OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 26 June 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 26 June 2018

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JUSTICE COMMITTEE
20th Meeting 2018, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
Maurice Corry (West Scotland) (Con)
*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Mairi Gougeon (Angus North and Mearns) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Liam McArthur (Orkney Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Julie Brannan (Solicitors Regulation Authority)
Elizabeth Comerford (University of Dundee)
Lord Eassie (Joint Standing Committee for Legal Education in Scotland)
Tim Haddow (Former Co-ordinator, Campaign for Fair Access to the Legal Profession)
Rob Marrs (Law Society of Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 26 June 2018

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 20th meeting in 2018. We have received apologies from Maurice Corry.

Agenda item 1 is a decision on whether to take in private item 6, which is consideration of our approach to the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill. Do we agree to take item 6 in private?

Members *indicated agreement.*

Professional Legal Education

10:00

The Convener: Agenda item 2 is a round-table evidence session on professional legal education. This is the committee's first consideration of the topic, and it is an opportunity to explore the issues that relate to legal education, including routes to qualifying as a solicitor and as an advocate, funding, and barriers to entry to those professions. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

I welcome all the witnesses to the committee's round-table evidence session and invite them to introduce themselves briefly. I am Margaret Mitchell, convener of the Justice Committee.

Gael Scott (Clerk): I am one of the clerks to the committee.

Stephen Imrie (Clerk): I am the clerk to the Justice Committee.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): I am the MSP for Mid Fife and Glenrothes.

Tim Haddow (Former Co-ordinator, Campaign for Fair Access to the Legal Profession): I am an advocate who came through the route to qualification, qualifying as a solicitor in 2015 and as an advocate in 2016. I have a particular interest in access to the profession. I campaigned on the issue while I was a student and worked on it while I was a trainee solicitor.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I am the MSP for Edinburgh Northern and Leith. I take this opportunity to declare two interests. First, I am a registered solicitor, and, secondly, during my diploma year, I was a member of the campaign for fair access to the legal profession and worked with Tim Haddow.

Lord Eassie (Joint Standing Committee for Legal Education in Scotland): My judicial title is Lord Eassie but my real name is Ronald Mackay. I am here in my capacity as the convener of the Joint Standing Committee for Legal Education in Scotland. Convener, do you want me to say something about the committee now, or should I come back to it later?

The Convener: It would not do any harm for you to say something briefly just now.

Lord Eassie: The Joint Standing Committee for Legal Education in Scotland has been around for a good number of decades, but when we were set up is a bit of a mystery. Our function is to bring together the professional bodies—the Faculty of Advocates and the Law Society of Scotland—and Scotland's law schools, in order that they can work together constructively in a co-operative manner in

the interests of legal education throughout Scotland.

In addition to those bodies, we also have representation from the diploma co-ordinating committee and the Judicial Institute for Scotland, which is responsible for the training of the judiciary and now includes justices of the peace. We are assisted in our work by three lay members. They were introduced to the committee relatively recently. The working of the committee has been greatly assisted by their presence and we appreciate the effort that they put in.

The Convener: That is helpful, because when we have the discussion, we will know when it is relevant to bring you in.

Lord Eassie: My role is as the convener of the committee rather than to represent a particular interest on the committee.

The Convener: I understand.

John Finnie (Highlands and Islands) (Green): Madainn mhath. Good morning. I am an MSP for the Highlands and Islands region.

Rob Marrs (Law Society of Scotland): I am head of education at the Law Society of Scotland.

Liam McArthur (Orkney Islands) (LD): I am the MSP for Orkney Islands. I declare an interest as the parent of a son who is about to study law at the University of Dundee.

Liam Kerr (North East Scotland) (Con): I am an MSP for the North East Scotland region. I declare an interest as a member of the Law Society of England and Wales and the Law Society of Scotland. I am a current practising solicitor. As we are discussing access to the profession, it is important to say that I self-funded my way through the common professional exam and the legal practice certificate at what is now the University of Law in London. I became dual qualified for Scotland a few years later.

Julie Brannan (Solicitors Regulation Authority): I am the director of education and training at the Solicitors Regulation Authority, which is the regulator of law firms in England and Wales.

Mairi Gougeon (Angus North and Mearns) (SNP): I am the MSP for Angus North and Mearns.

