCF\\_TT2\\_PPT\\_Wyness.pdf](http://www.docs.hss.ed.ac.uk/education/creid/Projects/34v_j_ESRCF_TT2_PPT_Wyness.pdf)



- 89) A number of universities now offer part-time LLBs<sup>38</sup> which means study can be combined with work. A number of Diploma units offer a part-time Diploma in Professional Legal Practice<sup>39</sup>. Part-time, and flexible, traineeships are possible.
- 90) There is also an online LLB available from RGU for graduate entrants to the profession. At present, in Scotland – unlike in England and Wales – there is no Open University LLB. There is also provision, under the Admission Regulations, to a Non-PEAT 1 traineeship which can be utilised in certain exceptional circumstances.
- 91) The Society also operates a non-university route to qualification: The alternative route to qualification via a Pre-PEAT 1 Training Contract. This route to qualification is currently under reform but it should be noted that very few individuals currently utilise this route and very few firms have shown interest in providing this route.
- 92) The Society is cognisant of the moves in England and Wales to create an apprentice route to qualification. The Society may wish to consider – in due course – whether or not the alternative route could be applicable, or be modified in such a way as to become applicable, for Modern Apprenticeship funding. There has been no significant interest from the profession for such a development at this stage.
- 93) As highlighted in the Milburn report on *Fair Access to the Professions*<sup>40</sup> multiple, and flexible, entrance routes into a profession will likely help those who wish to enter a profession later in life or re-enter the workforce after a career break.
- 94) There is some evidence which suggests multiple entry points can actually harm the chances of mature students and those who enter via “alternative” routes<sup>41</sup> (such as, in Scotland, the Pre-Diploma Training Contract Route and Requalification Route<sup>42</sup>). It may be that training organisations create an informal hierarchy which may still disadvantage those who have taken the least conventional pathway to qualification.

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<sup>38</sup> Aberdeen University, Glasgow Caledonian, Edinburgh Napier University, Stirling University and Strathclyde University offer the part-time LLB.

<sup>39</sup> Dundee University, Edinburgh University, Strathclyde University and RGU will offer a part-time Diploma if there is a demand.

<sup>40</sup> <http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf>

<sup>41</sup> Ibid

<sup>42</sup> Research that took place in 2013 regarding requalification in to Scotland suggested that there is a perception that the Scottish legal marketplace is sceptical of those who re-qualify into Scotland.

## **Section 2: The Diploma**

95) Assuming that an individual not only can but has accessed the LLB successfully, completes the LLB and still wishes to become either a solicitor or an advocate, the next stage is the Diploma.

96) It should be noted that the traditional concern regarding too many people commencing the Diploma no longer exists in terms of numbers (though there are clearly concerns about Diploma finance). Over the last five years, fewer and fewer individuals have commenced the Diploma although the number of potential Diploma places has actually risen with the splitting of the constituents parts of the Glasgow Graduate School of Law.

The issue is no longer about whether or not individuals can get a Diploma place but, rather, whether or not they can afford to undertake the Diploma.

97) Depending on the institution where the course is undertaken, the Diploma will cost somewhere between £5,500 and £7,000. This is the cost of the course. It does not necessarily involve the cost of books and certainly does not include the cost of accommodation, food, heating and other associated costs.

98) Estimates on the wider costs vary but it is estimated by CFALP that a student will likely need to find around £10,000 over the course of the Diploma year.

### **Diploma fees and finance**

99) The Scottish Government removed the maintenance grants in the 2010/11 academic year. The maintenance grant could only be applied for by those who were in receipt of a fees award. The fees awards were allocated on the basis of academic merit and so were given to the top 300 students in the professional subjects. Unlike those grants, the maintenance grant was means-tested. Roughly, 100 people per annum got the full maintenance award; roughly 100 got partial maintenance; and roughly 100 got no maintenance award whatsoever. Those who did not receive a fees award (ie those outwith the top 300) received no maintenance award whatsoever.

100) In late 2011, the Scottish Government announced that the system of Diploma funding would change in the 2012/13 academic session. The Scottish Government had, for a number of years, claimed that postgraduate funding was under review.

- 101) The Government introduced a new system of finance for those commencing the Diploma in 2012/13. This moved away from a system of 300 fees awards of £3,400 allocated to the students with the best marks in the professional subjects to a system where all Diploma students were eligible for loans from the government of equivalent value (£3,400).
- 102) It should be repeated that the fees awards were given out on performance in the professional subject which were assessed in the first two years and were not, contrary to a widespread belief, assessed on financial need. The Society has heard during the research phase of this project that those individuals from SIMD20 and SIMD40 groups were disproportionately likely to be outwith the top 300 as such individuals often find the transition to university more problematic.
- 103) It should also be noted that strong performance in the professional subjects as an LLB student is not a necessary nor a sufficient condition of being a good solicitor. However, the professional subjects were the one element that all Diploma entrants had in common whether they qualified via ordinary, honours, accelerated degree or Society examinations.
- 104) At the time, The Cabinet Secretary for Education and Lifelong Learning claimed that more individuals are eligible for funding and that this is a good thing. The then President of the SYLA said at the time of the change it isn't a case of "*grants good and loans bad*".
- 105) Those outwith the top 300 under the previous system had no access to government finance. Under the new arrangements it is clearly the case that the top 300 are worse off (as rather than a fee award they can now only access a loan) whilst those outwith the top 300 are potentially better off.
- 106) In October 2013, the Scottish Government announced further funding changes to postgraduate funding which will affect those studying the Diploma from 2015/16.

Table 4: Overview of changes to the funding situation

Pre-2012/13	2012/13	2015/16
<ul style="list-style-type: none"> <li>- Top 300 students eligible for grants of £3,400. Those 300 students had to finance the rest of the Diploma themselves.</li> <li>- All individuals outside the top 300 had to finance the entirety of the Diploma themselves.</li> </ul>	<ul style="list-style-type: none"> <li>- All students eligible for a loan of £3,400. All students require to finance the rest of the Diploma themselves.</li> </ul>	<ul style="list-style-type: none"> <li>- All students eligible for a loan of £3,400 for Diploma fees.</li> <li>- All students eligible for a loan of up to £4,500 for living expenses<sup>43</sup>.</li> </ul>

107) Table 5 compares the total number of Diploma students from years 2004 through to 2011 against the number of Diploma students who received no government funding.

Table 5: Number of Diploma students versus number of Diploma students who previously received no government funding

Year	Total number of Diploma students	Total number of Diploma students who received no government funding <sup>44</sup>	Percentage of Diploma students with no funding
2004	539	239	44.3%
2005	597	297	49.7%
2006	661	361	54.6%
2007	685	385	56.2%
2008	774	474	61.2%
2009	724	424	58.6%
2010	682	382	56%
2011	658	358	54.4%

108) CFALP submitted an FOI to the Scottish Government in early 2013 regarding how many individuals had taken out a loan. The Government's figures suggested that 320 individuals had taken up the option of a loan.

<sup>43</sup>

<http://scottishlegal.com/index.asp?cat=NEWS&Type=People%20and%20Places&newsID=56886#56886>

<sup>44</sup> This does not include the 'roughly 100' of the top 300 who received no maintenance awards.

109) The question remains that if the Government is committed to loans as a means of funding postgraduate education why doesn't it extend those loans to cover the entirety of the Diploma costs or to cover the entirety of the Diploma costs and also to assist with maintenance?

### **The make-up of Diploma students**

110) CFALP undertook some research at the University of Edinburgh. This research asked Diploma students at the University of Edinburgh the postcode of their home address prior to starting their undergraduate degree. It should be noted that this was a CFALP Survey and was not a survey by, or for, the University of Edinburgh.

111) These figures are of significant interest but do not compare with previous years nor do they cover the entirety of Scotland's Diploma cohort.

*Table 6: CFALP SIMD Survey of Diploma students at the University of Edinburgh 2012/13<sup>45</sup>*

<b>SIMD Quintile</b>	<b>Survey Results</b> <b>DPLP at University of Edinburgh 2012/13</b>
5 <sup>th</sup> (Least deprived 20%)	43.8%
4 <sup>th</sup> (Least deprived 20-40%)	35%
3 <sup>rd</sup> (Least deprived 40-60%)	13.8%
2 <sup>nd</sup> (Most deprived 20-40%)	5.0%
1 <sup>st</sup> (Most deprived 20%)	2.5%

112) Figures obtained from the Heads of Law School suggest that the numbers of students on the 2012/13 Diploma from SIMD20 and SIMD40 datazones – whilst lower than they should be by percentage of population – had actually increased between 2011/12 (when grants for some still existed) and 2012/13 (where no grants existed).

<sup>45</sup> <http://cfalp.wordpress.com/2013/05/07/survey-results-2/>

*Table 7: Heads of Law School Figures Comparing SIMD20 participation in Diploma between 2011/12 and 2012/13*

	<b>2011/12</b>	<b>2012/13</b>
SIMD20 Average	6.2%	7.7%
SIMD20 Weighted Average	6.3%	7.5%
SIMD40 Average	7.7%	12.7%
SIMD40 Weighted Average	7.8%	12.9%

113) As outlined in Tables 8 through 11 below, the evidence seems to suggest that the numbers of individuals from SIMD20 and SIMD40 increased in the first year that loans replaced fees awards. We should be extremely cautious about drawing conclusions on the basis of such a small sample size and we should be equally cautious about declaring loans a short-term success when there may be many factors at play.

114) Some figures for 2010/11 were provided but did not cover all institutions. This is why in Table 8 and Table 10 some institutions are noted as 0% individuals from SIMD20. Due to the lack of figures from three institutions in Table 8 and Table 10 the figures from 2010/11 are left out.

115) The Society asked all Diploma providers for similar figures going back over five years to see an overarching trend. Although the Society has received most of this data it has not received it all, and therefore, cannot present this data at this time. The Society intends – as an addendum to this work – to publish this data in early course.

116) As outlined on Table 8 at only one institution did the percentage of individuals from SIMD20 backgrounds decrease between 2011/12 and 2012/13 (whilst the percentage rose at all other providers).

Table 8: Diploma numbers SIMD20 by anonymised provider

The providers have been anonymised because, in some instances, the populations in particular SIMD segments could identify an individual or individuals.

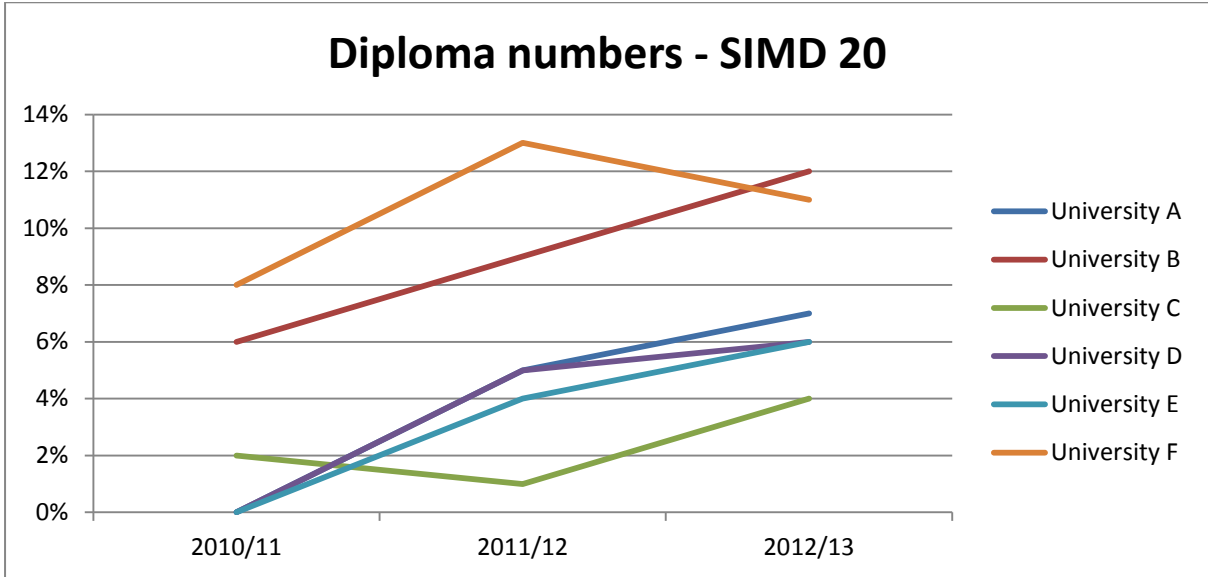
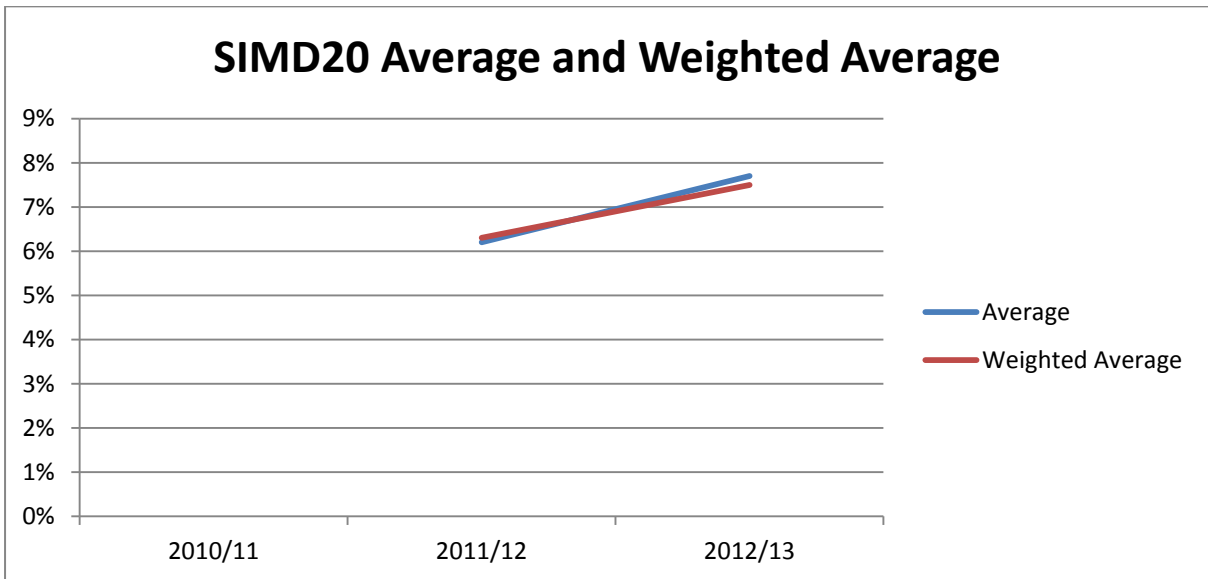
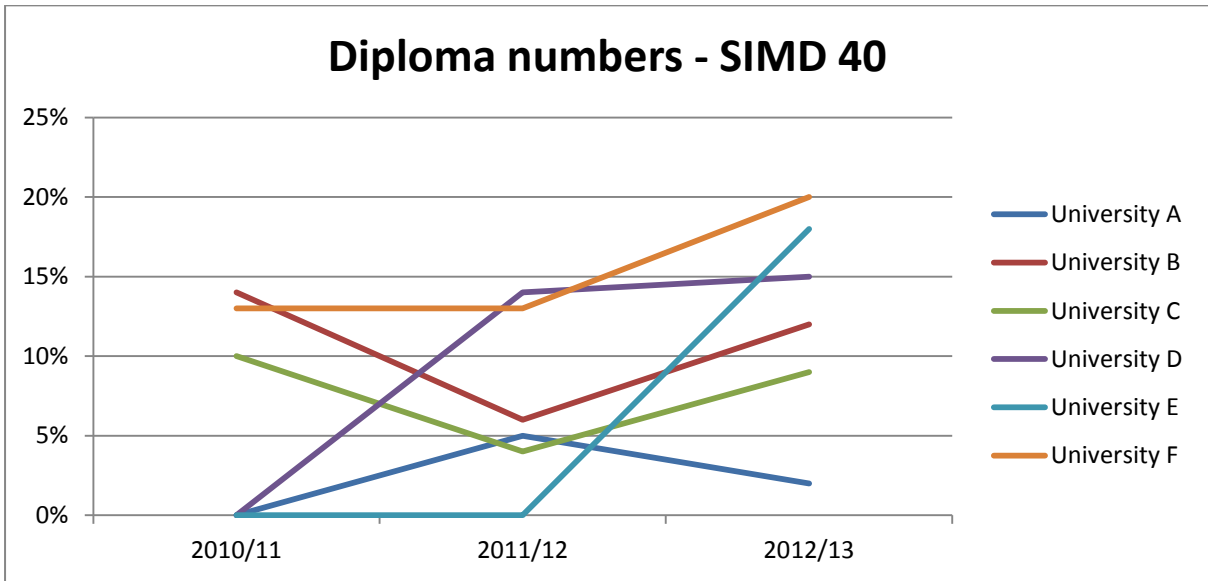


Table 9: SIMD20 by average and by weighted average



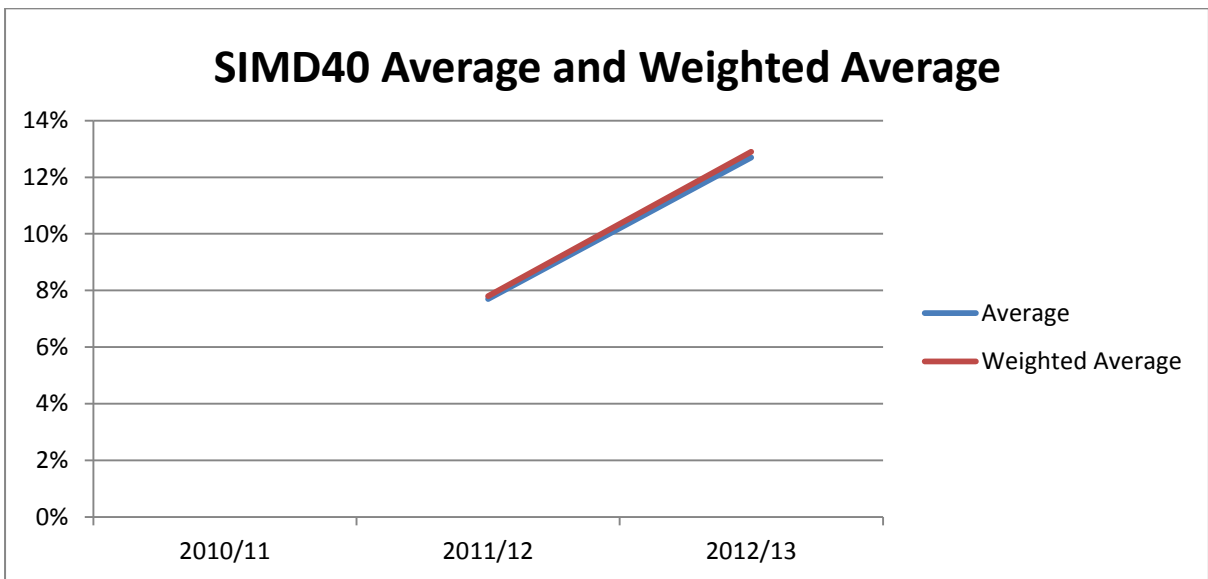
117) At five of the six providers, participation rates for SIMD40 also went up between 2011/12 and 2012/13.

Table 10: Diploma numbers SIMD40 by anonymised provider



118) As can be seen in Table 11 below, the average number (and weighted average) of SIMD40 students on the Diploma rose between 2011/12 and 2012/13.

Table 11: SIMD40 by average and by weighted average



119) As above it is difficult to draw strong conclusions from such limited data. Perhaps the best that can be said at this stage is that the move from fees awards to loans has had no immediate deleterious effect on access to the Diploma in terms of numbers of students from certain backgrounds accessing the Diploma. As per paragraph 115, the Society will publish more details when it has them.



120) Both the Heads of Law School figures and CFALP's figures should be considered in line with *Table 1: Highest qualifications obtained by Scottish State School Leavers by SIMD decile (2010-11)* on page 15 and *Table 2: Comparisons of numbers of students from lower socio-economic groups in the Home Nations* on page 16.

### **Managing expectations**

121) The Society has had formal and informal representations that the DPLP is a barrier to access. In this section, we consider the Society's current strategy, the defence of and justification for a Diploma, and potential alternative ways of delivering the Diploma.

122) It is noted that this section of the review often uses the terms Foundation programme and LLB and the terms Professional Education and Training Stage 1 (PEAT 1) and Diploma (in Professional Legal Practice) interchangeably.

123) The Society's current strategy is to influence the number of individuals commencing the Diploma indirectly by giving individuals full information on funding, finance, probabilities of traineeships, and an analysis of market trends over recent years.

An individual who is considering starting the Diploma will have usually had at least three talks by the Law Society of Scotland. The Society also visits all universities who host a law fair. At a university that hosts a law fair, by the end of a 4-year LLB, a student will have had at least seven direct opportunities to discuss matters of the route to qualification with Society staff. This is supplemented by the universities supporting this message and the Society's annual publishing of trainee statistics (which is disseminated to all universities). These statistics are shared with online news sources. The Society also publishes a detailed guidance note which goes out with Diploma application forms.

The Society also works closely with careers advisors at universities across Scotland. Moreover, some universities – with their Diploma offers – send out detailed information making it clear just how tough the trainee job market is.

124) It is reasonable to conclude that – in 2013 – anyone who chooses to do the Diploma is making that decision on the best available evidence. They know that the trainee job market is tough. They know that times are tough across the economic landscape. They know that the Diploma is not a golden ticket.

The remaining worry, however, is regarding those who choose not to do the Diploma. Some are choosing not to do so because – on balance – they realise that their grades over the course of the LLB, in this marketplace, will not lead to a traineeship in due course. Some, however, are very talented individuals who deeply want to be a lawyer and who are being priced out of the market. It is difficult to know the exact size of this group.

### **Potential solutions within the current structure**

- 125) One change the Society could make, and which might be of assistance to those studying the LLB, is to survey the profession each year to find out their intentions re: traineeships the next year. This is clearly imperfect but may be of some indicative use<sup>46</sup>.
- 126) We should be extremely careful about such a survey. If, for instance, trainee numbers for a given year looked promising it is likely that this would only inflate numbers undertaking the Diploma and create further access problems.
- 127) A survey may only be so useful and it might be worthwhile the Society instructing a legal management consultant and/or consulting actuary to consider long-term profession projections. If Susskind<sup>47</sup> and McEwen<sup>48</sup> are right it is possible that the larger firms will become more cylindrical than pyramid-like in structure. If that is the case, it may be that the number of trainee solicitors will drop in the coming years.
- 128) A supplementary idea is to mandate that the Diploma units publish on an annual basis a performance review in terms of how many of its graduates have gone on to get traineeships (both percentage and total). This would be particularly useful if the review could be supplemented with figures over a number of years.
- 129) Again, there are problems with the above approach. For instance, many individuals have a traineeship in place before starting the Diploma and this would skew the figures somewhat. We would not want to prejudice against those who do not have a traineeship in place before the Diploma.

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<sup>46</sup> It would be imperfect because firms may not respond; firms may not know the answer to the question; circumstances may change for good or ill; the fact there are likely to be x number of traineeships doesn't mean an individual will get one of them, etc.

<sup>47</sup> *The End of Lawyers? Rethinking the nature of Legal Services*. Oxford University Press. Susskind, R. (2008) and *Tomorrow's Lawyers: An Introduction to your future*. Oxford University Press. Susskind, R (2012)

<sup>48</sup> *Growth is dead: Now what?* CreateSpace Independent Publishing Platform. McEwen, B (2013)

130) The Society is frequently called upon to control the numbers of individuals commencing the Diploma. This could be done in one of two ways.

(a) For the Society to set a limit of Diploma places each year.

(b) For the market to set a limit each year. This would involve introducing a similar model to the Irish and Northern Irish routes to qualification which ties access to the vocational stage of the route to qualification to a training contract.

Considering the Society setting a limit of Diploma places each year

131) The former approach is fraught with difficulties and may lead to more, rather than fewer, access issues. Given market trends, it is likely that the limit would fall and rise each year. This would cause a lot of uncertainty for firms, students and Diploma units.

132) The practice of some firms recruiting in third and fourth year of the LLB may lead to issues. Unless those with traineeships already lined up were guaranteed a place, we may end up in the embarrassing situation where such individuals are caught outside the limit.

133) Given the relatively volatile legal marketplace and the impact that marketplace has on traineeship numbers, it is likely that there would continue to be oversupply or undersupply of Diploma graduates. As we've seen with professions which are not overtly reliant on the marketplace (eg teaching) it is incredibly difficult to get such predictions right.

134) Assuming that such control was legally competent (a position which would need to be clarified<sup>49</sup>), this would be extremely difficult to manage. If there were 500 places on the Diploma one year, how would they be allocated? To which Diploma units? Who would decide the cap? On what evidence?

135) There is also an intellectual argument which states that a system which affords individuals chances is inherently fairer than a system which limits chances. For instance, under the current system, an individual may find themselves in the maelstrom of the market but does have, at least, the chance to get a traineeship. If the Society capped

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<sup>49</sup> The Law Society of Northern Ireland which operates a blended approach to postgraduate legal education does limit numbers in a slightly different way. To commence the vocational stage an individual must have a Master (or training solicitor) arranged for the work-based stage. This system clearly has strengths but has fair access weaknesses as well.

numbers at, say, 500, we would be explicitly saying to the 501<sup>st</sup> person who wishes to do the Diploma that they cannot be a solicitor.

136) This argument was lucidly put forward by Michael Mansfield QC when discussing the English and Welsh Bar's Bar Professional Training Course (BPTC) numbers<sup>50</sup>: *"If you restrict the numbers of people coming up through the pipeline the argument is that you don't want to disappoint them, but on the other hand there's a whole welter of people who, on that basis, don't even get near the door. So I'm not in favour. I think if they're aware of the difficulties, you say to somebody: 'It's a pretty hopeless situation, on the other hand, if you feel you're up for it I'm not going to discourage you from doing it, as long as you're aware of the odds'"*.

137) Even in a system where perfect knowledge was assumed, where the Society could cap the numbers of Diploma students each year knowing exactly how many traineeships would commence the following year, there would still be individuals who would not find traineeships. Some individuals would be more valuable in the marketplace so may have offers from a number of firms. Others would be less valuable in the marketplace so may not receive any offers. The family, or other, circumstances of some potential trainees may mean that they cannot accept certain sorts of traineeships.

138) In the real world where mergers occur, firms' financial positions change, markets stagnate or flourish, legal process outsourcing happens, and internal mechanisms at firms develop it is impossible to predict accurately how many trainees will be needed across the entire Scottish profession each year. If the Society canvassed the profession in March/April on how many trainees they would take the following summer, and every member answered to the best of their ability, it is entirely possible that the predicted total would differ significantly from the number of traineeships which actually commenced.

#### Considering the market setting a cap

139) There are strengths to the models used in Ireland and Northern Ireland, both of which limit access to the postgraduate stages of the route to qualification. These routes to qualification are considered in section 7. As these models are differing versions of "sandwich courses" it is difficult to compare directly with the Diploma.

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<sup>50</sup> <http://l2b.thelawyer.com/michael-mansfield-qc-there-should-be-no-limit-on-bptc-places/3002440.article>

140) Given current market trends – particularly small firms and in-house organisations recruiting on an ad hoc basis – any move to a market-based cap (eg one can only commence the Diploma if they have a traineeship in place at the start of the Diploma) would need significant thought and, potentially, significant work with sectors of the profession that do not currently recruit a year in advance.

#### Who should start the Diploma?

141) CFALP raise two main points (i) the potentially deleterious effect of the Scottish Government's changes to Diploma funding on fair access (ii) the mismatch between Diploma graduates and traineeship numbers.

142) There are, however, tensions between those two concerns. Improving access to the Diploma via a reform of Diploma finance is likely to lead to more people doing the Diploma (unless numbers are controlled some other way) which, in the current marketplace, will not be mirrored by a rise in the number of traineeships.

143) If we note that there are – already – more Diploma graduates than there are traineeships, it would be odd to pursue a policy which led to more Diploma graduates unless the financial reform was so great that nobody who entered the Diploma paid at all (or unless one takes the fairness of offering choice outlined by Michael Mansfield QC on Paragraph 136 to its logical conclusion)

144) The focus surely must be about ensuring the highest quality LLB graduates who wish to become solicitors get a place on the Diploma. It should be noted that "*highest quality*" does not always mean the person with the best grades and further noted that good academic performance does not always translate into being an individual who is good with clients.

#### An aptitude test?

145) One way to help ensure the best possible candidates entered the Diploma would be to consider the introduction of an aptitude test for those who wish to sit the Diploma. Introducing such a test could help ensure that those undertaking the Diploma have the required attributes to succeed and would help make sure that those without the required skills do not needlessly spend money on the course.

146) The English and Welsh Bar has recently introduced the Bar Course Aptitude Test (BCAT) following Lord Neuberger's report into access to the Bar. This costs £150 and

there are unlimited opportunities to sit the test. If the Society were to introduce such a test, cost and number of resits would require to be considered to ensure equitable access<sup>51</sup>.

147) Although not titled an aptitude test, the Law Society of Ireland has operated entrance examinations for many years. Candidates must pass both the Preliminary Examination (although those with law degrees are exempted from the Preliminary Examination) and the Final Examination – First Part (FE-1) before commencing their training contact.

148) The FE-1 model may offer a solution to access at the LLB stage. The Law Society of Ireland’s model allows non-LLB graduates to sit the Preliminary Examination and the FE-1. The Society could institute a similar arrangement for non-LLB graduates who wish to pursue a legal career. Such a test would require to be built around the Foundation Outcomes. Whilst this might increase competition for Diploma places it might also mitigate concerns regarding access at the LLB stage. It is likely that such a suggestion would be extremely unpopular with LLB students.

149) Whilst some will have intellectual sympathy with the introduction of an aptitude test, especially one that is well-configured, others will see this as another barrier to access. Moreover, in its discussions with numerous organisations across the Scottish legal market we have not encountered any support for an aptitude test.

150) An alternative to an Aptitude Test is outlined in recommendation 27 of The Neuberger Report (Entry to the Bar Working Party): *“Research should be undertaken to establish (a) whether it would be unfairly detrimental to any groups for a qualified 2:1 BVC entry condition to be imposed, (b) the extent, if any, to which the presence of students on the BVC with lower degrees than a 2:1 adversely affects the performance of others, and (c) the relative extent to which people with a 2:2 and no post-graduate degree obtain pupillages and tenancies<sup>52</sup>”*. This is supplemented by recommendation 29: *“In the meantime, BVC providers should be required to inform, both orally and in writing, any applicant who does not have a 2:1, how many and what proportion of its BVC graduates in the past four years who have not been awarded a 2:1 (or a first) obtained a pupillage and entered practice”*.

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<sup>51</sup> There is an intellectual argument that the English and Welsh Bar has always offered a quasi-aptitude test. The number of scholarships available from the Inns of Court equates, roughly, to the number of pupillages each year.

<sup>52</sup> <http://cms.barcouncil.rroom.net/assets/documents/FinalReportNeuberger.pdf>

Some in the profession will have an intellectual sympathy with the idea of limiting access dependent upon the degree grade. It should be noted that such a limitation would stop individuals with an ordinary degree from qualifying as a solicitor and, in turn, may lead to more fair access issues. It would also occlude the possibility of an apprenticeship route being founded and, potentially, closes off the Pre-Diploma Training Contract Route.

### **Why have a Diploma anyway?**

151) As part of the process *Future of Legal Education and Training Project* the Society undertook three consultations. These were:

- Shaping the Future of Legal Education
- Discussing the Detail
- The Way Forward

152) At the time the *Shaping the Future of Legal Education* was the Society consultation with the highest ever response rate. Over 900 individuals and organisations responded to it.

153) Those responses showed a broad level of support for a vocational stage to legal education and training. This was, in part, an acknowledgement that LLB graduates were not ready for practice and, also, that the LLB is viewed as a liberal arts degree as well as part of a route to qualification.

It is noted that we are now in a different funding and economic environment.

154) In 2011, as a direct result of the above consultations with the profession and academia, the Society introduced the concept of Professional Education and Training (PEAT). This was broken down into two core concepts: PEAT 1 (a vocational stage which would be organised either by a university or other provider) and PEAT 2 (a traineeship).

155) Whilst *prima facie* the route to qualification did not change (an LLB followed by a vocational year followed by a traineeship) substantive changes were made. The largest of these was the introduction of a series of Outcomes for both PEAT 1 and PEAT 2.

156) The main reason behind the introduction of PEAT, and the PEAT Outcomes, was to reinforce the idea that the Diploma was the “bridge” stage between the academic learning undertaken during the LLB and the work-based learning undertaken during the traineeship.

157) The introduction of PEAT saw the introduction of a number of Outcomes. These Outcomes define the minimum standard that an individual should reach by the end of each stage.

The PEAT 1 Outcomes combined define the minimum standard that a supervising solicitor can expect of a trainee on day 1 of the traineeship.

The PEAT 2 Outcomes combined, building on the PEAT 1 Outcomes, define the minimum standard that a supervising solicitor can expect of a day 1 newly qualified solicitor.

158) Moreover, the changes to the Diploma were designed to make the Diploma more obviously relevant to practice. The PEAT 1 Outcomes and the PEAT 2 Outcomes are deliberately similar and are linked to each other. What a PEAT 1 student learns in a simulated environment is built upon and honed over the work-based stage of PEAT 2.

159) The other major reform to the Diploma was the introduction of up to 50% elective content. This, again, means universities or providers have the possibility to innovate their content to align it to the needs of practice. Already significant innovation is happening at Diploma units across the country.

160) One frequent critique of the Diploma is that it is unnecessary and that the matters taught during the Diploma could be incorporated in either the degree or within the traineeship. The Society already acknowledges the potential of a combined LLB and Diploma and specifically drafted the Accreditation Guidelines to allow that possibility.

These matters are discussed at length in paragraphs below.

### **Alternatives to the Diploma**

161) It is possible that the ideas suggested in paragraphs 125 through 150 may be viewed by some in the profession as “*tinkering at the edges*”. In this section, consideration will



be given to other potential models of delivery of the route to qualification and in particular the current requirement for students to complete the Diploma.

- 162) Before exploring alternatives to the Diploma, it may be helpful to set out some of the Society's requirements for the LLB and Diploma. The information in this section is not an exhaustive list of the requirements for delivering an accredited LLB or Diploma but rather those aspects that are important for this discussion.

### The LLB

- 163) The paragraphs in the text box below are taken from the Society's Foundation programme accreditation guidelines, which set out the requirements for the LLB. A Law Society accredited LLB is a "Scottish Exempting Degree".

#### **3.2 Basic structure**

*The Scottish Exempting Degree comprises a set of Outcomes covering knowledge, skills and values and attitudes, all of which are compulsory, the detail of which can be found in Appendix A to [the guidelines]*

#### **3.4.1 Curriculum structures**

*Within the chosen model, Applicants will be asked to describe their Programme design in detail. The Scottish Exempting Degree must:*

- In the case of a student studying a graduate entry two-year accelerated degree, include study of 180 SCQF credits towards meeting the Outcomes within a degree programme of not fewer than 240 credits of law overall taught at SCQF level 7/8 or above.*
- In the case of a student studying an Ordinary degree, include study of 180 SCQF credits towards meeting the Outcomes and 240 SCQF credits in law within a degree programme of not fewer than 360 credits taught at level 7/8 or above.*

*In the case of a student studying an Honours degree, include study of 180 SCQF credits towards meeting the Outcomes and 240 SCQF credits in law within a degree programme of not fewer than 480 credits taught at level 7/8 or above*

Note: 1 SCQF credit is equal to 10 notional hours of student learning (this would include time spent on matters such as researching, private study and assessment, as well as more traditional learning activities such as lectures and tutorials).

The Diploma in Professional Legal Practice (PEAT 1)

164) The paragraphs in the text box below are taken from the Society's PEAT1 programme accreditation guidelines, which set out the requirements for PEAT 1.

**3.2 Basic Structure**

3.2.1 PEAT 1 is taught within 120 SCQF credits, at level 10 or above. Within that, it consists of two sets of Outcomes statements, all of which are compulsory, the detail of which can be found in Appendix A to [the guidelines]:

- **Mandatory Outcomes:** Private Client, Conveyancing, Litigation, Business, Financial and Practice Awareness, and Tax (Tax to be taught pervasively). Conveyancing, Private Client, Litigation are reserved areas defined in the Solicitors (Scotland) Act 1980.
- **Core Outcomes:** Professionalism, Professional Communication, Professional Ethics and Standards

**2.1 Core Requirements**

2.1.1 The Society will recognise an Applicant as a Provider of PEAT 1 if the following requirements are met: ...

(d) The Programme will comprise predominantly small group tutorials, practical and simulated learning, with a range of assessment methodologies appropriate to a vocational training programme

**D.5.4 Staff Ratio and Student Ratio**

In small-group teaching on courses comprising the Mandatory/Core Outcomes, and Electives, there should be an appropriate staff: student ratio. This is difficult to standardise, given the many forms of small-group teaching that are possible; but as a general rule the ratio of staff to students in tutorials should not exceed 1:12. Where classes exceed this ratio, the Applicant should include in accreditation documentation an explanation of the circumstances of this decision. Any ratio is acceptable in large group teaching

The significance of this information will be revisited later below. However, it is noted that the Society's guidelines require: (a) for the LLB and Diploma to be taught at (or above) specific SCQF levels; and (b) for the Diploma to be taught predominantly by way of small group tutorials.

165) In response to the assertion that the Diploma is an unfair or a disproportionate barrier to access to the profession, critics appear to commonly propose one of five main solutions:

- (a) A four year combined LLB and Diploma;
- (b) A five year LLB which includes PEAT 1 Outcomes;
- (c) A reduced Diploma (in terms of time);
- (d) A combined two year Diploma and traineeship; or
- (e) The removal of the Diploma.

166) As outlined above, The Society has undertaken substantive and substantial reforms to the nature of the Diploma relatively recently and has had considerable strong feedback from students, providers and training firms on the increasing quality of this new programme. The Society will, in due course, independently review the overall efficacy of the PEAT concept but – at this stage – no one has completed both PEAT 1 and PEAT 2. It is too early to assess this.

#### *A combined LLB & Diploma*

167) The Society currently allows for the possibility of providers delivering a combined LLB and Diploma. However, the Society's accreditation guidelines currently state that any provider of the LLB must have degree awarding powers. This combined course could therefore presumably only be delivered by institutions with such a power (eg Scottish universities<sup>53</sup>).

Universities are aware of this possibility and the Society understands that it has been considered by some existing providers. The Society would always encourage innovating provision and is receptive to hearing from providers who would like to move to a blended model. However, so far two messages have been informally fed back to the Society as to why providers are unable to propose such a model in practice:

- (a) It is impractical or impossible for universities to develop a combined programme that delivers both sets of Outcomes at the requisite SCQF levels, particularly when also having to comply with individual university regulations; and

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<sup>53</sup> It is possible, though perhaps not likely, for a non-Scottish university to offer the Foundation Programme.

(b) Much more commonly, a combined model would be extremely difficult to deliver within the undergraduate degree funding model, whilst also complying with the Society's requirements for the delivery of the Diploma in terms of small group, practical teaching.