George Adam (Paisley) (SNP): I am Paisley's MSP.

Elizabeth Comerford (University of Dundee): I was formerly a solicitor in private practice and I am still on the solicitors roll, although I am non-practising. My role now is as a diploma director at the University of Dundee, where I co-ordinate the diploma in professional legal practice.

Daniel Johnson (Edinburgh Southern) (Lab): I am the MSP for Edinburgh Southern. I should add that my wife is a practising solicitor, having qualified via law conversion in England. She subsequently qualified in Scotland and is, therefore, dual qualified.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I am the MSP for Strathkelvin and Bearsden.

The Convener: This is a round-table discussion, which is a less formal way of collecting evidence on a topic. It will allow for a more free exchange and enable the discussion to go in different directions, which is not always the case when we have a more structured question session with a panel.

If you want to speak, just attract my attention, or the clerk's attention, and I will bring you in. Your microphone will come on automatically. As usual, we will try to give as much of the speaking time as possible to our witnesses, although I know that our members have a lot of questions to ask on the subject.

I thank everyone who provided written evidence. That is always helpful to the committee.

Liam McArthur will ask our first question.

Liam McArthur: I have a general question. We have had a note on the various stages that are involved in qualifying as a solicitor and as an advocate. Could the witnesses detail what is involved in each of those stages and say what key points of learning are attached to each stage?

The Convener: Who thinks that they are best placed to give an overview of legal education and training in Scotland?

Rob Marrs: The main route—the route that the vast majority of people take—involves undertaking the LLB degree. Normally, it takes four years for an honours LLB degree, although it is possible to do it in three. That is the academic stage on the way to qualification. The Law Society sets a series of outcomes that require to be taught by universities and met by students. How universities teach those outcomes is up to the universities, so there is a bit of academic freedom for them in that regard.

It is important to remember that, depending on the university, between 40 and 50 per cent of the people who take the LLB course will not go on to further legal study. They might take that decision at the start of the course, because they do not want to become a lawyer, half way through the course, after they have realised that they no longer want to become a lawyer, or at the end of the course, for other reasons that I am sure that we will come on to. It is important to remember that the LLB course is not solely for legal practice.

After that academic stage, the person goes on to study the diploma in professional legal practice. We accredit that and, again, we set outcomes that require to be met. Up to 50 per cent of the course is what we call elective, which, again, gives providers significant freedom to play to their strengths and to link into their local market. The most obvious example is that the universities in Aberdeen that offer the diploma might well tailor their provision to the local energy and oil and gas sectors.

The other 50 per cent of the course, which we mandate, is core content. That ties in directly to the reserved areas of practice for solicitors—private client work, litigation and elements of property law and conveyancing. As well as that, tax is taught pervasively in the diploma course—it might be taught at the undergraduate level but it has to be taught pervasively at the diploma level. Similarly, legal ethics might be introduced in the LLB course, but they are mandated to be taught throughout the diploma course.

Then the person has a training contract, which can be either with a private practice firm—such a firm can be a sole practitioner all the way up to one of the largest law firms in the world—or with an in-house organisation. The biggest single hirer of trainees is the Crown Office and Procurator Fiscal Service.

It is a broad spread. We set outcomes that require to be met over the course of the two years. Those are quite broad, because negotiation for a large corporate firm may involve a similar underlying skill to negotiation as a procurator fiscal, but we do not go too deeply into that or it becomes difficult.

Throughout the training there are regular quarterly performance reviews. Trainees are required to undertake continuing professional development, to meet the outcomes and to be designated by a disclosure check and by their supervising solicitor as being a fit and proper person to be a solicitor in Scotland. Although people can be admitted half way through their training contract, at the end they are discharged as newly qualified solicitors and can work wherever they want to in the profession, or they can go to the bar. I cannot speak for how advocates become advocates, but I am sure that Tim Haddow can jump in on that.

The Convener: You said that the degree takes three or four years. Is there still graduate entry to a two-year course?

Rob Marrs: Yes, there is a graduate LLB, which takes two years. People generally need to have undertaken a previous degree to do that. There are occasionally exceptions—for example, if someone has significant work-based learning. On the whole, somebody will do an undergraduate degree in, say, history, politics, English or science and then move across to do a two-year accelerated course. A number of universities do that. One university offers the course online and pretty much all parts of the route to qualification can also be undertaken part time.