168) The Society is aware that universities have considered, and are considering, a combined LLB and Diploma but at this stage no provider has come forward for accreditation of such a model.

169) In addition to the practical difficulties noted above, it is crucial to remember that the LLB is not viewed as a degree solely for future solicitors and advocates. It is used, by many, as a degree of high quality which stands them in good stead in the wider job market. Institutions offering the LLB ensure that their degree programmes offer opportunities to the whole range of graduates – both those who want to pursue a legal career and those who do not. An accredited core that covered the Foundation Programme and PEAT 1 Outcomes could crowd out other degree options/routes. For instance, Erasmus student exchanges ordinarily take place in a student's third year. If PEAT 1 was combined with the Foundation Programme it is likely that law students and universities would have to consider if it were possible to undertake the Erasmus programme.

#### A five year LLB

170) Some critics of the current structure have asked why the LLB cannot look more like the MEng (a five year undergraduate degree). However, the MEng seems to be an historical anomaly in terms of UK degrees.

171) There is in theory nothing which would prevent a Scottish university from having a five year LLB degree programme. This would be an integrated Masters programme and would be a decision for individual universities to make. Supporters argue that this additional undergraduate year would prevent the need for the more expensive postgraduate Diploma year. However, the issue of funding for a five year degree is unfortunately not that straightforward.

172) The Student Awards Agency for Scotland (SAAS) funding requirements require students to progress to the next level in the SCQF to get funding. As noted above, the LLB must commence, according to the Society's accreditation guidelines, at SCQF 7/8. Therefore any new fifth year of study would have to be at level 11 (presuming a start point of level 7).

173) However, it is fundamental to note that SAAS only fund level 11 learning by way of Postgraduate Student Allowances Scheme (PSAS) loans. No other funding (eg for tuition fees) is provided.

#### A reduced Diploma

174) The Diploma currently consists of around 26 teaching weeks. However, in addition to the teaching weeks, there will be induction, study and exam weeks – ordinarily taking the total number of weeks to approximately 30.

175) The accreditation guidelines do not directly specify a required timescale over which the programme must be delivered. However, the Society does prescribe that PEAT 1 must consist of 120 SCQF credits. As noted above, one SCQF credit is equivalent to 10 notional hours of student learning (which includes time spent on matters such as researching, private study and assessment, as well as more traditional learning activities such as lectures and tutorials). This equates to approximately 1,200 hours. Working on the basis of an eight hour day, five day week course, the time taken to complete such a course would be around the 30 week mark. Again, it is noted that this is not contact hours but all notional student learning.

176) Three matters are explored below in relation to this requirement:

- a) Although that it is noted above that “the Society prescribes” that PEAT 1 be 120 SCQF credits, it is also an SCQF requirement that postgraduate diplomas be delivered in this way. Therefore, the removal of the Society’s requirement would not alter the position for institutions seeking to provide the currently recognised vocational qualification for aspiring solicitors – the DPLP.
- b) It is worth noting that there is a nuanced difference between PEAT 1 and a DPLP. PEAT 1 is a stage of the Society’s required route to qualification. A Diploma on the other hand is an exit award granted by institutions holding Diploma awarding powers. However, providers of PEAT 1 need not have Diploma awarding powers. As noted, the Society currently requires PEAT 1 providers (Diploma awarding institutions or otherwise) to deliver the programme in at least 120 SCQF credits. If this requirement was removed, a non-Diploma PEAT 1 provider could propose and deliver a shorter programme – whilst acknowledging that this shorter programme would still have to meet the requirement that it was comprised of the PEAT 1 Outcomes. Such a

shorter non-Diploma programme may, it is presumed, also be delivered by universities offering a different qualification. What such a qualification would be called would be down to the individual provider to decide. The Society is aware of at least one potential non-university provider of PEAT 1 but the DPLP is currently the only “vehicle” used to deliver PEAT 1. No comment is made on whether there is any appetite from either set of providers to do so.

- c) When the PEAT 1 programme was constructed, in terms of Outcomes, it was essentially done from the bottom up. Individual Outcomes were identified and collated into sensible groupings (eg conveyancing knowledge/skills, civil litigation knowledge/skills, communication skills, ethics, etc). Providers have used these groupings to construct Diploma modules which tend to be between 10 and 20 SCQF credits in size – students taking, on average, between six and eight modules depending on which provider they are studying with.

177) What is left then, is perhaps the following question: Is the Society’s requirement relating to the length of the Diploma actually creating an artificial barrier that is unnecessary, given the internal and external requirements on potential providers? It is suggested that this question has not been fully explored in terms of the current fair access debate, the question of the length of the Diploma was considered, in context, at the time of writing the guidelines. The opinion of the profession and, in particular, (legal) education providers would require to be sought before making a decision on the potential for removing this requirement and whether, if at all, this would have any impact on future provision in terms of increasing access. One important point to note is that Diploma providers have all recognised that constructing a meaningful programme, covering all of the Outcomes and having an appropriate level of assessment, within 120 SCQF credits is a challenge. The course is a very busy one with all Diploma providers reminding students of this fact. The workload is, by design, heavy. It would likely be a significant challenge for a provider to reduce the timescales of the programme, within the current structure.

178) There remains the question then that if removing the 120 SCQF requirement won’t actually assist in reducing the length of the Diploma, what might? A number of options are explored below:

- a) *The Diploma has longer contact time, per day/week:* In considering this, it is important to bear in mind the fact that the overall time for the Diploma (ie the 120

SCQF credits) includes, for example, time for study, research, practical exercises and assessment. The time taken to complete the Diploma may not therefore be reduced simply by increasing contact time.

- b) *The Diploma could be delivered in one continuous block/earlier.* Currently the Diploma is a weekday, term time programme and it breaks, with the rest of the university, for Christmas, summer and other timetabled holidays. Having it as a continuous block of study or moving it to the summer months would allow students to start traineeships earlier. One issue with this – which is unknown to the Society and on which providers would have to advise/decide – is whether there would be sufficient availability of staff, tutors and accommodation for such a model. Indeed, this may also be an issue for the “longer contact time” suggestion above. Another question mark is whether or not a more intensive/block PEAT 1 programme would be attractive to students (or indeed even possible for some). It is known by the Society that some students already have to work to fund their way through PEAT 1. It would seem logical that any condensed programme would eat into the time available to students to work. It is acknowledged that, currently, whilst the Diploma providers state that their programme is full-time, many students still choose/find a way to balance part time work – albeit perhaps to varying degrees of success – in addition to their studies. It is simply unknown if students could be expected to work part time in addition to completing a condensed programme. This is not suggested as a reason not to pursue such a model – any overall policy for qualification can have multiple routes.
- c) *Electives could be repositioned to free up time.* The Society’s accreditation guidelines currently state that a PEAT 1 programme must consist of the Outcomes and electives. The compulsory elements of PEAT 1 are the Outcomes agreed on by the profession, as a result of the wide ranging consultations. However, between 40 and 60 SCQF credits can count towards electives. Repositioning electives to another point on the route to qualification would reduce the time taken to complete the Diploma. It is suggested that the only logical place that these electives could go would be the traineeship. In terms of increasing the mandatory, “away-from-desk” learning time on the traineeship, these matters are explored further at paragraph 182 onwards – “The Diploma and traineeship combined”.
- d) *The electives requirement could be removed.* This suggestion is an extension of the point above. The removal of a requirement to deliver electives would reduce the time

spent on PEAT 1. However, three immediate issues spring to mind: (1) Diploma providers would still have to reach 120 SCQF credits of programme (indeed, as the accreditation guidelines are currently written, all providers would); (2) it is known that many students value the electives as the aspect of the programme where they get to choose what to do and tailor this to their traineeship/career aspirations, (3) initial feedback from employing firms is that the elective content is also beneficial to them.

- e) *Elements of the core could be removed:* A criticism of the PEAT 1 programme is that it contains compulsory content that students will not use once they move on to their traineeship/career (for example, a student who has a purely commercial traineeship having to learn residential conveyancing – perhaps a practice area that their training firm does not advise on). Requiring students to obtain passes only in those practice areas that are relevant to their traineeship may free up time on the Diploma – albeit that it would require inventive policy formulation, cooperation of training firms and also likely strict monitoring. No comment is made here as to whether or not this would be possible from a provider's perspective, particularly if the focus was to be a reduction in the overall time taken to complete the Diploma. However, even if the above was possible, the current Diploma content relates to the reserved areas and the fact that solicitors, once qualified, have an unrestricted practising certificate. Any decision on such a policy is therefore inextricably linked to the much wider debate on specialised/restricted practising certificates, on specialisation, and more general discussions on protecting the public interest and the Law Society's role and duties in ensuring that all solicitors are fit and proper persons. It is therefore a far wider debate than one which can be considered on the basis of freeing up time on the Diploma for fair access purposes. It is also predicated on the assumption that all Diploma students have a traineeship in place which is not the case.

- 179) In addition to the points raised above, there are a number of other points that should be taken into account in terms of considering a reduction to the timescales of the Diploma. The points below are not noted as an attempt to defend the continuing existence of the current Diploma model. These are simply relevant matters to keep in mind. Some are also matters the Society will find hard to obtain any certainty over unless and until any such change is made:



- a) The SAAS funding for postgraduate courses requires that the programme that a student is studying meet certain criteria, before that course can attract funding<sup>54</sup>. The Scottish Government's publication *Helping you meet the costs of learning and training 2013/2014* states: "The courses that qualify are generally 1 year postgraduate diplomas and the 9-month taught element of some Masters courses and are mainly in vocational subjects"<sup>55</sup>. The DPLP is currently one such programme. However, on the basis of this criterion, it is presumed that, should the length of the Diploma be reduced, which is the proposal being discussed in this section, this funding could be withdrawn. Withdrawal of one of the major sources of funding currently available to Diploma students would surely create a further barrier to the Diploma – a matter the Society is seeking to guard against.
- b) It is suggested, and was alluded to above, that a condensed PEAT 1 programme could be more costly for students, therefore creating more access issues. Increased teaching hours/a course which is run over fewer weeks or summer months, is likely to require providers to have a different staffing and teaching model. Indeed, it may not even be possible for some of our current providers but we shall presume here that it is. Currently, most providers operate the Diploma by having a core of staff and then a number of tutors from the profession who tutor on a reduced remuneration or voluntary basis. The current model of the Diploma relies heavily on the goodwill of the profession and its commitment to ensuring the future excellence of its members. Any increase in the cost of permanent staff or administration will likely increase the cost of the qualification. Likewise, economies of scale would suggest that, the lower the numbers of people embarking on the course, the more expensive it will get, and it is presumed that a reduced model Diploma will not be universally appealing. Any such increase in cost, it is safely presumed, will be passed on to the student – particularly where such increased cost is as a result of a programme model falling outwith normal university structures. As finance is stated as the main barrier to access to the Diploma by critics, it is suggested that this option may not assist in combatting this. Having stated this, it is noted that in England and Wales the "fast-track" Legal Practice Course (LPC) shortens the course from nine months to seven months and costs the same price as the "non-fast-track LPC" (over £12,000). However, economies of scale may have something to do with this.

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<sup>54</sup> The students on the course will also have to meet certain criteria (eg residence) in order to access the funding

<sup>55</sup> <http://www.scotland.gov.uk/Resource/0042/00426908.pdf>

c) Reducing the time taken to complete PEAT 1 would mean that students would complete the qualification faster – which is acknowledged, on the face of it, as a positive. However, this leaves a question mark over when traineeships would commence. It is suggested that it is perfectly possible that not all students would choose to embark on a shorter PEAT 1 – for many of the reasons highlighted above, such as potentially increased costs or need to work whilst studying (albeit that it is acknowledged that it is currently unknown exactly what such a model would look like). This leads to a plethora of questions. When would traineeships start? Would firms have two intakes per year? Would those on the shortened Diploma simply have to fill time until August/September when the current/usual intake starts? If so, what would aspiring trainees do in the meantime? Are such prospective trainees any better off, financially, completing the Diploma quickly and then gaining full time (non-traineeship) employment prior to commencing the traineeship than they would be if they were simply working part time throughout the current PEAT 1 model? This last question is more complicated if you accept the suggestion that any condensed Diploma would prohibit a student from working part time, as some currently do. If firms do have two intakes, does this create a fair access issue in itself, in that those who can “afford” to take a condensed route could be more attractive to firms as they can start sooner? The answers to these questions are potentially unanswerable, as matters of fact, unless and until such a model was moved to by a provider. However, it is acknowledged that the profession and prospective providers could be surveyed on the matter.

180) What these points may be taken to suggest is that, in terms of the current accreditation standards (ie 120 credits, small group teaching, the inclusion of electives, the current core, etc), it would seem that a change to a reduced model could present a number of challenges that may even put more barriers in the way of some students or set up a two tier PEAT 1. It is suggested that condensing the current model would be at the very least extremely complex and that any attempt to decrease the time and money spent by students on PEAT 1 can only realistically be tackled by considering the standards and requirements of the programme. However, this is a much wider question about the standards set by the profession for this aspect of training and it is suggested that any such decision to change the standards, as agreed four years ago when the accreditation guidelines were signed off on by Council, would require serious thought and consultation and should not be made purely on the basis of a fair access argument.

181) Additionally the considerations above begin to indicate that a move from one exclusive model to another will bring with it as many negatives as positives. This implies that any change to the current structure should be by way of addition rather than replacement.

#### *The Diploma and traineeship combined*

182) Another proposal put forward by critics of the current model is that the Diploma is an unnecessary step entirely. Most supporters of this proposal subscribe to the view that prospective solicitors only really commence their legal training once they have embarked on the traineeship.

183) The current route to qualification sets out certain Outcomes which must be achieved at each stage: the Foundation programme Outcomes; the PEAT 1 Core Outcomes and Mandatory Outcomes; and the PEAT 2 Outcomes. Removing a stage of this would necessarily remove the related Outcomes. However, it is presumed that proposers of the “removal” of the Diploma do not in fact actually want these Outcomes removed – rather that an aspiring solicitor would still end up with the same competencies but by another, shortened, route (or a differently structured route). The logical question that appears to need answered, therefore, is how would these PEAT 1 competencies be preserved in a model of qualification that has no Diploma?

#### *PEAT 1 – Core Outcomes*

184) The PEAT 1 Core Outcomes are grouped into: professionalism; professional communication; and professional ethics and standards. Many, more specific, Outcomes sit below these groupings. These Outcomes (with the exception of “advocacy”, as a result of the acknowledgement that some trainees may not complete traineeships where litigation advocacy skills will be required) are carried through to the PEAT 2 Outcomes. The only difference is, understandably, the context. The idea of PEAT 1 and 2 is that it is a three year journey, along which students progress towards the achievement of the Outcomes at the end of their traineeship. This is why the Core Outcomes are consistent throughout the three years/two stages.

185) These Outcomes could therefore still be required to be met within the two year traineeship, as opposed to a one year Diploma and a two year traineeship. Whether or not such Outcomes are practically achievable in such a different structure and timescale is open to debate, testing and evidence.

### *PEAT 1 – Mandatory Outcomes*

186) In terms of the Mandatory Outcomes, matters may be slightly more complex. The PEAT 1 Mandatory Outcomes are subject specific Outcomes in conveyancing, litigation, private client and business, financial and practice awareness. Taxation Outcomes are to be addressed pervasively throughout these subject specific Outcomes. As noted in subparagraph 178 (e) above, the current Diploma content relates to the reserved areas. Given this fact, there would be wider issues to consider if these subject specific Outcomes were removed. They would surely require to be picked up/achieved elsewhere.

187) If these Outcomes must be achieved elsewhere, it would seem that there are some obvious ways to do so: (1) in some form of block teaching (and assessment) release from the traineeship; (2) through work based learning, private study and examination; (3) through integrating them into the LLB (this is not discussed any further below as it has already been covered); and (4) by way of on-the-job learning (with no assessment). In terms of option (4) it is noted that where a training firm did not practise in a certain area, a trainee would likely have to be seconded to a firm that could provide this experience – this is akin to what happens in the Canadian model. In terms of option (1), it is acknowledged that this would also include private study and would likely be supplemented by practical experience (as is always the case on a traineeship). The significant difference between the two, therefore, is the block release for some form of formal training.

188) There are a number of matters that would have to be considered for the first block release proposal. For example, a frequent criticism of the previous system was that firms had to release trainees for a week in order to complete the Professional Competence Course (PCC) (which PCC, at the time a trainee sat it, might have covered subjects not relevant to the seat that they were in or, even, their employing organisation).

The Society would therefore have to give careful consideration as to how a block release system would look – Would there be several releases? What length would the release(s) be? Who would provide the training and how could the Society (could the Society?) ensure that such training was available at the relevant point?

We also know from experience from the PCC and Trainee Continuing Professional Development (TCPD) that firms often appeal to us with “*pressures of work*” reasons for not undertaking the PCC and now TCPD at certain times. Presumably such a response would be unacceptable under a more stringent regime.

- 189) Candidates training to become a Chartered Accountant are generally expected to be out of the office at classes for a combined 23 weeks (costing somewhere around £10k<sup>56</sup>). Assuming a similar model in a legal context, would firms and organisations accept losing their trainees for such time? Would firms and organisations be willing to pay a higher sum towards trainee structured learning (considerably higher than the PCC was or TCPD is) especially considering comparatively few firms pay for the Diploma for future joiners? Would this further limit the number of small to medium sized firms hiring trainees?
- 190) It is suggested that any Diploma replacement would require a trainee to be released for a total of more than one week and so it is therefore hard to envisage that these issues would not resurface. These issues are also relevant to the discussion above in sub-paragraph 178 (c) where the proposal was to reposition the elective offering on the Diploma to the traineeship.
- 191) Having noted these potential issues, it is suggested that it would seem possible to work into the Society’s current TCPD system some form of formalised training to cover the learning of the Mandatory Outcomes and/or electives which currently take place on the Diploma. Such policy development would of course require consultation with our members.
- 192) In relation to the second proposal, on-the-job training and private study, there may be questions for the Society to ask in relation to whether or not the profession has the appetite and/or resource to commit to training LLB graduates in this way. The significant and excellent work carried out by the profession in training the next generation of new lawyers will always be recognised by the Society. However, one of the original drivers for the Diploma was an agreement in the profession that LLB students were ill equipped for the rigours of practice. Training an LLB graduate would likely, for the vast majority of solicitors/firms, be significantly different – and more time-consuming – to training a Diploma graduate. The profession’s view and also the views of the legal and other

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<sup>56</sup> Most accountancy firms – though not all – cover these costs. It should be noted this is the cost of the course and does not include time away from desk etc.

professionals currently delivering the Diploma would likely need to be sought to explore this matter further.

193) Having noted these potential issues, it is important to acknowledge that the Society already allows such a combined Diploma and traineeship system, which is accessed by some students in exceptional circumstances. The Society currently has a “non-Diploma” training option, open to students who cannot access the Diploma. As noted above, this option is only granted in exceptional circumstances – such as where students cannot attend a Diploma provider’s course because of where they live, coupled with child care responsibilities. The non-Diploma training contract is a three year training contract which sees a trainee solicitor work in a law firm in the traditional way. The three years include in office training and the candidate must also sit three prescribed Law Society exams, designed to mirror some of the content of the Diploma. The non-Diploma training contract replaces the combination of the Diploma and the traineeship. A student successfully exiting this stage/type of training will be a fully qualified solicitor.

194) This route therefore presents a template to the Society for the proposal of combining the Diploma and the traineeship. Any move to increase the use of such a route could use this existing template. Trainees on this route would be required to achieve the PEAT 1 and 2 Outcomes over the course of the three years. The Society could, for example, increase the circumstances under which a student can embark on this route or simply make it an open option to students, without the need to provide any reasons. This matter is currently being actively considered by the Education and Training Committee, through an Alternative Route to Qualification Working Party, as a result of a review of this route, following the changes to legal education in 2011. Additionally, however, the Society is unaware of a desire in the profession to lengthen the period of a traineeship particularly as one of the main barriers to some firms taking on trainees is the two year commitment.

#### Removal of the Diploma from the route to qualification

195) The discussions in relation to combining the Diploma and the traineeship above were based on the statement at paragraph 186 that in order to protect the Mandatory Outcomes, “they would surely require to be picked up/achieved elsewhere”. This statement works on the assumption that students must be versed in the knowledge relating to the “reserved areas” before they can go on to commence the traineeship. However, there is a question around whether this ought to be the case. What about

students who do the Diploma but then go on to do a non-reserved area in which they have had little or no training? We don't seek to "protect" against such individuals in the same way. Why, for example, must Diploma students study private client or conveyancing modules?

196) Many individuals have criticised the Diploma for its grounding in subjects that an individual solicitor may never work in. Moreover, many individuals criticised the PCC on the same grounds. Similar objections have come about from those re-qualifying into Scotland (eg "I'm a commercial lawyer, why do I need to know about criminal procedure?"). The Society has always maintained that individuals are not qualifying as a commercial lawyer, an Intellectual Property (IP) lawyer or a criminal defence lawyer. They are qualifying as a *Scottish solicitor* and that involves having certain skills, values and knowledge. It would be a major departure to move away from that and may have significant unintended consequences.

197) If the Society were to consider removing the Diploma entirely this would result in a shorter time frame. However, this is not simply a fair access debate. As highlighted above, the Outcomes that have been introduced for the Diploma have been so introduced to protect standards that the profession deemed essential when last consulted. These include the Mandatory Outcomes relating to the reserved areas.

198) However, the Society may wish to consider a suggestion outlined in Legal Education and Training Review<sup>57</sup> to move certain matters out of the vocational stage. Individuals would then qualify with a restricted practising certificate. This would become unrestricted in due course when necessary courses had been sat.

199) As noted before in this paper, this particular aspect of the debate is not restricted to matters of fair access alone.

200) It is also worth noting that such a move would also increase the numbers of students who could legitimately apply for traineeships, year on year – traineeships then being open to any student who had completed an LLB

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<sup>57</sup> Page 89 paragraph 7.95. <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>

## **Overarching considerations relating to combining or removing the Diploma stage**

- 201) If the Society, after consultation with the profession and academia, were to significantly change the route to qualification this could have a knock on effect in terms of competition for traineeships in subsequent years.
- 202) Certain changes could mean that in whatever year such a change occurs an additional cohort of students could be competing for traineeships with the year “ahead” of them. For example, if the Diploma and LLB are combined, there will be one year in which the last students to take the Diploma and who have not already secured traineeships, which number will vary from year to year but will not be insignificant, will suddenly be competing with the LLB student from the year “below” them as well as their own cohort.
- 203) If faith is placed in the profession’s recruitment process, which it is suggested it should be, a logical argument is that the best students from this increased cohort will still be taken on by the profession – which it is suggested is an aim of a route to qualification that seeks to ensure standards. However, the fact would remain that a significantly increased number of students would be competing for the traineeships available. This may take a number of years to “level out” but, in the meantime, a number of students would be left contemplating their chances of a career in law.
- 204) It is possible that taking action such as controlling the future numbers embarking on the route to qualification could mitigate this. This would be a significant departure from current policy and would require further exploration with, in particular, training firms and legal education providers.
- 205) It is noted that it may be that Council does not see this potential issue as significant enough to deter it from acting. However, it is likely to be of interest to Council and will certainly be of concern to students and trainees who are competing for jobs.
- 206) We should be careful to note, however, that the issue noted above is stated on the presumption that any such change in the route to qualification would be a complete change from the current one (degree, Diploma and traineeship) to a new two year traineeship only system. However, the very principle of fair access to the profession would probably suggest that shutting off any one route in favour of another is contrary to that principle. Additionally, the Society, as noted above in paragraph 193, already offers



a three year non-Diploma training route and this should be considered in any “combined qualification” discussion.

207) For example, in the instance of combining the Diploma and traineeship, the Society could increase routes into the profession whilst maintaining the current routes. This would potentially lessen the effects noted above. Some students would continue along the traditional separate Diploma and traineeship route, whilst others could proceed along a combined route. Particularly if the three year traineeship route was accepted, due to the fact that this route is no less lengthy than the Diploma plus traineeship route, this would lessen the issues highlighted above about a sudden increase in those competing for traineeship places.

208) It is suggested that this aim, in and of itself, is not persuasive enough to make it the justification for widening a three year non-Diploma route – the decision on the appropriate length for any such route should be one that is properly considered by all relevant/expert parties. Questions such as: “What credence does the Society and profession place on the Diploma as a professional qualification?” should be robustly considered and answered.

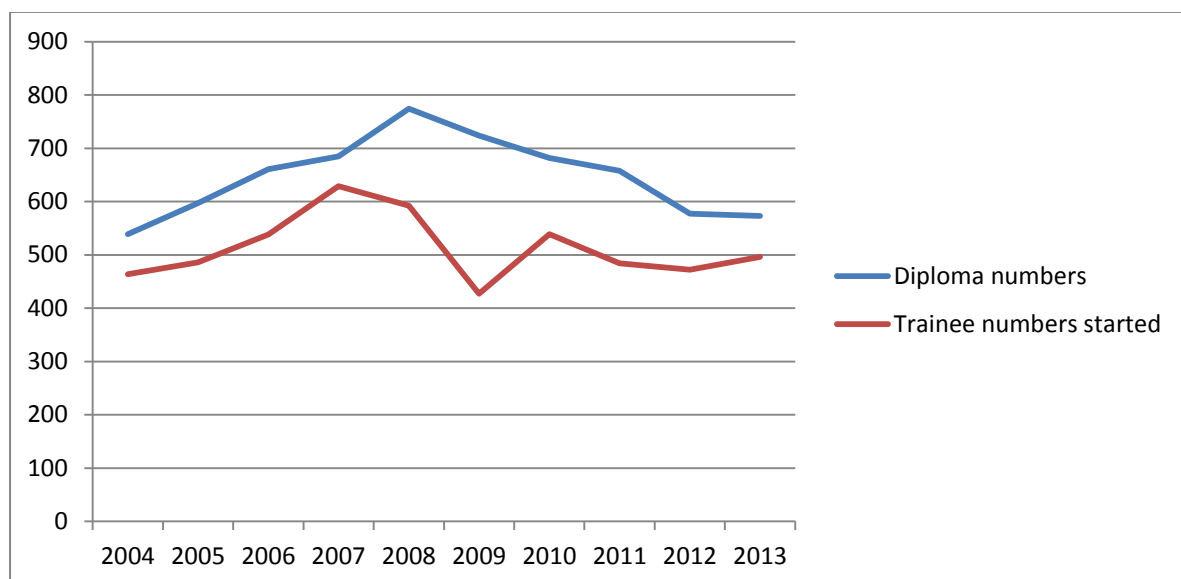
209) It is perhaps worth pointing out that the model where the Diploma is subsumed into the traineeship would see two different styles of traineeship running concurrently – those on the one currently recognisable, for the last students to have completed the DPLP, and those on a new PEAT 1/PEAT 2 hybrid. This would likely take two or three years to run out.

210) These matters are raised as natural consequences of certain proposals as opposed to an argument to deter change.

### **Section 3: The relationship between the Diploma and the traineeship**

- 211) The traineeship job market is covered in Section 4 on Page 61. This section covers the relationship between the Diploma and the traineeship.
- 212) This section looks to analyse the numbers graduating from the Diploma and the traineeship numbers.
- 213) There has always been a mismatch in the numbers of students starting a Diploma and the numbers commencing a traineeship (See Table 12 and Table 13). That said, by any measure this gap is distinctly larger today than it was 8 years ago.
- 214) Table 12 represents the numbers of those commencing the Diploma in Professional Legal Practice on an annual basis from 2004. It also represents the numbers of training contracts started each year. It should be noted that the Diploma figures from 2010 onwards includes a small number of part-time students.

*Table 12: Diploma numbers vs training contracts annual basis*



- 215) This representation is only so useful because an individual cannot start the traineeship in the same year they commenced the Diploma. A more useful analysis is covered in Table 13 below.
- 216) Table 13 is more interesting although it is also far from perfect. Given the importance of trainee statistics, and the sensitivity of them, it is better to explain clearly why this representation is not perfect before we examine the statistics.

- a) In 2009 and - to an increasingly lesser extent – 2010 and 2011 the traineeship numbers were highly likely to include graduates from previous Diploma cohorts due to the policy of some firms deferring traineeships. This means that the 55.1% in 2008 is likely unrepresentative as many of those who did not get traineeships in 2008 will have commenced their training in 2009. That isn't to say that the year without a traineeship for those involved was not stressful or one that caused anxiety and worry.

Equally, this means that the 74.4% in 2009 and, to a lesser extent, the 70.9% in 2010 and 71.7% in 2011 are also somewhat unrepresentative.

It is important to note that many individuals in 2008 were caught in an imperfect storm. The three previous years had seen a growth in the numbers of those commencing the Diploma (a 27% increase in numbers between 2004 and 2007) and had seen a steady rise in the number of traineeships for those cohorts (a 21.8% rise between 2004 and 2007).

This helped lead to the largest ever year starting the Diploma in 2008 (774 – a 44% increase from 2004 and a 12% increase on 2007). By the time this cohort graduated from their Diploma in 2009, many organisations had decided to either defer them to their 2010 cohort or had decided not to proceed with traineeships at all. The practice of deferring traineeships had a knock-on effect on future cohorts. Before 2009, there were always a relatively small number of individuals who did not get a traineeship in one year but who successfully gained one in future years. This is now a much more standard practice.

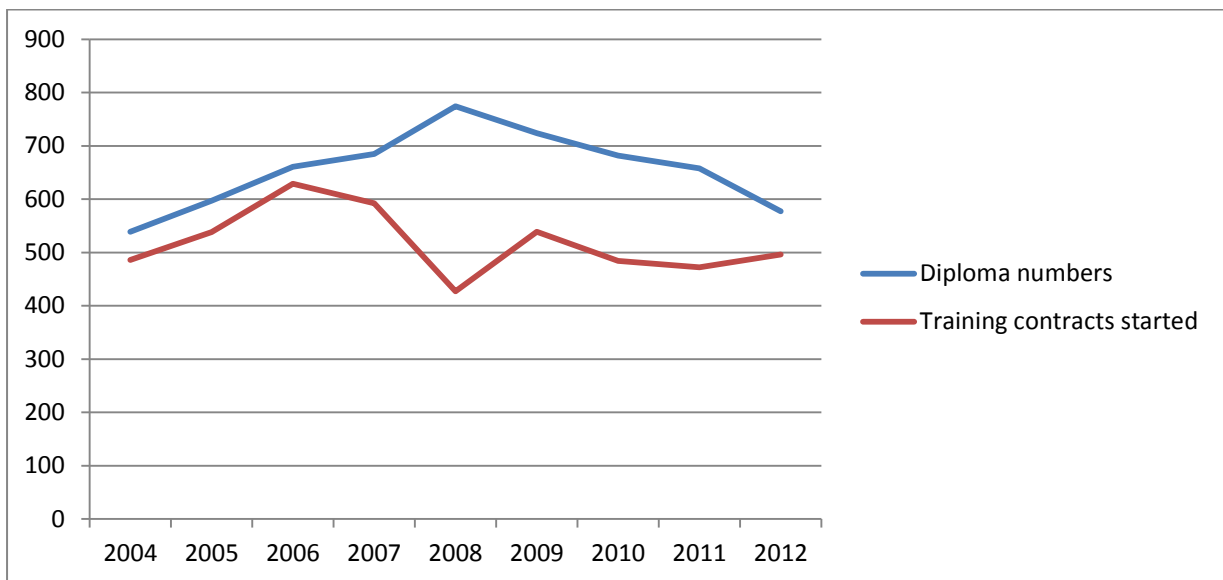
- b) There is, as with all academic courses, a rate of attrition to be factored in (either dropping out for a variety of reasons or failing the course). It is a reasonable assumption to suggest that this attrition rate will have grown since 2004 and intensified particularly since 2010 given the changes to maintenance (2010) and the changes from fees awards to loans (2012). There are no precise statistics about attrition rate but Diploma providers have noted to the Society that they believe that today the dropout rate and failure rate combined is somewhere between 5-10%.

The figures below compare those who started the Diploma rather than those who completed the Diploma. It is likely, for this reason, that percentages of those completing the Diploma and getting a traineeship are higher than those presented below.

- c) There have always been a small number of individuals who – having completed their Diploma successfully – have decided either not to pursue a career as a solicitor or who have decided to defer commencing their traineeship for some time (to pursue a gap year, LLM etc).
- d) The 2010 and 2011 Diploma figures include a small percentage (circa 5%) of part-time Diploma graduates (who will graduate a year later).

217) Rather than comparing the number of students commencing the Diploma in a given year with the number of traineeships commenced in that year Table 13 compares the number of students commencing the Diploma in a given year with the number of traineeships commenced in the next year.

*Table 13: A year on year comparison of Diploma numbers and training contracts started*



218) As can be seen the gap between these numbers in the years 2004 through 2006 was relatively small before widening substantially in 2008 before narrowing slightly between 2009 and 2011. This is represented in percentage terms on the next page.

219) As an aside, what we have seen since 2008 is a decrease in those starting the Diploma. In 2012, 577 (including part-time students) started the Diploma. This is a decrease of 25% since 2008. In 2013, 573 (including part-time students) started the Diploma<sup>58</sup>.

*Table 14: A year on year analysis of Diplomas students and training contracts*

<b>Year</b>	<b>Number of Diploma Students</b>	<b>Training contracts the following year</b>	<b>Percentage</b>
2004	539	486	90.1%
2005	597	538	90.1%
2006	661	629	95.1%
2007	685	592	86.4%
2008	774	427	55.1%
2009	724	539	74.4%
2010	682	484	70.9%
2011	658	472 <sup>59</sup>	71.7%
2012	577	496 <sup>60</sup>	85.9%

<sup>58</sup> An English and Welsh comparison can be found at Richard Moorhead's blog <http://lawyerwatch.wordpress.com/2010/11/09/a-history-of-lpc-numbers/>

<sup>59</sup> For a comparative context: The Law Society of England and Wales published data in 2013 the number of admissions and training contracts, in that jurisdiction, are at the lowest levels since 1999.

<sup>60</sup> In early 2014, the Society announced a move to calculating traineeships by practice year rather than calendar year. This measurement does produce slightly different figures. The figures above are calculated on a calendar year basis.

#### **Section 4: A market overview and the traineeship job market**

- 220) The pressures on the Scottish solicitor's profession at present are legion. The recessions that Britain has been shaken by have had an ongoing effect on all working in professional services and none more acutely than the Scottish legal profession.
- 221) The recessions have shrunk the legal sector – commercial and domestic property work has dwindled as banks have reined in their lending; government cuts have affected solicitors who work for the various arms of the state but also have put further pressure on defence agents and those solicitors who advise on government projects.
- 222) Moreover, Scotland's medium to large law firms have suffered because of the falling away of work from the two largest clients in the country: The Bank of Scotland and The Royal Bank of Scotland<sup>61</sup>.
- 223) It is likely – given the Scottish Court Service's consultation on court closures, the ongoing challenges of the post-financial crisis economic circumstances, the introduction of contributions to criminal legal aid work, and the strategic challenge of the potential introduction of legal aid contracting – that there will be ongoing difficulties for many of our members.
- 224) None of this will be news to hard-pressed professionals. The reason it is restated here is to give some context to some of the other trends analysed within this document. As all sectors of the profession have suffered there has inevitably been a dip in the numbers of traineeships commenced each year (Tables 15 and 16 below).
- 225) It is also important to note that the numbers of solicitors holding a practising certificate across the country has risen and not fallen since 2008. This may be for a number of reasons but perhaps the most obvious two are: (a) a retreat to the professions during tough economic times (b) fewer individuals retiring and/or being able to sell their practice on. Focusing on the latter, if individuals are not retiring and younger members of the firm are not moving up the ladder this too will likely have consequences for new lawyers and traineeship numbers.

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<sup>61</sup> This is covered in detail here: <http://www.thelawyer.com/news-and-analysis/market-analysis/scotland-feature-saltire-in-the-wounds/3003396.article>

## **Where do trainees train?**

- 226) One medium to long term worry for the profession is the nature of where trainees are training – both in terms of geographical location and type of firm.
- 227) In 2012, 472 individuals commenced their traineeship. 285 of those started at firms with 11 or more partners. There are only 42 firms in Scotland with 11 or more partners. There have to be long-term worries about such a small number of firms training 60% of the trainees.
- 228) Of the 629 sole practitioners in Scotland only 42 took trainees in 2012. The 576 firms who have between 2 and 10 partners took 103 trainees in 2012.
- 229) Of the 816 firms which employ in-house lawyers only 42 trainees were employed in the in-house sector. Most of these will have been with COPFS, GLSS and local councils.
- 230) This document does not seek to blame or lambast organisations for not taking trainees. Each will have their own good reasons for not employing a trainee solicitor. It is often the right business decision not to take a trainee in a given year. It is noted that in-house organisations and smaller firms may not be able to train trainees as frequently as they may like. It is also noted that this is a one-year snapshot. All that said, there are potential long-term harms to the profession if a very significant section is not training trainees.
- 231) It has been a perception for a number of years that firms with fewer than 10 partners and in-house organisations have been able to hire individuals who have trained with larger firms and who have either not been kept on as newly qualified solicitor or who have decided that large firm life is not for them.
- 232) The Society has seen, in recent years, the larger firms taking fewer trainees but also retaining a higher percentage of those trainees upon qualification. As merger activity continues to occur within Scotland and across the border it is possible that the trend of larger firms taking fewer trainees will intensify. If it does intensify, and even before factoring in whether or not Alternative Business Structures will affect traineeship numbers positively or negatively, trainee numbers may drop further.

233) If the predictions of Professor Richard Susskind and Bruce McEwen are correct and the roles traditionally performed by trainees are outsourced to non-qualified staff or to technological processes, then the Society will have to give considerable thought to all legal training.