The Convener: That is helpful. It is interesting that people do not always do the degree with the intention of practising. It is looked at as a good general degree to have in order to go into a lot of different professions. Unless any of the witnesses have anything to add on training, we will move on to the more substantive questions. I see that Tim Haddow wants to add something.

Tim Haddow: I am not here to give evidence on behalf of the Faculty of Advocates, but I can speak to the process of qualifying as an advocate. The first point to acknowledge is that the scale is very much lower, in that between four and 10 people a year train as advocates, compared with 400 or 500 who train as solicitors. The second point is there is a great diversity of people. Usually, one or two people a year come straight from having qualified as solicitors, but there will be others who have worked as solicitors for a number of years. Indeed, some who have worked as solicitors for a significant period of time perhaps come to the bar instead of becoming a partner in a law firm, or perhaps they have even been a partner in a law firm and want to do something completely different. The profile of people coming into the advocates' profession is quite different from that of people coming in at the bottom end of the solicitors' profession.

Put very simply, the requirements for becoming an advocate in Scotland bolt on top of those for becoming a solicitor. The law degree requirements are not quite identical but they are very similar, and people then have to do the diploma and qualify as a solicitor. There are some routes around that but they are few and far between. Generally, people do what I did, which was to go through the law degree, the diploma and the traineeship. Then, they either come straight to the bar or practise as a solicitor first.

The process of training as an advocate involves spending a year doing what is called pupillage in England; in Scotland we call it devilling. People work for about nine months shadowing experienced advocates. During that time they receive some fairly specialist and intense advocacy training from members of the faculty and at the end, if they meet the right standards, they are admitted by the Court of Session to the office of advocate.

People do not have to pay for that period of training but neither are they paid for doing it, so they have to plan ahead for it. Scholarships are

available. From next year, the scholarships will be very much enhanced in comparison with those that have been available up until now.

10:15

The Convener: That is helpful. Before we move on to get an overview of education in England and Wales, which Daniel Johnson will explore, Liam McArthur and Liam Kerr have supplementary questions.

Liam McArthur: Rob Marrs's explanation was helpful. I am aware that not all universities offer the diploma. It would be helpful to understand the extent to which people move to a university in a completely different part of the country in order to do the diploma. He cited the example of Aberdeen. Would people with an interest in the energy sector gravitate there to do a diploma? Is it more likely that, if they can, people will do the diploma at the university from which they got their degree?

Rob Marrs: It is, to an extent, horses for courses. Sometimes people move away from where they undertook their undergrad studies. For example, a person originally from Glasgow may go to study in Aberdeen or Edinburgh, but they may return home to do their diploma at the University of Glasgow or the University of Strathclyde.

You are right that not all LLB-providing universities also offer the diploma. We accredit 10 LLB providers and there are six providers of the diploma. There is a bit of movement—it may be on an educational basis, because a student desperately wants to do a particular area of law or a particular elective, or it may be because they can live at home, which is cheaper. However, some people continue where they started—that is, they do Edinburgh-Edinburgh or Dundee-Dundee—because they like being there, it works for them and it is a far better place for their course.

Elizabeth Comerford: I echo that. The predominant reason why students move back to their home town to undertake the one-year postgraduate diploma course is that it saves costs. However, some are driven by the electives on offer at the individual diploma providers. Rob Marrs cited oil and gas in relation to Aberdeen. People would be aware of what universities offer through their websites, and that can often sway their decision.

The Convener: Some universities are more geared towards the technical side, while others are traditional, which might be a factor when someone is looking at where to study.

Elizabeth Comerford: We always look at emerging and relevant areas of law to give our diploma students the best job opportunities for practising locally.

Liam Kerr: Will Mr Haddow clarify a matter for me? Rob Marrs has described the standard process for becoming a lawyer in Scotland. If I am right, a person does a two-year training contract with a law firm and then decides whether they can afford one year of unpaid devilling with a view to becoming an advocate. I think that that contrasts heavily with the position in England and Wales. A person who decides to do a one-year bar vocational course instead of the LPC would then do two years of pupillage. Is it two years?

Julie Brannan: No, it is one year.