Table 15: Overview of traineeships (2012)

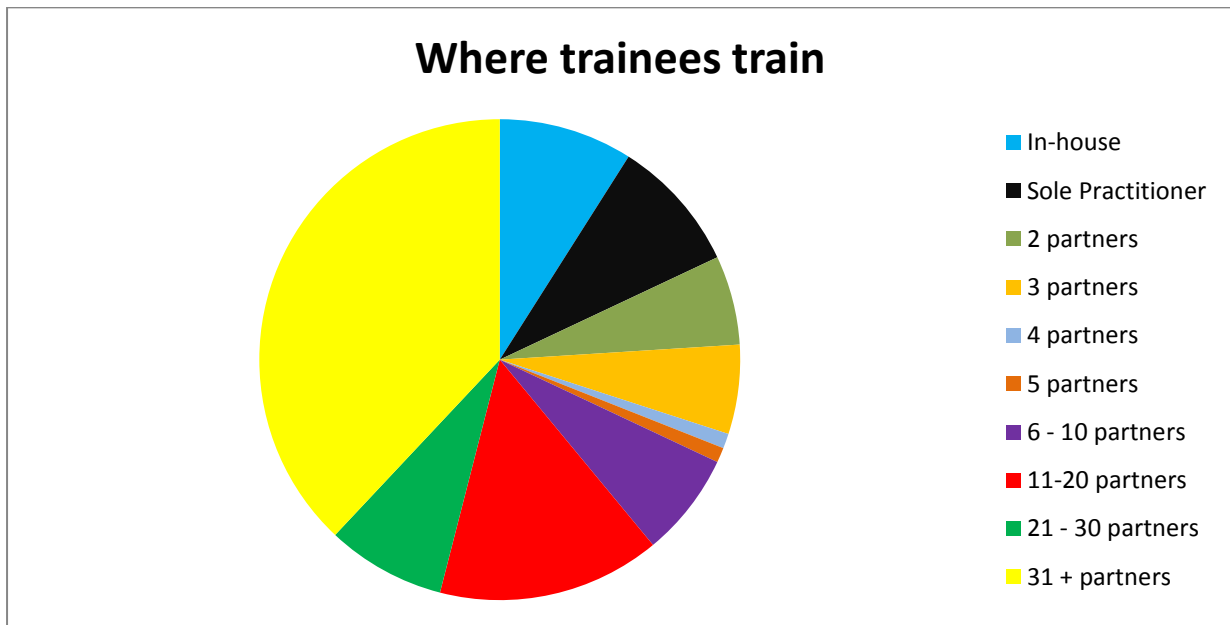
Type/Size of firm	Total number of trainees	Percentage of trainees	Percentage of solicitors employed in these entities	Number of solicitors employed by these entities	Number of firms in category
0 partners <sup>62</sup>	42	9%	27.7% (25.2% <sup>63</sup> )	2872	816
Sole practitioner	42	9%	10.2%	1052	655
2 partners	30	6%	9.5%	986	304
3 partners	28	6%	5.8%	605	120
4 partners	6	1%	3.8%	398	61
5 partners	6	1%	2.4%	249	61
6-10 partners	33	7%	6.5%	668	59
11-20	70	15%	6.7%	699	19
21-30	36	8%	5.1%	538	8
31+	179	38%	22.3%	2311	15
<b>Totals</b>	<b>472</b>	<b>100%</b>	<b>100%</b>	<b>10378</b>	<b>2118</b>

<sup>62</sup> The overwhelming majority of these are solicitors working in-house. However, a small number will include solicitors working overseas and a smaller number of unemployed solicitors. These figures combined might equal around 250.

<sup>63</sup> See footnote 60. Assuming a 250 overseas/unemployed, the in-house population is 25.2% of the profession.



Table 16: Where do trainees train?



234) We will publish up to date statistics when the finalised traineeship figures for 2013 are available.

235) In 2012 and 2013, the Society (and other organisations) brought in a number of measures to try and assist firms to take trainees.

(a) The Society continued to set a recommended salary rate for trainees but also noted that firms could pay below that rate and could, legally, pay as low as the minimum wage. This is a knotty and nuanced issue regarding fair access. This is examined in Section 5.

It should be noted that there was some criticism of the Society in ending the potentiality of unpaid traineeships. Some individuals who were looking to find a traineeship were vehement in their criticism of the Society and noted that an unpaid traineeship was better than no traineeship. Whilst this rhetoric is understandable from frustrated individuals, it is clear that unpaid traineeships have no place in today's legal profession.

(b) The Society promoted a Flexible Traineeship Register to try and facilitate more flexible traineeships. The response to this has been underwhelming. It may be that this is still due to lack of knowledge and the Society will continue to promote this option on a frequent basis. The Society was heartened by various representative

bodies promoting and supporting the Flexible Traineeship Register but acknowledges that, at this stage, very few firms have taken it up.

(c) Glasgow City Council continued its Commonwealth Graduate Fund which gives cash to organisations which employ unemployed graduates (initially up to £10k in the first year of employment but subsequently changed to £6k). The Society promoted this on a number of occasions to members but only a very small number of firms came forward for this.

(d) The Society launched a booklet called *Taking on a trainee*. This brought together all the guidance in one place regarding taking on a trainee and has been well-received.

The Society has had preliminary discussions with an organisation called Adopt an Intern. It is suggested that this work continues as a result of the Fair Access report.

236) As part of this research the Society undertook some recruitment analysis of the profession. This will be published as part of best practice recruitment guidance in 2014.

## **Section 5: Trainee salaries**

237) There is a contentious debate about whether and how the Society's trainee salary policy can help access to the profession. The Society is aware that there are a number of views on the future of the recommended rate of remuneration. Table 17 shows the progression of the recommended rate in recent years.

238) It is understood that the majority of firms pay at or around the recommended rates set by the Society. This understanding is suggested in the analysis in Table 18 below.

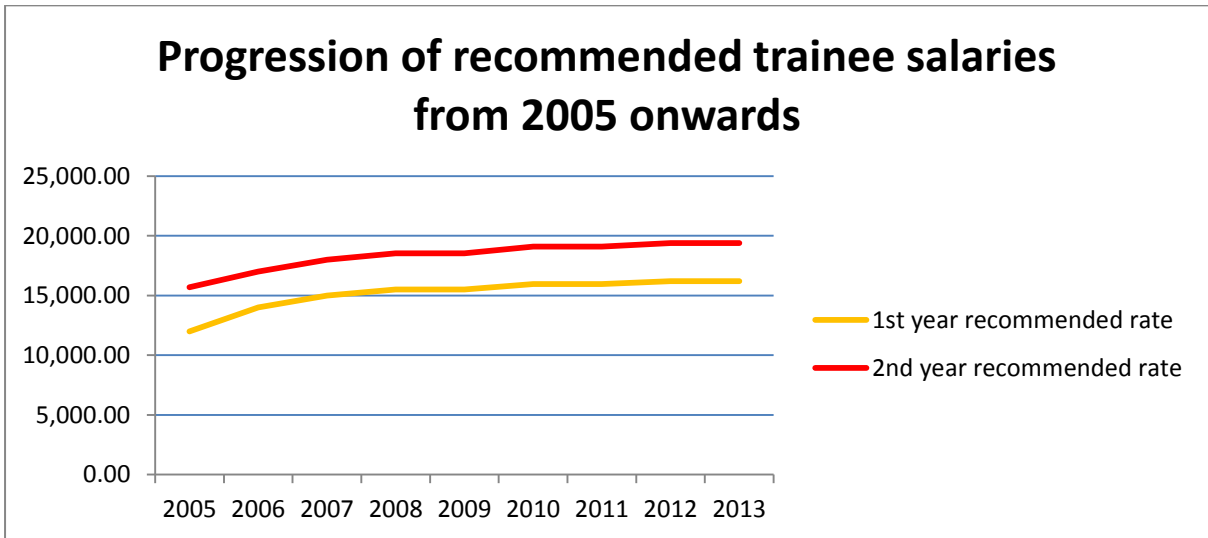
239) Each year, the Society's Education and Training Committee submits a recommendation for trainee recommended remuneration – based on a paper prepared by the Education and Training Department – to the Society's Council. The Society's Council then decides whether or not to approve the recommendation and sets the Society's recommended rate.

240) The problem with a single recommended rate is that it is a necessarily blunt tool – the rate recommended for a corporate boutique in Edinburgh is the same as the rate for a sole practitioner in Wick, the rate recommended for a Crown Office trainee is the same as the rate for the largest private practice firm in the country.

### **A history of the recommended rate**

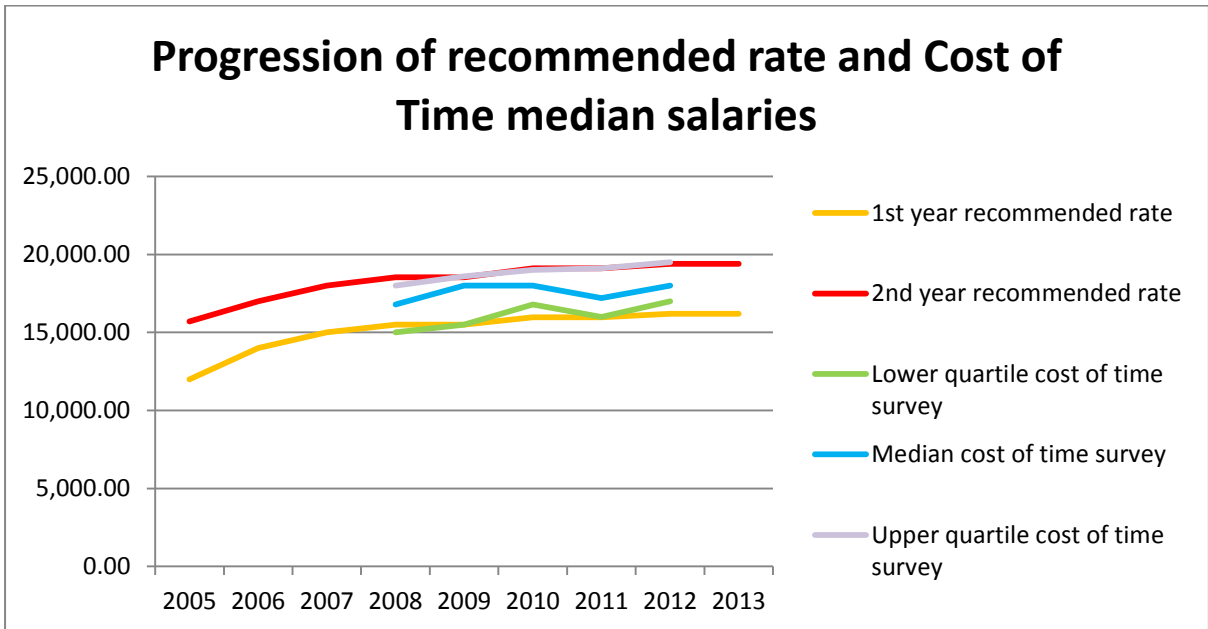
241) In the past eight years, the recommended rate of remuneration in first year has risen from £12,000 per annum to £16,200 per annum. The recommended rate of remuneration in second year has risen from £15,700 per annum to £19,400 per annum.

Table 17: Progression of recommended trainee salaries from 2005 onwards



242) The Cost of Time Survey each year includes data about the average trainee salary. Table 18 compares the recommended rate of remuneration against the Cost of Time survey median salary for a trainee. This is not perfect but it is, at least, illustrative.

Table 18: Progression of recommended trainee salaries from 2005 onwards and cost of time median salaries



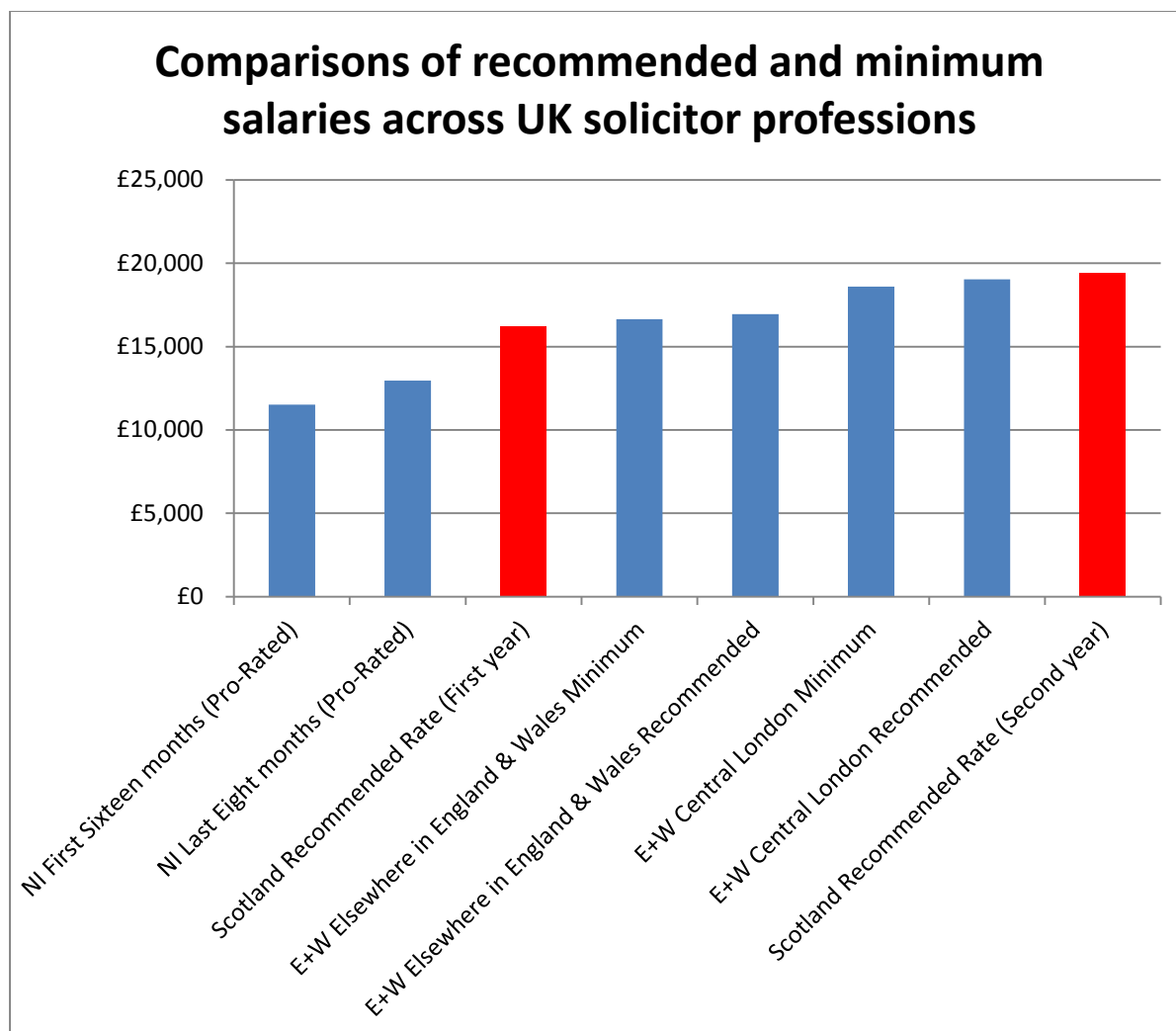
Comparing trainee remuneration across the British Isles

243) As with so much about the routes to qualification, the most noticeable difference between the Solicitors Regulation Authority (SRA), The Law Society of Northern Ireland

(LSNI) and the Society is that each approaches trainee remuneration differently. Table 19 compares the recommended rates across the UK jurisdictions.

- LSNI split the apprenticeship into two separate sections – the first 16 months (where apprentices are paid £240 per week gross) and the last eight months (where apprentices are paid £270 per week gross).
- The SRA currently set a minimum rate higher than the minimum wage and also a recommended rate. They set different minimum rates for Central London and the rest of England and Wales. They also set different recommended rates for Central London and the rest of England and Wales.
- It should be noted that the SRA's recommended figures have remained the same since August 2010 and, in August 2014, they will remove both the minimum and recommended rates. From that point forward, the SRA will only concern itself with compliance with the National Minimum Wage Act.
- We know that the top 100 (and possibly top 200 firms) in England and Wales often pay significantly more than the recommended rate.

Table 19: Comparisons of recommended and minimum salaries across UK solicitor professions



### Potential future policies

244) The Society is criticised whether Council freezes or chooses to raise the recommended rate below the rate of inflation. Fiona McAllister, President of the SYLA, in reaction to the freeze of the rates in 2013 said, “We believe that the profession has a responsibility to support trainees and it should be possible to increase the current recommended minimums. We would hate to see the profession being caught in a race to the bottom<sup>64</sup>”.

245) At the same time, the Society is acutely aware of the commercial realities for many law firms. Frank J Irvine, of Frank Irvine Solicitors, wrote in the Society’s July *Journal* “The continuous championing of the recommended rates for trainees, including £19,400

<sup>64</sup> <http://www.firmmagazine.com/syla-condemns-trainee-rate-freeze/>

*for a second year trainee (pre-employers' national insurance contribution) is becoming a tad wearing. Can I respectfully suggest consideration of the lower quartile figures for sole practitioners in the most recent Cost of Time Survey which appears to reveal that 25% of sole traders earn less than the recommended second-year traineeship rate. We are not dealing with a 'race to the bottom'. Many legal firms are having to face up to the realities of the commercial landscape that they find themselves in".*

246) The traditional argument that “*the Society's rate is a recommendation and firms can pay more or less if they wish to do so*” has some validity but as many firms do their utmost to comply with the Society's recommendation, the Society – and profession – should consider the future policy direction of the recommended rate.

- Some members would like the Society to treat the traineeship like an apprenticeship. This would allow organisations to pay trainees considerably less than the current national minimum wage. It is suggested that Council continues to reject this notion absolutely and unequivocally as the apprenticeship rate for the minimum wage is aimed at a school leaver apprentice, whereas a trainee has a minimum of four years (and more often than not five years) of higher education.
- Some members think the Society should abolish the recommended rate of remuneration (as the SRA will do next year). This would leave the market to decide what was appropriate for trainee remuneration with the relative safety net of the minimum wage.

Proponents of this policy would argue that the recommended rate artificially spikes trainee wages and puts some firms off taking trainees. They would argue that this would lead to a greater number of traineeships.

Conversely some trainees at larger firms have expressed support for the abolition of the recommended rate of remuneration. They believe that far from spiking the rate artificially that it actually subdues their rate of remuneration as their firms comply with the Society's recommendation rather than taking account of market conditions.

There are concerns that without a recommendation there will be a race to the bottom. Trainees who are servicing career development loan debts will find this exceedingly difficult.

- Some members think the Society should introduce a 'stepped recommended wage' (eg four recommended rates over the two years based on the four six-month quarters).

Proponents of this policy would argue that a stepped wage would recognise that trainees are a relative cost in the early stage of their traineeship but are more likely to bring in fee income as they progress. Proponents of this policy would argue that the current recommended rate (particularly in first year) puts some firms off taking a trainee. There is nothing to stop a firm doing this at present.

- Some members think that the profession has a larger responsibility to trainees and that the recommended minimums should be substantially increased.

Proponents of this policy might note that this may lead to a decrease in traineeships but would note that an individual with an LLB and Diploma is a very qualified individual, is valued in the wider marketplace, and should be treated as a professional.

- Some members think that the Society should go further and set a mandatory minimum significantly above the minimum wage perhaps at the level of the national living wage (or higher again – as is the current SRA policy).
- Some members think one recommended rate doesn't work and a better system would be to echo the SRA's current policy of having a rate of having (say) one recommended rate for Aberdeen, Glasgow and Edinburgh and another for the rest of the country.

247) All of those viewpoints (and others regarding the recommended rates) are based around the desire for fair access to the profession but whatever policy the Society decides upon many will be left unhappy.



## **Section 6: Current funding, debt and potential alternatives**

248) The current funding situation has been explained in Sections 1 and 2 of this document.

249) This section focuses on the debt that new lawyers face on the route to qualification and also suggests some potential funding alternatives of the current route to qualification (both the Diploma and the traineeship).

### **Debt**

250) There are no precise figures on debt relating to LLB graduates and Diploma graduates in Scotland.

251) There are varying figures about how much the debt the average Scottish graduate is carrying.

252) The Students Loans Company notes that the average student loan debt for the 2013 repayment cohort in April 2013 is £6,850. This only covers average student loan debt and does not cover, for instance, credit cards, overdrafts, store cards and other debts.

253) The Push Survey in 2011 suggested that the average debt for Scottish university graduates would be £8,841<sup>65</sup>.

254) When focused on the LLB providing universities this data suggested average debt was closer to £9,952 (and does not include those doing the accelerated degree or the Diploma).

255) *The Herald* reported in 2012 that the average debt at four Scottish universities covered in a UK-wide survey ranged between £10,000 and £15,790<sup>66</sup>. That data focused on three universities which provided the LLB (Glasgow, Edinburgh and Strathclyde) and one that did not (St Andrews).