Liam Kerr: They do one year of unpaid pupillage. The unpaid period runs throughout a person's legal education in England and Wales in a way that it does not in Scotland. Is that correct?

Tim Haddow: I am not particularly familiar with the system in England—perhaps Ms Brannan can help. I think that there is a mandatory minimum award of about £12,000 for that year of pupillage. However, the bar practice training course—I think that that is the new name for the bar vocational course that you mentioned—costs about £16,000. In Scotland, people do not have to do the course, but they will already have paid to do their diploma.

The difference is that a lot of people do not come straight to the bar in Scotland. That is not just because they cannot afford to do so, although that might be a consideration for some. As Rob Marrs said, it is horses for courses. Some people want to work first as a solicitor and develop their interest in advocacy as they go through the profession; others might want to do it straight away; and other people might have family or other reasons for delaying coming to the bar.

In the year that I called as an advocate, three of us qualified through the Scottish solicitor route. I came straight from a traineeship; one of my colleagues had done three years in practice and two years working for a judge; and the other had been in practice for about 15 years—bizarrely, I was his trainee when I worked in the law firm, yet we devilled together. I repeat that it is very much horses for courses.

Daniel Johnson: Having heard that outline of how one can qualify in Scotland, I would find it interesting to compare and contrast with England and Wales, in terms of the academic requirements at university, the equivalent of the diploma, and the postgraduate routes.

Julie Brannan: The structure is broadly similar. We also have a tripartite system. We have the academic stage of training, which is either a law degree or another degree, and then the common professional examinations, as Liam Kerr

described. Then, for solicitors, there is the legal practice course and, for barristers, the BPTC, as you have heard. Then is there a training contract.

To give you a sense of the numbers coming through on the solicitors side, the number of students in England and Wales has increased enormously in recent years. About 26,000 students are starting a law degree each year and there are about 5,000 or 6,000 training contracts at the end of that process, so you can see the funnel. Added to that, we have a large number of people coming through the non-law degree route, particularly among those who go into the elite law firms; about 50 per cent of the people who are recruited into the big city law firms are non-law graduates, so it is very competitive to get the training contracts at the end.

As I will go on to describe in a moment, we are proposing a radical overhaul to that system, where we will have a national licensing exam called the solicitors qualifying exam, which everybody will take regardless of their route to admission. We will no longer specify particular pathways that people have to follow.

Daniel Johnson: How do those proportions compare with Scotland? You said that there are 26,000 students and 5,000 training contracts. Is there a similar funnel in Scotland or a narrower one? I understand that there is a one-year postgraduate qualification in England before people do the legal practice certificate, whereas in Scotland it takes two years. Why is that?

Rob Marrs: The numbers are not comparable. The rough numbers that we give are that around 1,300 law students commence across the 10 providers each year; obviously, there is a level of attrition over the four years as people drop out, which happens in all degree courses to some extent. Although the figures move around from year to year, it is a good rule of thumb to say that there are about 1,000 law graduates each year. Last year, 612 people started the diploma—of course, people do not necessarily do one following the other, because they may take some time out—and there were around 540 training contracts. That number has been remarkably similar over the past four years, and the number of training contracts has been between 530 and 550. We do not know what will happen in the future, but those are the figures and you can see that the funnel is not comparable.

Julie Brannan: The reason for the disparity in university places is that in Scotland, as I understand it, places at university are capped, whereas in England they are not capped at all, so universities can recruit as many people as they want to into their courses. Indeed, a number of Scottish universities, including Dundee, offer what we call a qualifying law degree for the purposes of admission as an English solicitor; students can do a degree in law in a Scottish university and then come south of the border, where we recognise that degree, and qualify as an English solicitor.

Daniel Johnson: You said that the solicitors qualifying exam will be agnostic about the route to admission. Can people literally do whatever they like so long as they pass the exam, a bit like taking the bar exam in the States? Is that the idea?

Julie Brannan: In a nutshell, that is absolutely the idea. I have described the most common route to admission as a solicitor in England and Wales, but we have a large number of routes. We have tried to inject some flexibility into the system by having alternative pathways to admission as a solicitor; there is also an overseas route to admission. The problem is that each different route to admission has its own assessment. We cannot justify having different assessments for admission, depending on the route that the person has chosen. Instead, we think that we need a single test to check that people have the competence to practise safely as a solicitor.

There will be a requirement that, by the time that a person is admitted as a solicitor, they have a degree or equivalent qualification. We expect that the profession of practising solicitor will continue to be predominantly a graduate profession, as it has been in the past. It has never been an exclusively graduate profession, and that will continue.

By focusing our regulation on a rigorous assessment at the point of admission, we think that we can inject flexibility into the routes or pathways to admission. We could, for example, have people qualifying through apprenticeships; we have already started to do that. There will be greater opportunities for people to learn while they earn. There will be greater flexibility, but there will be a better and more rigorous check of competence at the point of admission than we have at the moment.

Daniel Johnson: John Finnie will return to that point. Is the idea of a test—rather than looking at the means by which people have arrived at that point—something that the Scottish legal profession looks on with envy or revulsion, if I may put it glibly?

Rob Marrs: We tend not to use terms such as “envy” or “revulsion”. We have engaged positively on the matter with the Solicitors Regulation Authority. We have responded to three consultations and have put across our views. At this stage, we have no plans to mirror what the SRA is doing. We watch with interest what is happening south of the border, but it is not our direction of travel.

We are a professional body, and there are many cross-border entities that will operate in both

jurisdictions. We have not seen a significant push from anyone to go down the route of the SQE. That is not to say that it would be wrong to do so; it is simply that we are not being pushed to.

Elements of the route to qualification can be alternative. The area in which our members are keen to innovate, as I stated in my written evidence, is in creating a truly alternative route to qualification via apprenticeship. Large sections of the membership are keen to do that, as is the Law Society. We consulted on that last year.

We have no plans to go down a single assessment route—or, rather, the two-stage assessment model of SQE 1 and 2. However, we are keen to continue to look at apprenticeship and we are speaking to Skills Development Scotland about that.

The Convener: Lord Eassie would be well qualified to answer this question.

Lord Eassie: The JSCLES is aware of what is proposed in England and has given it careful consideration. None of the constituent bodies is in favour of going down that route. There are a number of reasons, one of which is that one of the drivers in England and Wales is seemingly the great variety of routes and qualifications and the inconsistent standards that are seen as a result. That situation does not exist in Scotland. The structure of the legal profession and the organisation of legal education are, as we have been learning, very different. There is a long tradition of close contact between the university law schools and the professions. I like to think that the JSCLES has played some part in that.

We operate on a constructive and co-operative basis. The Law Society of Scotland and the Faculty of Advocates audit what is being done in the universities through accreditation. Although I am not saying that everything is identical, in that way we achieve consistency and quality in the standards. Between the law schools in Scotland, there is a fairly rigorous system of external examiners, so in a sense they check up on each other. That is one reason why we do not see the proposal as a good idea.

10:30

The Convener: May I press you on that? It sounds as though you are saying that the single system test would almost lead to a lowering of standards because people would come into the profession from many different routes that are not available in Scotland. Is that what you are saying?

Lord Eassie: I am not sure that I am saying that. As I understand it, one of the principal reasons for that in England and Wales is the apprehension that there are very varying standards and inconsistency in both the level of teaching and the rigour of the marking standards. We do not have that issue. There is no perception in Scotland that there is any great variety of standards between universities.

The Convener: I will bring in Julie Brannan on that, because I would have thought that the test would be rigorous enough, regardless of how someone had come into the profession, that it would not be a concern.

Julie Brannan: I will give a flavour of our concerns about standards. We know that we have variable pass rates on both the CPE and the LPC; at some providers, the pass rates are as low as 50 per cent, while at others they are as high as 100 per cent. We do not know whether 50 or 100 per cent is a good thing. There could be a number of reasons—a different calibre of student, better or less-good teaching, more difficult or easier exams—but we do not know which of them it is.

About two or three years ago, we called in all the LPC exams to examine them and get a sense whether there are differential standards. On the face of it, there appeared to be different standards. I should give members an understanding of the context. There are about 26 different legal practice course providers, and we looked at the exams for each of them. It appeared as though there were different standards in the exams—some exams looked easier than others. However, we could not tell, because we did not know how the students had been taught; we did not know how the teaching related to the examining and whether the questions in the exam papers were very different and novel in relation to what the students had been exposed to in the teaching. It was very difficult to get a grip on that.