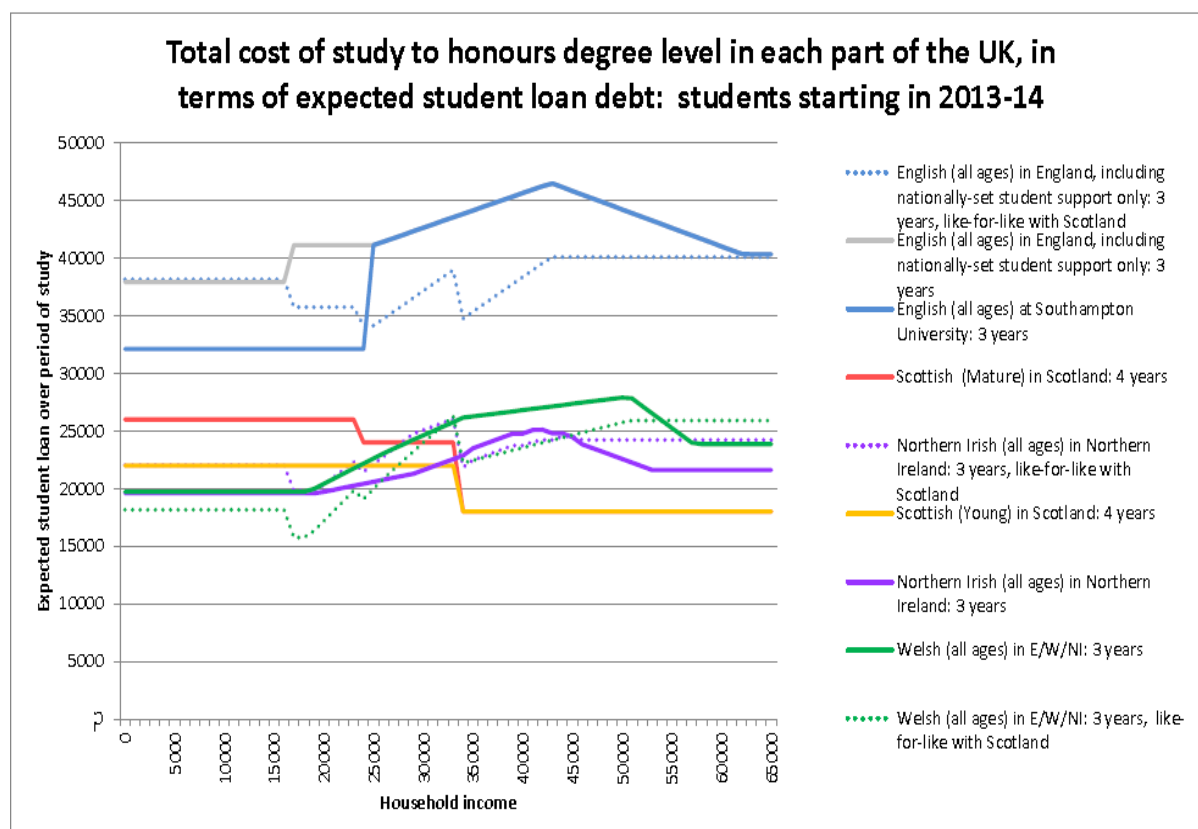
256) Table 20 below was provided to the Society by NUS Scotland. It looks at the total cost of study to honours degree level in each part of the UK, in terms of expected student loan debt for students starting in 2013/14.

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<sup>65</sup> <http://push.co.uk/student-debt-survey-2011/Debt-Survey-2011-by-region.htm>

<sup>66</sup> <http://www.heraldscotland.com/news/education/student-debt-levels-lowest-in-scotland.17657624>

Table 20: Total cost of study to honours degree level in each part of the UK in terms of expected student debt: students starting in 2013/14



257) Given the additional year – and costs of that year – it is extremely likely that average debt of Diploma graduates would be higher than individuals who have graduated from a four year course.

#### Data the Society holds on debt

258) In 2012, the Society undertook research with the 2012/13 Diploma cohort (and will repeat this with the 2013/14 cohort). The response rate to the survey was 18%.

259) One question focused on the debt they would carry at the end of their Diploma (Question was: *Including student loans, by the end of your Diploma in Professional Legal Practice, roughly how much total debt will you have incurred over the course of your studies?*). This survey was done within the last two months of the Diploma so we would hope that the predicted debt was reasonably accurate.

The headlines from that survey are:

- 16.7% of those on the Diploma expect to have no debt upon completion of their Diploma.
- 36.6% of those on the Diploma expect to have between £1 and £10,000 worth of debt upon completion of their Diploma.
- 31.3% of those on the Diploma expect to have between £10,000 and £20,000 worth of debt upon completion of their Diploma.
- 10.5% of those on the Diploma expect to have more than £20,000 worth of debt upon completion of their Diploma
- 5.2% answered “Prefer not to say”
- The average debt of those who answered the question was £10,098.
- Noting that the average debt was spiked downwards by the 16.7% who had no debt, the average debt of people who had debt was £12,253.

260) Calculating average debt is a hostage to fortune. Depending on where in the fields the average is calculated from will have an impact on the total average debt. The average above is based on taking the average from the middle of the field (eg £1-£2k we used £1k, £2-4k we used £3k) but in openness and for completeness we’ve calculated the averages using the worst case scenario (eg using £4k in the £2k to £4k) and best case scenario (eg using £2k in the £2k to £4k field).

261) Those carrying no debt spikes the average debt downwards so there are two figures below: the average debt of Diploma graduates and the average debt of Diploma graduates with those carrying no debt removed.

*Table 21: Average debt of Diploma graduates in 2012/13*

	<b>Worst case scenario</b>	<b>Average</b>	<b>Best case scenario</b>
Average debt (not including individuals with no debt)	£13,853.33	£12,253	£10,753.33
Average debt (including individuals with no debt)	£11,417.58	£10,098	£8,852.64

262) There are some worries that one impact of high levels of student debt (and the need to service that debt) may put off some candidates from undertaking legal aid work or public interest legal work.

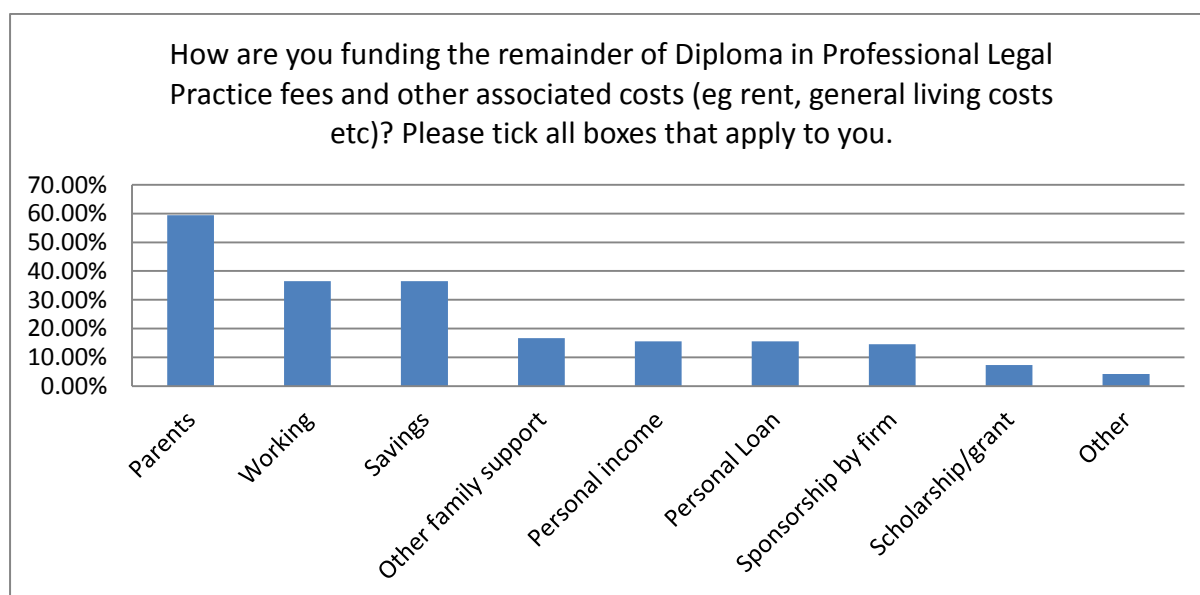
263) In October 2013, the Scottish Government announced that Scottish-domiciled students undertaking 'eligible supported courses' would be able to apply for cost of living loan funding, in addition to the current loan available as a contribution towards the cost of tuition from academic session 2015/2016. The Scottish Government confirmed that the DPLP is a one of the 'eligible supported courses'<sup>67</sup>.

This will allow loan funding of up to £4,500 per annum in addition to the £3,400 per annum currently allowed towards the cost of Diploma tuition fees. Whilst the solution is not perfect (the Society strongly believes that the loans for Diploma fees should be extended to cover the full amount) it should be tentatively welcomed.

### How students are financing their Diploma?

264) Another question in the Diploma survey focused on funding. "How are you funding the remainder of your Diploma in Professional Legal Practice fees and other associated costs (eg rent, general living costs etc). Please tick all boxes that apply to you". Perhaps unsurprisingly, most individuals ticked multiple boxes (Table 22).

Table 22: How 2012/13 Diploma students were funding the remainder of their costs



### Potential future funding

265) It is clear that how individuals finance their Diploma is an important fair access issue. It is also clear that the Society is not the only organisation with an interest in this matter nor the only organisation which can act.

<sup>67</sup> DPLP Students to be able to apply for 4,500 living expenses loan  
<http://scottishlegal.com/index.asp?cat=NEWS&Type=People%20and%20Places&newsID=56886#56886>

266) At present, the Diploma is counted as a “*second course of study*” so students are not eligible for student loans. Those wishing to enter other professions are eligible for a fifth year of loans. This concession covers veterinary medicine, architecture, and teaching.

267) The Society has lobbied – along with colleagues on the Joint Standing Committee on Legal Education – and alongside CFALP, SYLA and TANQ for the extension of this concession to DPLP students. Whilst the development outlined in paragraph 263 is helpful it is noted that Diploma students will still require to find up to £3,000 for Diploma course fees.

268) Some firms currently pay for elements of the route to qualification. This practice is currently far more widespread in the English and Welsh jurisdiction although that is likely to be a reflection on both the higher costs of qualification as a solicitor in that jurisdiction and, moreover, the nature and size of firms in that jurisdiction.

Some firms in England & Wales pay:

- (i) Full LPC only
- (ii) Full Graduate Diploma in Law (GDL) and LPC course fees
- (iii) Full GDL<sup>68</sup> and LPC course fees plus maintenance. The amount of maintenance seems to start at around £4,500 per annum with regional firms and up to around £8,000 per annum with US firms with a London presence.

The GDL is the law conversion course in England and Wales. The LPC is the vocational element of the route to qualification in England and Wales. Both are offered by universities and large private providers (most notably the University of Law, BPP and Kaplan). As yet no such private providers have entered the Scottish marketplace.

The GDL differs in cost quite substantially. At the University of Law in York and Chester the course costs £7,200. At the Bloomsbury University of Law the course costs £9,820. The cost of the accelerated LLB at Edinburgh is £9,000 per year (£18,000). This does not factor in other costs (rent, books, general living costs). This is an access issue but only for graduate entrants.

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<sup>68</sup> The GDL is the law conversion course in England and Wales.

The LPC is considerably more expensive than the DPLP. This, obviously, affects all entrants to the English solicitor profession. The cost of the LPC varies between £10,200 (University of Hertfordshire) and £14,025 (Bloomsbury University of Law). It should be noted that the LPC is dominated by private providers (most notably the University of Law, BPP and Kaplan). Such providers have not entered the Scottish market.

The BPTC is considerably more expensive again. The University of Law, BPP, and Kaplan have all set their London prices for academic session 2013/14 at £17,350. There is not a separate vocational stage for those who want to become advocates in Scotland.

Numerous Scottish firms do already pay something towards the Diploma fees (and very occasionally living costs) for their future joiners. It is estimated, based on evidence from the Society's Diploma survey in 2013, that around 15% of trainees have some funding of their Diploma year from their training firm – though the level of funding in each case will vary significantly.

269) This matter has been raised previously at meetings of the Legal Education and Development Scotland (LEADS). Firms have generally noted that whilst some firms can assist future joiners, that if others were to do so the following may occur:

- a. Training firms may cut the numbers of trainees they hire each year. This has been the initial reaction from some firms when this topic is raised. If this does occur the number of traineeships will be squeezed further particularly given the reliance of the profession on a comparatively small number of firms to train trainees.
- b. If firms decide against the above option it is likely that they will turn their eyes to trainee salaries instead. There is substantial room between the National Minimum Wage and the Law Society of Scotland's Recommended Rate For Trainee Salaries. It may be that firms recoup the money spent on the Diploma year by lowering trainee salaries.

270) Another option may be for firms to lend future joiners the cost of the Diploma and recoup that directly from future salaries. This does happen at present; from the Society's Diploma survey, only around 1% of trainees have access to such finance.

- 271) It should be remembered that not all training organisations recruit a year in advance. More firms paying for their future joiners' Diplomas will only help those who have secured a traineeship with one of the larger firms or in-house organisations. We know that most smaller firms and in-house organisations do not recruit in advance.
- 272) There have been suggestions from time to time that the Society should use its reserves to create bursaries for the most disadvantaged students<sup>69</sup>. It is unlikely that the profession at large would opt for either (i) using the Society's reserves to help fund bursaries (ii) see the Practising Certificate fee raised to help fund bursaries<sup>70</sup>.
- 273) The Society does operate The Pritchard Educational Trust (a trust which currently assists a small number of Diploma students each year). More could be done to raise awareness of, and funds for, the Pritchard Educational Trust. An expanded Pritchard Educational Trust could become a legal version of The Journalism Diversity Fund<sup>71</sup>.
- 274) The Milburn Report notes that "*Professions should work directly with banks and other lending institutions to provide privately brokered financing for those studying relevant professional qualifications*". It is thought that the numbers studying the Diploma are relatively small (and the numbers who may need such a product are smaller again) so it is unlikely a special product for Diploma students only would be workable for a bank or other lending institution. It may be, however, possible for the Society to liaise with other organisations to create a product across various professions.
- 275) An alternative to, or something that could be run in conjunction with, additional funding at the Diploma stage would be to financially support traineeships.
- 276) Advocates of this approach might prefer the Society to consider the Inns of Courts "*Pupillage Matched Funding Scheme*"<sup>72</sup>. This scheme sees the Inns of Court cover 50% of the cost of some pupillage awards at publicly funded chambers to assist them to take more pupils. The Inns of Court will match the amount of "first six"<sup>73</sup> pupillage funding provided by a chambers with a grant to cover the cost of an additional first six pupil.

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<sup>69</sup> <http://www.journalonline.co.uk/Magazine/56-12/1010576.aspx#.UUsY5he-3To>

<sup>70</sup> The Scottish Social Services Council, the Social Services regulatory body, provides fees and living costs bursaries for the year of the postgraduate Diploma in Social Work

<sup>71</sup> <http://www.journalismdiversityfund.com/>

<sup>72</sup> <http://www.legalcheek.com/2013/10/dozens-of-extra-2014-pupillages-could-be-created-by-new-inns-of-court-subsidy-scheme/>

<sup>73</sup> The first six months of a pupillage.

Where a chamber offers no pupillages, it can apply for a smaller grant of £3k towards taking on a pupil. The scheme is only open to chambers which do predominately publicly funded work. Could such a scheme be implemented for Scottish law firms?

277) A variant of the pupillage support used at the English and Welsh Bar would be a training levy.

Such a levy would require firms, or individual practitioners, to contribute to a fund which firms that wished to take on a trainee could then access.

Douglas Mill, the former CEO of The Law Society of Scotland and a former Director of the Diploma at the University of Glasgow, raised the prospect of a training levy in an article for *The Firm*<sup>74</sup>. At present, as outlined in Section 4, around 60% of traineeships commence at 42 practice units in Scotland. As Mill says, asking small firms to subsidise those practice units would neither be popular nor fair. Moreover, asking small firms to subsidise their competitors – who will gain a competitive advantage by hiring a trainee – would likely lead to more problems than solutions.

278) It should be noted that the above solutions are not necessarily mutually exclusive.

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<sup>74</sup> [http://www.firmmagazine.com/features/1273/A\\_profession\\_for\\_all%3F.html](http://www.firmmagazine.com/features/1273/A_profession_for_all%3F.html)



## **Section 7: Comparing the route to qualification as a solicitor with other jurisdictions**

279) This section compares the standard route to qualification as a solicitor in Scotland against other routes to qualification as a solicitor around the world.

280) It seems that there has been comparatively little homogenisation of routes to qualification globally.

281) The route to qualification as a lawyer in a given jurisdiction will often differ in content, length, requirements, and make-up to even neighbouring jurisdictions.

282) How a jurisdiction develops its route to qualification will be contingent upon a number of factors. Such factors might include: the role of lawyers in the jurisdiction (eg the extent to which matters of legal advice are reserved to lawyers); the functions of competing professions (eg does the jurisdiction have a fused Bar or are the solicitor/advocate professions separate? Is the notarial profession a separate entity?); the nature of the legal marketplace and the types of firms within that marketplace; whether the jurisdiction uses an inquisitorial or adversarial system of dispute resolution; attitudes towards legal aid and access to justice; the regulatory environment and regulatory and governmental approach to risk within the legal sectors; developments in neighbouring and competing jurisdictions; multi-national accords (eg the EU's Bologna Process); and factors outwith the profession's control (eg the length of a university degree, how university degrees are structured, assessed, and regulated etc)

283) In some jurisdictions the law degree is only used by those who want to become lawyers. In other jurisdictions, such as Scotland, the law degree is essentially a liberal arts degree which is used both as a formal part of the route to qualification by those who want to become lawyers and by some who do not wish to become lawyers.

284) In some jurisdictions the law degree is accredited by a regulatory or professional body. In such instances the regulatory or professional body will set down matters that must be taught during the law degree if an individual wishes to become a lawyer in that jurisdiction in due course. In other jurisdictions the law degree is a more academic affair and is not accredited by a regulatory or professional body. For example, the Law Society of Ireland does not authorise or accredit the undergraduate degree. Perhaps because of this the Law Society of Ireland has a series of entrance examinations to the vocational stage (though those with law degrees are exempted from the first examination).

285) In some jurisdictions the professional body or a collection of professional bodies are the sole providers of elements of the route to qualification. In other jurisdictions, like Scotland, the professional body is not a provider as part of the route to qualification.

286) It seems, unsatisfactorily, that routes to qualification are rarely developed on educational issues. They are culturally contingent, historically bound, and politically determined<sup>75</sup>.

287) Even with those caveats in mind, this section sets out to compare the route to qualification in Scotland.

(i) against other British Isles jurisdictions

(ii) against other EU jurisdictions

(iii) against some non-EU jurisdictions

### **Comparisons with other British Isles jurisdictions**

288) There is a reasonable level of convergence between the four largest British Isles jurisdictions<sup>76</sup>. An overview of this is given in Tables 24, 25 and 26 below.

289) The standard English and Scottish routes to qualification are reasonably similar in structure. The initial stage is an undergraduate LLB followed by a vocational element followed by a training contract.

290) The Northern Irish route to qualification does not involve two separate stages. The route involves an integrated system where an apprentice spends four months in office, a year at the Institute of Professional Legal Studies or the Graduate School of Legal Education, and then a further eight months in office. As it is an integrated system an applicant needs an office in which to train.

291) The Irish route to qualification has a greater level of blending the postgraduate stages but still involves a substantial vocational period.

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<sup>75</sup> There is a good background to this in the LETR Literature Review Chapter 2.

<sup>76</sup> The Society has not compared with the Manx or Channel Islands jurisdictions. These are, by and large, the same processes as the English route to qualification although the Society has previously been informed that candidates with a Scottish LLB and Diploma are eligible to become articled clerks with law firms on the Isle of Man.

292) The Solicitors Regulation Authority<sup>7778</sup> in England and Wales announced in October 2013 that they would radically reform education and training. There is not enough detail at present about the proposed changes to comment but it is acknowledged that the current route to qualification in England and Wales will continue until at least the end of 2017/18. The Society should monitor developments extremely carefully.

293) There are strengths and weaknesses in terms of fair access in each route to qualification. For instance:

- a) The Irish model allows non-law graduates to compete with law graduates for entrance to the vocational and work-based stage via the FE-1 examinations. (In this model an LLB is not a formal requirement on the route to qualification.)
- b) The Irish model has only one provider of vocational training (The Law Society of Ireland). This means that those wishing to become a trainee solicitor will have to move to Dublin for a significant portion of their post-degree training.
- c) The Irish and Northern Irish models bar anyone without a training contract or apprenticeship in place from starting their postgraduate stages. Some in the profession would contend that this was fair access. Others in the profession would contend that this – given the nature of the Scottish marketplace – would make it all but impossible for smaller organisations to take trainees. (NB: It should be noted that the majority of firms in Northern Ireland are either two partner firms or sole practitioners and they do recruit in advance to a far greater degree than comparably sized firms in Scotland.)

In Northern Ireland and Ireland it is possible (though perhaps unlikely) that an individual who has a First Class LLB, extensive clinical experience, extensive internship experience and strong extra-curricular activities could not progress past the end of the LLB without a training contract in place.

294) Table 23 over page compares the vocational element costs in each of the British Isles jurisdictions:

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<sup>77</sup> <http://www.legalfutures.co.uk/latest-news/sra-strip-away-restrictions-qualifying-solicitor>  
<sup>78</sup> <http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page>

Table 23: Vocational stage course fees (or equivalent) by British Isles jurisdiction

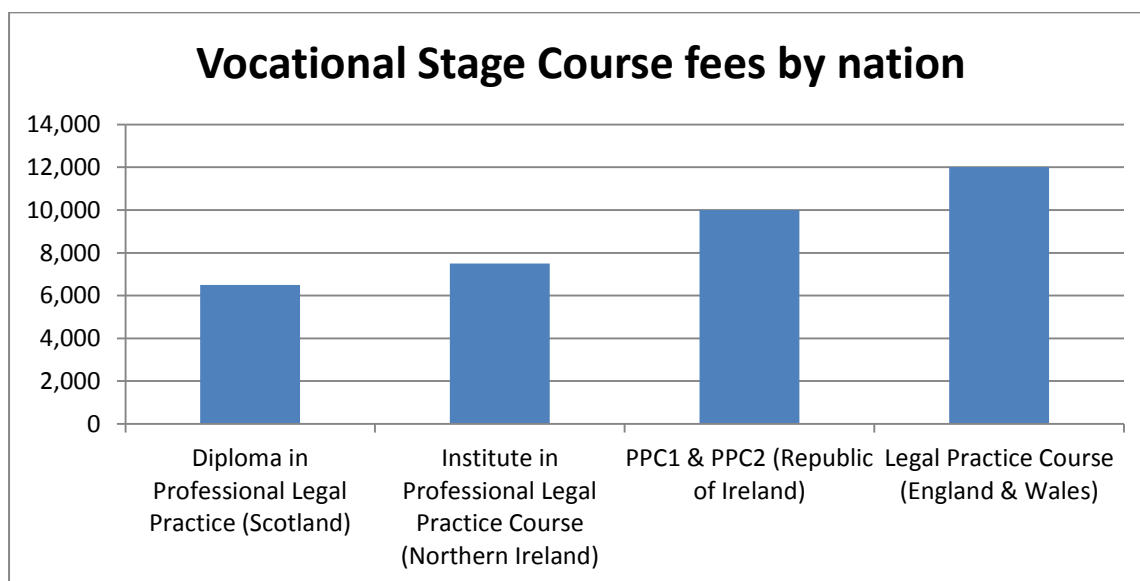


Table 24: Timescale map comparing British Isles jurisdictions

Route	Scottish Undergrad. Law	Scottish Non-Law Grad.	English Undergrad. Law	English Non-Law Grad	NI Undergrad Law	NI Non-Law Graduate	RoI Undergrad Law	RoI Non-Law Graduate
<b>Undergraduate degree</b>	4 years <sup>79</sup>	4 years	3 years	3 years	3 years	3 years	3 years (Though an increasing number of degrees are 4 years)	3 years
<b>Postgraduate degree/course</b>	N/A	2 years	N/A	1 year	N/A	2 years	N/A	N/A
<b>Entrance exams to Vocational stage</b>	No	No	No	No	Yes	Yes	Yes	Yes
<b>Traineeship necessary to enter vocational stage</b>	No	No	No	No	Yes	Yes	Yes	Yes
<b>Vocational</b>	8 months	8 months	8 months	8 months	1 year	1 year	6 months (PPC1) 3 months (PPC2)	8 months (PPC1) 3 months (PPC2)
<b>Work-based</b>	2 years	2 years	2 years	2 years	1 year <sup>80</sup>	1 year	21 months	21 months
<b>Total</b>	7 years	9 years	6 years	7 years	5 years	7 years	6 years (Though many take 7/8)	6 years (Though many non-law graduates take a conversion Diploma to assist with entrance exams)

NB: The vocational stages are given in month form to show exactly how long they are. The totals are rounded up to the nearest year.

<sup>79</sup> It is acknowledged that undergraduate degrees in Scotland could be a year shorter.

<sup>80</sup> The postgraduate stage sees vocational and training combined in Northern Ireland by way of an apprenticeship.

Table 25: Educational costs map comparing British Isles jurisdictions

Route	Undergraduate degree	Postgraduate degree	Entrance examinations to vocational course	Vocational course	Total educational fees
Scotland (law degree)	No fees for Scottish domiciled students.  Universities may charge up to £9k to rUK students.  Tuition fee loan available.  Repayment begins once earnings threshold reached.	Not applicable	Not applicable	Depending on provider £5.5k - £7.5k  No grants are available.  Loans of up to £3.4k are available to all.	£5.5k - £7k
Scottish (non-law degree)	As directly above	2-year accelerated LLB (circa £9k per annum)	Not applicable	As directly above	£23.5k to £25.5k
English (law degree)	Up to £9,000 fees (per annum). Tuition fee loan available.	Not applicable	Not applicable	£10k to £14k	£37k to £41k
English (non-law degree)	As directly above	Graduate Diploma in Law (£7.5k to £9.5k)	Not applicable	As directly above	£48.5k to £50.5k
Northern Irish (law degree)	£3,575 for Northern Irish students. Tuition fee loan available.  Up to £9,000 charged to rUK students.	Not applicable	Not applicable	A year at the Institute of Professional Legal Studies or the Graduate School of Professional Legal Practice  The fees are £7,400 to £8,500.	£17.7k

Northern Irish (non-law degree)	See above	Masters in Legal Science (£4,400 per year)	Not applicable	As directly above	£26.4k
Republic of Ireland (law degree)	€2,500 contribution fee (x3 as paid yearly)  (£2,100 x 3 = £6,300)	Not applicable	€410 for Preliminary Exams €940 (8 x €105 for FE-1)  (£1,150)	PPC1 - €8,3k PPC2 - €4.5k  (£10.8k)	£18.2k
Republic of Ireland (non-law degree)	€2,500 contribution fee (x3 as paid yearly)  (£2,100 x 3 = £6,300)	Not applicable	€940 (8 x €105 for FE-1)  (£800)	PPC1 - €8,3k PPC2 - €4.5k  (€12.8k = £10.7k)	£17.8k

NB:

- Tables 24, 25 and 26 above should be considered in light of Table 3 on page 21.
- The nature of the fees is different in each of the jurisdictions. The nature of a given tuition fee matters. For instance, a delayed tuition fee total of £27k may well be less off putting to a student than an up-front fee of £3k.
- The above does not take into account debts such as student loans, credit cards, overdrafts etc. Nor does the above take into account living costs (eg rent, heating, food, etc) during this time. Nor does it take into account income generated over the course of the route to qualification (eg part-time work)

The Society is aware of some Diploma providers allowing staggered payment of Diploma fees. The Society is also aware of some Diploma providers offering numerous bursaries to students from SIMD20 and SIMD40 backgrounds.

Table 26: A visual representation of routes to qualification across the UK & Ireland<sup>81</sup>

Timeline	Scottish solicitor (standard route)	Scottish advocate	English solicitor	English barrister	Northern Irish solicitor	Irish solicitor	Scottish solicitor accelerated degree route	English solicitor non-law graduate	Northern Irish non-law graduate
1	Undergraduate degree (LLB Hons)	Undergraduate law degree (LLB)	Undergraduate law degree (LLB)	Undergraduate law degree (LLB)	Undergraduate law degree (LLB)	Undergraduate degree	Undergraduate non-law degree	Undergraduate non-law degree	Undergraduate non-law degree
2									
3									
4			Legal Practice Course	Bar Professional Training Course	Work-based learning Institute of Professional Legal Studies	PPC1		Graduate Diploma in Law	Masters in Legal Science
5	Diploma in Professional Legal Practice	Diploma in Professional Legal Practice	Work-based learning	Work-based learning	Work-based learning	Work-based learning	Accelerated LLB	Legal Practice Course	
6	Work-based learning	Work-based learning			Qualified	Work-based learning		Qualified	Work-based learning
7			Qualified	Qualified	Qualified	Qualified	Qualified	Diploma in Professional Legal Practice	Work-based learning
8	Qualified	Devilling	Qualified	Qualified	Qualified	Qualified	Work-based learning	Qualified	Qualified
9	Qualified	Qualified	Qualified	Qualified	Qualified	Qualified		Qualified	Qualified
10	Qualified	Qualified	Qualified	Qualified	Qualified	Qualified	Qualified	Qualified	Qualified

<sup>81</sup> The Northern Irish model is an integrated course and can be taken at either the Institute of Professional Legal Studies or the Graduate School of Legal Education



## Comparisons with the European Union

295) There are large differences between routes to qualification across Europe. Some examples<sup>82</sup>:

- **Belgium** - The academic requirement is the qualification of *Licence en droit*. The period of study is five years. After this there is a three year training period with a qualified *avocat*.
- **Denmark** - The intending *advokat* will have to complete a law degree (five years) and professional training (three years). During the professional training period, intending *advokats* have to follow a designated trainee programme taught by the The Bar and the Law Society. At the end of the three years a written test (primarily on ethics and regulatory issues) is sat and there is also a procedural test either in the form of litigating a real court case or in a moot court.
- **Finland** - Three universities run the law degree which is necessary for becoming an *advokat/ asianajaja*. The minimum length of time for completion by a full time student is four and a half years, though it can take five to six years. Legal training follows the academic stage. This four year period includes at least two years being supervised by a law firm and must include successfully passing set examinations.

The length varies as students can choose in which order and what time he or she takes various courses from the university.

Students also have to pass an entrance examination to gain admission to a Finnish law faculty. Each of the three faculties organise the examinations themselves and the requirements vary between faculties.

- **France** – To become a lawyer (*avocat*) in France, a candidate must obtain an undergraduate degree (three years) and then a Master of Laws (*Diplôme de maîtrise en droit*).

She must then complete an examination to enter one of the *Centre Régional de Formation à la Profession d'Avocat* (CRFPA) which provides an 18 to 24 month

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<sup>82</sup> The Society is grateful to colleagues from Bar associations and law societies around the world for their detailed expositions of their routes to qualification.

course. At the end of that course, assuming a pass, she will be awarded a *Certificat d'aptitude à la Profession d'Avocat*.

The examination to enter the CRFPA is dealt with by each university and is not a national examination, which can create discrepancies between the universities and the level of access between the various universities and CRFPA.

Unlike in Scotland, it is accepted and applied that the CRFPA will primarily accept students coming from the universities in the same province. Students from universities outside the province are accepted to a CRFPA in a different province only if the student has a valid reason to apply for admission to another CRFPA.

The 18-24 month course<sup>83</sup> is broken down as follows:

- six months at school with academic lectures and some time spent in law firms;
- six months at an organisation related to a professional project or interests of the student (NB: it does not need to be a law organisation but it must be in relation with the training of the future lawyer, eg charities, not-for-profit organisations, enterprise etc.);
- six months at a law firm as a trainee *avocat*.

Reports are made on the two periods with organisations, and marks are given which are taken into account for the final examination.

- **Germany** - Lawyers in Germany have to go through two phases of legal education although, due to the federal system, the training differs in each state.

The route comprises four and a half years of academic study and ends with a formal written and oral examination. This exam is the first of two organised by the *Justizprüfungsamt* (the competent authority for the state exam). As well as this, there is an extra examination in one specific field of law chosen by the student. This exam, *Schwerpunktbereichsprüfung*, is organised by the university. The score of this university exam goes with 30% in the final score of the first exam.

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<sup>83</sup> The course is formally 18 months long but actually takes 24 months once holidays and examinations are taken into account.

After passing the first exam, the candidate has to undertake a two-year legal traineeship (*Referendariat*). This traineeship is organised by the Federal States. This two-year period consists usually (with slight variations from state to state) of:

- three-month training with a judge
- three-month training with a prosecutor
- three-month training in an administration office
- nine-month training with a lawyer
- four-month institutional training or upon candidate's personal choice.

After the completion of the legal traineeship the candidate has to take the second exam organised by *Justizprüfungsamt* (similar to the first exam organised by the same organisation). This exam has a greater number of questions on procedural law and an oral presentation of a file.

- **Italy** – To become an Italian lawyer, an applicant must undertake a five year law degree which is followed by an 18 month apprenticeship and professional examination.
- **Netherlands** – To become an *advocaat* an individual must hold a Bachelor of Laws and a Master of Laws by a university as specified in the Dutch Higher Education and Scientific Research Act having passed a final examination in the field of Dutch Law. The individual must also have met the requirements of the Decree on Legal Profession Entry Requirements.

If there is no reason to object to the applicant s/he is sworn in and will be automatically a member of the Netherlands Bar Association.

The *advocaat* starts as a legal trainee (*advocaat-stagiaire*) and is obliged to work under the supervision of a *patroon* (mentor) for three years. The *advocaat-stagiaire* has to meet all educational obligations (including the professional education programme of 2.5 years). Once these have been met the *advocaat-stagiaire* can become a fully qualified *advocaat*. It is estimated by the Netherlands Bar Association that the vocational course taken during the traineeship will cost around €18,000.

- **Portugal** – Advocates (*advogados*) have very wide, and nearly exclusive, powers of representation in courts and of legal consultancy. The usual route to qualification is a five year degree and two year traineeship followed by Bar examinations.

There is also the profession of the *solicitador*. This self-regulating profession performs specific minor juridical acts.

- **Spain** – To become a lawyer in Spain, an individual must undertake five years of study at a university. The next step is to undertake an offering run by the Bar Schools of Legal Practice and Universities. This is a split between a vocational training course and an internship. There is also a final examination (this will be formally introduced in the first six months of 2014).

## **Comparisons outwith the European Union**

### North America

296) The USA and Canada both favour a system of postgraduate legal studies, meaning that qualification is typically an expensive and lengthy process.

#### *USA*

297) Precise requirements vary from state to state. However, generally, this means that individuals intending to practise as a lawyer need to:

- a) gain an undergraduate degree (usually four years);
- b) sit an entrance examination to enter law school;
- c) gain a three-year Juris Doctor degree;
- d) pass state Bar examinations.

#### Canada

298) Similarly to the United States, individuals becoming lawyers in Canada will:

- a) Undertake a non-law Bachelor's degree (eg BA, BSc, BComm). It is possible to enter law school with a three year degree; the overwhelming majority of applicants will complete a four-year undergraduate degree.
- b) All Canadian law schools require candidates to sit the Law School Admission Test.
- c) Undertake a three-year Juris Doctor (JD) degree.

d) Upon completing law school, individuals must article (ie work under supervision) for 10 months and successfully complete a Bar Admission Course. The Bar Admission Course is a five-week Skills & Professional Responsibility Programme plus two compulsory examinations.

299) There are moves away from this in some states and territories.

300) In the United States, New Hampshire has introduced an innovative model which sees JD students undertake simulated and clinical legal practice<sup>84</sup>.

301) In Canada, Ontario is piloting a Law Practice Programme at its route to qualification. The Law Practice Programme<sup>85</sup> provides an alternative for students who fail to find an articling role at a law firm. Rather than undertaking articling they will, instead, take four months additional classroom training and an unpaid, four-month co-op placement.

302) It is understood that the plan is for many of the co-op placements to be with smaller firms, law centres and legal clinics (who typically do not offer articulated roles).

303) There are some concerns in the Canadian profession that this will lead to a two-tier system (and that those who have been through the Law Practice Programme will be viewed poorly in the market). Moreover, there are access concerns regarding an additional course and time spent doing unpaid work.

### Australasia

#### *Australia*

304) To be admitted as a solicitor (with a restricted practising certificate) in New South Wales an individual must:

- a) Acquire an LLB
- b) Undertake Practical Legal Training incorporating coursework and work experience. The coursework is 15 weeks of full-time or 30 weeks part-time study. The work experience consists of 75 working days (or 15 working weeks). This can also be done full-time or part-time.

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<sup>84</sup> <http://law.unh.edu/academics/jd-degree/daniel-webster-scholars>. This seems like an accelerated LLB with a PEAT 1 programme integrated into it as part of the third year.

<sup>85</sup> <http://www.lsuc.on.ca/LPP/>

- c) Continuing Professional Education: two self-assessable parts being a workbook and seminars (accessible online).

Having completed parts (a–c) above an individual could be admitted as a solicitor and get a job as a solicitor in a firm/government department under supervision only.

305) To move from a restricted practising certificate to an unrestricted or principal solicitor practising certificate an individual must:

- a) Work under supervision for at least two years;
- b) Make an application to the Law Society for an unrestricted practising certificate and must be able to demonstrate they have completed practice in several areas: property and conveyancing; criminal; and probate. This must be certified by a supervising solicitor and obtain professional indemnity insurance.
- c) Complete a practice management course.

306) In Australia there is also a “*sliding device*” which allows additional electives to be undertaken to reduce the amount of time needed during the work-based learning phase.

#### *New Zealand*

307) To be admitted as a solicitor in New Zealand, the most common route is:

- a) To undertake a four-year LLB
- b) Complete the Professional Legal Studies Course (PLSC)
- c) The PLSC is a competency-based skills training programme that prepares trainee lawyers with the skills and knowledge required for practice in New Zealand. The PLSC can be undertaken in a number of ways: a 13-week course onsite and full-time; full-time via two nine-week long modules; or online via 15.5 weeks online and 3.5 weeks onsite.

## **Section 8: Comparing the route to qualification as a solicitor against other professions in the UK**

308) This section compares the standard route to qualification as a solicitor in Scotland against other professions in the UK.

309) How a profession develops its route to qualification will be contingent on a number of factors. Such factors might include:

- The nature of the market that the profession operates in (eg professions where the state is the largest employer are likely to be different to market-based professions).
- The size of the profession.
- The size of firms in the profession.
- The nature of the work that the profession undertakes and whether there are jurisdictional restrictions in place.
- The role of the profession and the degree of monopoly rights over an area of activity that profession has.
- The view – from government and wider society – of the social utility of the profession.
- The degree of specialisation (and regulation of that specialisation) post-qualification.
- Whether a specified undergraduate degree is necessary to enter a profession or whether all that is needed is an undergraduate degree of any sort.
- Historical accident/anomaly.

310) On the next page is a table which compares the length and nature of the routes to qualification across a number of professions.

311) Some professions will have a nationwide recruitment mechanism for the work-based stage (eg dentistry) whilst others allow organisations to recruit as they see fit (eg law).

312) Some professions during their work-based stage have exams at the end of the course (eg accountancy) whilst others do not. An alternative is that used by the Royal Institution of Chartered Surveyors where individuals require to meet competencies at the end of their work-based learning and are also interviewed by a panel of experts.

Table 27: A comparison of routes to qualification across professions

Timeline	Solicitor	Accountant	Actuary	Architect	Dentist	Doctor	Surveyors	Social Workers	Teachers	Trade Mark Attorneys
1	Undergraduate degree (LLB Hons)	Undergraduate degree	Undergraduate degree	RIBA Part 1	BDS degree	MbChb Degree	Undergraduate degree	Undergraduate degree	Undergraduate degree	Undergraduate degree (generally science or engineering)
2										
3										
4				Professional Experience						
5	Diploma in Professional Legal Practice	Work-based learning	Work-based learning	RIBA Part 2	Work-based learning	Foundation Training	Work-based learning	Postgraduate Diploma/MSc Social Work	PGCE/PGDE	Certificate in Trade Mark Law and Practice
6	Work-based learning						Day release Week release Examinations Authorised trainer		Most students are allowed a day each week to study for examinations.  15 examinations Authorised trainer	Work-based learning
7		Qualified	Qualified	Qualified	Qualified	Qualified				
8	Qualified	Qualified	Qualified	Work-based learning	Qualified	Run through, Speciality, or GP training (generally takes three to 7 years)	Qualified	Qualified	Qualified	Qualified
9	Qualified	Qualified	Qualified	Qualified	Qualified		Qualified	← Qualified	Qualified	Qualified
10	Qualified	Qualified	Qualified	Qualified	Qualified		Qualified	Qualified	Qualified	Qualified



## **Section 9: The War for Talent, newly qualified solicitors, and retention**

### **War For Talent**

313) There are – or at least should be – worries that the Scottish legal professions are in danger of losing the war for talent.

- a) A Scots LLB graduate, with a first class honours degree, has numerous options ahead of her. She could (a) proceed to the DPLP and then undertake her traineeship before qualifying as a Scottish solicitor (b) apply to a large English firm and convert to English law via the GDL and LPC (c) leave law altogether and work for an accountancy firm, management consultancy, investment management firm, technology firms<sup>86</sup> or other graduate employer.

Option (b) may well turn out to be a particularly attractive one to many graduates of the Scots Law LLB. It may take longer for them to qualify into England but it is more likely that their course fees (both GDL and LPC) will be covered, maintenance will be paid by the firms as they study, and in due course they will be paid considerably more as both a trainee solicitor and as a newly qualified solicitor than their Scottish counterparts.

Admittedly, the competition for training contracts is fierce with the larger English firms. It is fiercer still when one considers the numbers of individuals studying the LPC. According to *The Lawyer*<sup>87</sup>, in England and Wales in 2009/10, there were 11,370 full-time and 3,140 part-time LPC places compared to 4,874 newly registered training contracts. (NB: These are places available, not places taken!)

- b) A non-Scots Law graduate, possibly with a first class honours degree in political science, has an even more obvious choice ahead of her.

In Scotland, to qualify, she will have to undertake a two-year accelerated degree, a one-year DPLP and a two-year traineeship.

If she moves to England, she will have to do the GDL (one year), LPC (one year) and a two-year traineeship. She too is more likely to see courses paid for, maintenance

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<sup>86</sup> [http://online.wsj.com/article\\_email/SB10001424127887323528404578452841343130084-IMyQjAxMTAzMDAwMTEwNDEyWj.html](http://online.wsj.com/article_email/SB10001424127887323528404578452841343130084-IMyQjAxMTAzMDAwMTEwNDEyWj.html)

<sup>87</sup> <http://l2b.thelawyer.com/too-many-lpc-students-where-does-responsibility-lie/1012431.article> .

given and higher salary rates. Indeed, if she had her heart set on Scottish qualification it might be quicker for her to qualify in England and then undertake the Intra UK Transfer Test. Even if it were a longer process, she'd be qualified in both jurisdictions.

314) In June 2013, one of the world's largest law firms, Ashurst, announced they were to open a Legal Process Outsourcing unit (LPO) in Glasgow<sup>88</sup>. Similar announcements in Wales occurred in October 2013<sup>89</sup> and numerous large firms have opened similar operations in Belfast in recent years. It is conceivable that more LPOs will move to Scotland given the high quality of our LLB and Diploma graduates.

315) It has been suggested that LPOs moving to Scotland may look to the DPLP cohort for their staffing needs<sup>90</sup>. If this becomes a reality there may be an intriguing twist on the war for talent within Scotland: If an LPO offers a DPLP graduate £26-28k per year for two years how many individuals will choose to work for a City law firm at nearly £10k per year more than the average recommended first year salary? How many will choose to eschew £20k over the course of two years to become a solicitor?

### **Newly qualified solicitors**

316) Previous sections have considered how individuals access the LLB, the Diploma and the traineeship. The final area of concern for this document is the transition from traineeship to newly qualified solicitor.

317) Since 2010, the Society has compared the number of individuals who hold a Practising Certificate (tied to a practice unit) against those who discharged their training contract the previous year.

318) As can be seen in Table 28 below, that percentage has risen over the last three years.

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<sup>88</sup> <http://www.thelawyer.com/news-and-analysis/latest-news/ashurst-to-open-low-cost-support-base-in-glasgow/3005899.article>

<sup>89</sup> <http://www.thelawyer.com/newlaw-solicitors-expands-cardiff-base-with-support-from-welsh-government/3010857.article>

<sup>90</sup> This is analogous to the small number of DPLP graduates who enter (in particular) the Big Four accountancy firms each year.

Table 28: Traineeships discharged versus working as a solicitor the following year

Year traineeship ended	Working as a solicitor 6 months into the following year
2010	79%
2011	85%
2012	86%

319) It should not be assumed that those not holding a Practising Certificate are all unemployed. It is true that some individuals will not be working but the Society is aware of a significant number of people who finish their training contract and either (a) opt out of law for good (b) opt out of law for some time (eg go travelling) (c) will work in law but not with a full Practising Certificate (eg working in a non-reserved area and retaining themselves on the Roll).

320) The nature and type of contract is not known in the table above. In August 2013 it came to light that 12 large UK law firms denied their trainees permanent employment on qualification and offered short-term contracts or fixed-term contracts instead. The Society is unclear how widespread this practice is in Scotland<sup>91</sup>.

### Retention within the legal sector

321) Via feedback from Bar associations, membership organisations and individuals it became clear that there are significant issues within certain areas of the profession, particularly in the legal aid sector.

322) One commenter noted *“almost everyone in my generation is jealous I’ve left the legal profession. Everyone wants to leave and many are actively looking for a way out”*. The commenter went on to note that this was particularly true of new lawyers in legal aid firms but was true, to a lesser extent, across the profession.

323) The consistent message we heard, in particular from those working in legal aid, was that low rates of pay, uncertainty in the market concerning the challenges of the potential introduction of contracting and further legal aid cuts would lead to fewer people wanting to enter that sector and would inevitably force some to leave.

<sup>91</sup> <http://www.rollonfriday.com/TheNews/EuropeNews/tabid/58/Id/2867/fromTab/36/currentIndex/0/Default.aspx>

- 324) Feedback from Bar associations and solicitors was that there are substantive and substantial long-term worries about where the next generation of defence agent will come from.
- 325) Whilst this section concerns qualified lawyers, there is a particular concern regarding traineeships in the legal aid sector. Many in the sector would like to take trainees but feel – given the restrictions on what a trainee can do in first year (and what they will be paid to do), the economic environment, and the uncertainty in the market mentioned above – that they cannot do so.
- 326) This is particularly problematic as there is a large section of undergraduate law students who would like to become criminal defence solicitors (especially when considered in light of unmet legal need)
- 327) There was formerly a practice in England and Wales where funding to take trainees was given to firms undertaking legal aid work. This was discontinued in 2010 but had been successful in stimulating the numbers of trainees, and subsequently Newly Qualifieds (NQs), who worked in defence firms. This system was never adopted in Scotland
- 328) Consideration should be given to how firms in the legal aid sector can be assisted to take on trainees. This will not be a matter, solely, for the Society but will require input from the profession, Bar associations and representative bodies, the Scottish Legal Aid Board and Government.

## **Section 10: Other matters**

### **Internships**

329) Many firms – particularly the mid-sized to large firms – have structured internship programmes which typically take place over the summer. Firms will often treat these internship programmes like extended interview procedures and many of those who gain such internships will, in due course, train with that firm. Indeed, the presence of any internship on an application form is a positive indicator for other firms.

330) Alan Milburn, in his series of reports on *Unleashing Aspiration*, condemned the “informal economy” of internships and work experience placements especially when these replace paid jobs or are an essential pre-requisite to them. Milburn called for employers to select interns transparently and pay them at least expenses and preferably a wage.

The Milburn Report acknowledged the overwhelming evidence about the advantages that internships confer when competing for entry to professional jobs.

331) *The Telegraph* reported in June 2013<sup>92</sup> that students who had undertaken internships were three more likely to get jobs than those who did not. Research shows that some 36% of students completing a work experience placement had received at least one definite job offer by the Easter of their final year compared with just 11% of other undergraduates. The report goes on to say that “*work experience is no longer an optional extra*”.

332) According to our 2013 Diploma survey it seems that, in a Scots law context, this trend is even stronger. There was a strong correlative link between undertaking summer internships and those gaining traineeships. A total of 75.4% of respondents who had a summer internship or similar work experience at a law firm had a traineeship lined up. Of those who had not undertaken an internship – which was a far smaller sample size (and should therefore be treated with considerable care) – only 39.1% had a traineeship in place by the time the Diploma survey closed.

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<sup>92</sup> <http://www.telegraph.co.uk/education/educationnews/10115439/Student-interns-three-times-more-likely-to-get-top-jobs.html>

333) Interest in internships in the legal sector has grown in recent years. Eilidh Wiseman and Val Dougan, of Dundas & Wilson CS, wrote in the Society's *Journal* on this matter in an article called "*Should you be paying your interns?*"<sup>93</sup>

### **Equality and diversity**

334) The Society monitors equality and diversity via an equality and diversity survey every three years. The most recent of these was published in October 2013<sup>94</sup>.

335) The legal profession is subject to perceptions about equality and diversity that are out of date. For instance, the twitter account of the SNP Students (when discussing a resolution about fair access to the legal profession) tweeted in early June 2013 "*The Legal Profession is still dominated by the white, male, privately educated middle classes and this lack of diversity is harmful*".

336) Whilst there are concerns about equality and diversity within the profession we know that the biggest single group in the profession is state-educated women under 35.

337) There are differences between access to and progression within a profession. This report's remit was to focus on access but it should be noted that there are concerns regarding progression within the profession.

338) CFALP has called on socio-economic monitoring of those entering the profession and for the Society to work with universities to see how this changes (if at all) as individuals progress through the route to qualification.

339) The Society does not, at present, hold data on all of the nine protected characteristics under the Equality Act 2010<sup>95</sup> and, therefore, it would seem anomalous to hold data on socio-economic status. It is suggested that the Society continues to work with universities in this regard and monitors socio-economic data by way of the equality and diversity survey every three years.

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<sup>93</sup> <http://www.journalonline.co.uk/Preview/1011540.aspx#.URUK8B1WzTo>

<sup>94</sup> <http://www.lawscot.org.uk/media/680687/profile%20of%20the%20profession%202013.pdf>

<sup>95</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

## **Nepotism, The Old Boys Network and The Old Girls Network**

340) There are ongoing concerns relating to nepotism within the profession. This concept can rear its head in a number of ways, eg a solicitor employing a relative as a trainee<sup>96</sup>; a solicitor employing the relative of a client, of a friend etc.

341) A frequent accusation levelled at all professions is that it is beholden to “*the old boys network*”. Such a network is often blamed for the higher proportion of the pupils from certain schools, and the graduates of certain universities, within the profession.

In the 2013 Equality Survey of the profession:

- Nearly three quarters of the profession attended state secondary school (72%) and nearly one third of the profession attended a private secondary school (29%). (Some attended both, hence the overlap).

For reference: It is estimated around 5% of pupils in Scotland are educated at private schools. It is estimated around 12% of students at Scottish universities are privately educated.

- Nearly half of all respondents (48%) indicated that neither of their parents had attended university. Only 22% of respondents claimed that both had attended university.
- When asked about their parents’ occupation at the start of their law degree only 7% of fathers and 2% of mothers worked in the legal professions.

342) In the Scots legal profession, there are occasional accusations that graduates of certain universities are favoured in the traineeship market over others. There are accusations that employers will only recruit from Russell Group universities<sup>97</sup>.

343) Given that 48% of the profession is female and given that for over a decade women have outnumbered men as newly admitted solicitors there have been occasional suggestions of an “*old girls network*”. Such criticism suggests that the preponderance of female entrants to the profession is reflective of a bias within the recruitment procedures of law firms.

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<sup>96</sup> This is a knotty issue: in some instances such as family businesses it may make perfect sense to employ a relative. Moreover, if a solicitor employs a family member as a trainee solicitor there is no guarantee that they would have offered the traineeship had said relative not needed a traineeship.

<sup>97</sup> There are only two members of the Russell Group that offer the LLB in Scotland – Glasgow and Edinburgh.

344) It is likely, however, that the number of women entering the profession at traineeship and NQ stage is in line with the number of women entering the LLB and subsequently the Diploma.

345) There are other concerns regarding access. The Society is aware of concerns that older graduates often feel that they are unfairly treated in recruitment processes.

346) The Society’s Diploma research in 2013 suggested that there was no discernible difference between those who had undertaken the LLB as an undergraduate subject and those who had done an accelerated LLB in terms of traineeships.

*Table 29: 2013 – LLB or accelerated LLB versus traineeship*

<b>LLB</b>	<b>Traineeship in place before Diploma</b>	<b>Secured traineeship during the Diploma</b>	<b>No traineeship as of March 2013</b>
Undergraduate	50.6%	16.0%	33.3%
Accelerated	50.3%	13.3%	33.3%

347) Those who had undertaken the accelerated degree were a far smaller group than those who had undertaken the undergraduate degree but this is still an interesting parallel.

348) Conversely, there is sometimes a perception amongst those individuals who have undertaken the “standard route” to qualification and who do not have a traineeship that there is a bias in the system towards candidates with a non-law undergraduate degree and/or greater life experience.

### **Paralegals**

349) The *Unleashing Aspiration* report recommends (Recommendation 72) that “*Each profession should examine the potential to devolve functions to paraprofessionals*”. This is followed with Recommendation 73 that “*The professions should work with the Government and others to set out clear progression maps from paraprofessional roles, and ensure that training systems support these routes*”.



350) The Scottish legal profession is ahead of the game here. The profession has, due to market forces, noted the potential of paraprofessionals. The Society has launched the Registered Paralegal Scheme. There are currently developments relating to a Modern Apprenticeship in Paralegal Practice in Scotland.

### **Matters relating to the Admission Regulations**

351) A number of matters relating to the Admission Regulations might also be considered in regards fair access. These are:

- The regulations around Diploma validity.
- The various regulations regarding secondments and the requirement to train within Scotland.
- The regulations around numbers of trainees at various types of practice unit.

352) Each of the regulations has robust arguments in its favour. However, the Society might wish to re-examine these to ensure fair access.

353) The Admissions Sub-Committee has noted that it encourages and supports flexible traineeships wherever it is satisfied that the trainee will be adequately supervised and will be trained towards the PEAT 2 Outcomes.

354) A move to an Outcomes-based approach does lead to the potential for a discussion regarding whether or not the PEAT 2 Outcomes can be met in ways other than solely via the training contract. This matter should be considered by the Education and Training Committee and the Admissions Committee of the Society in due course.

### **Access to the Bar**

355) It is not the Society's place to comment on how the Faculty of Advocates manages its admissions processes. It is understood, however, that the last two years have seen comparatively high numbers of those commencing training to become an advocate.

356) There are ongoing concerns about the nature of devilling and how individuals can access the advocates' profession.

## **Section 11: Proposed programme of work**

### **Data**

1. The Society will continue to collect, collate and publish data relating to fair access, including undertaking an annual survey of Diploma students, to inform its ongoing policy development. This will also include publishing SIMD data relating to the LLB and Diploma mentioned at various points in this report which, for reasons outwith the Society's control, it has not been available to be included within this report.

### **Access to the LLB**

2. The Society will encourage firms and organisations to support widening participation schemes such as Prime<sup>98</sup>. The Society should continue to support such widening participation initiatives.
3. As part of raising aspirations and attainment the Society should, in collaboration with organisations such as the SYLA and the Scottish Universities Law Clinic Network, institute a targeted Street Law programme for Scottish schools.
4. The Society should host a conference inviting those involved in fair access at universities, also involving representatives from firms and organisations and FE institutions, to share best practice.
5. The Society should consult with the profession on the desirability and practicality of an alternative route to qualification that covers more than just an alternative to the LLB. Consideration should be given to how, if at all, the alternative route to qualification could be an apprenticeship route to qualification. This work is already underway as a result of a review of the current "alternative route".
6. The Society should continue to encourage and support providers to deliver innovative provision of the LLB and Diploma and, in particular, should encourage consideration of how the two courses could be combined, already allowed under the Society's accreditation process.

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<sup>98</sup> <http://www.primecommitment.org/for-law-firms>

7. In early 2014, the Society will publish a directory of financial support for law students at all universities across Scotland. This should include engaging with educational trusts across Scotland.

### **Internships**

8. In 2014, the Society will publish guidance regarding the payment of interns.
9. The Society should also liaise with Adopt an Intern to see if a specialised programme for unemployed Diploma graduates is a possibility.

### **Access to the Diploma**

10. The Society, working with the Joint Standing Committee, should continue to lobby the Scottish Government for increased and better financial support for Diploma students.
11. The Society should increase awareness of the Pritchard Trust and encourage donations and fundraising for that trust. As part of this process further consideration should be given to how, if at all, the profession can assist.
12. The Society should liaise with other professional bodies about the creation of a new banking product for those on the route to qualification across various professions.

### **Access to traineeship**

13. The Society should publish best practice guidance for training organisations on recruitment, particularly focusing on the impact trainee recruitment might have on fair access to the legal profession. The Society should work with the LEADS group in this regard. As well as guidance, the Society should consider free CPD in this area.
14. Under the Admission Regulations 2011 a Non-PEAT 1 Traineeship is allowed under certain circumstances which are defined by the Admissions Sub-Committee of the Law Society of Scotland.

At present such circumstances are generally based around the inability of an individual to access the Diploma (for example, an individual living a considerable distance from a Diploma unit and who also has caring responsibilities may be eligible).

The Society should consider the circumstances which are applicable for Non-PEAT 1 traineeships.

15. The introduction of the PEAT 2 Outcomes has given firms a framework to work within during the training contract.

Given developments within the legal market and wider economy, the Society should consider whether there are other ways in which the PEAT 2 Outcomes can be met and evidenced.

16. The Education and Training Committee and Admissions Committee – as part of a wider review of the Admissions Regulations 2011 – should consider what impact the regulations of the training contract have on fair access.

17. The Society will implement independent reviews of PEAT (both PEAT 1 and PEAT 2) in 2014 and 2015.

18. The Society should continue to work with Bar associations and other representative bodies to continue to promote flexible traineeships. Flexible models of training should continue to be considered by the profession.

19. The Society should continue to promote traineeships to firms and organisations that currently do not take trainees and give thought to sector specific support.

20. The Education and Training Committee should consider what incentives – if any – could be offered to firms to hire trainees.

21. The Society should encourage the Scottish Legal Aid Board to outline its thoughts as to how individuals will join the legal aid sector in the future.