We think that there may be differential standards, but it is very hard for us to tell and to know for sure. We think that a single exam will give us a much better grip on standards; we will know that everyone is being assessed to the same standard because everyone will take the same test.

There is quite a lot of interest among the regulators of higher education—the Quality Assurance Agency for Higher Education and the new Office for Students—about the external examining system. There are some concerns about the extent to which the system is effective. We know that universities tend to select external examiners from the sector that they operate in. Although external examiners are required to make a statement that the standards in the university to which they are external are the same as their home university, that is only a bilateral test. There are questions about that and the regulators are considering the extent to which the system is robust.

Liam Kerr: My question might support Lord Eassie's point. It seems to me that the issue is about getting a training contract—at the end of a person's studies, they have to get a training contract if they want to become a solicitor. When I was selecting where to study in England and Wales—I accept that this was a long time ago—where I got the LPC from would probably have had an impact on where I could expect to get a training contract.

Am I right in thinking that, because we have only 10 providers in Scotland, that analysis is less likely to happen because, wherever someone goes, the law firms would consider it to be of a certain standard?

Lord Eassie: Yes, that is what it comes to.

The joint standing committee has considerable reservations about the test of a single exam. There is a concern that there is more to becoming a sound lawyer than just sitting one exam—it is the exposure to the academic discipline and the study of legal thinking that makes for sound lawyers. We need sound lawyers.

There is an apprehension, which is shared south of the border, that with a single exam that is largely computer based, we will end up with crammers that teach to the exam, which will not provide the real measure of assurance of quality for the future profession.

Tim Haddow: I share the reservations that have been expressed by the Scottish witnesses. There certainly does not seem to be the scale of problem that there is with diversity of provision. We are talking about six providers rather than 26, but I do not think that there is any evidence of a difference in quality, or at least in pass rates, which might mean a difference in quality between the providers. I do not necessarily see the advantage of taking away the assessment process from universities and giving it to a third party; in effect, that is what is being talked about in England.

One aspect of the new system in England is that it seems to be less tied to the particular structure of the route to qualification, which is commendable. In Scotland, the primary route for people coming through is, in some ways, quite prescriptive. For example, people more or less have to do the diploma and then the two-year traineeship. When I went through the diploma process, there was someone who had worked their way through from being the office boy in the solicitors firm. He had gone through the Law Society exams, which allowed him to reach the legal qualification without having done a law degree. However, to reach the next stage of qualification, despite having worked in a legal office for seven years, he had to leave his job and do the diploma to learn about how to work in a legal office; that is not all that is covered in the diploma, but it is part of the course. He then had to do a traineeship in order to learn about the practicalities of working in a legal office, but he had already done that.

I was slightly in that situation myself. I had worked for 19 years as a professional in another profession. I already had some of the skills that I required to work in a legal office, such as working in an office and being a professional. I did not have some of the legal bits and pieces, but because the structure is very much based on the lowest common denominator, it assumes that everybody is starting from the position of a fresh-faced graduate and has to follow that structure of diploma plus traineeship.

It is commendable that the SRA is trying to move away from having to jump through particular hoops and just to assess the outcomes at the end. Without going the whole hog, we could take from the English proposals aspects of that process agnosticism about how to get to the standard.

The Convener: Lord Eassie was shaking his head vigorously when the example was cited about a clerk who had worked in an office for a long time yet still had to do the diploma.

Lord Eassie: There is a problem with people who have worked in a particular field, because they acquire knowledge. However, there is the other side of that and one has to be anxious to make sure that, from the point of view of public protection, people are adequately qualified.

I will cite an analogy from medicine. Someone might have worked in a paramedical capacity for a very long time and might be very knowledgeable, but I think that the public would still want to know that they had gone through the proper route to qualification. There is a balance to be had, which is sometimes quite difficult to draw, between making access easy and maintaining the quality.

The Convener: Does your committee have the flexibility to waiver the rules in individual cases?

Lord Eassie: No. We are just a co-operative, consultative body.

The Convener: You bring everybody together, as a facilitator.

Lord Eassie: We can argue about an issue, we can make suggestions and we can encourage actions. Indeed, one thing that we have been looking at and encouraging is the development of different routes to qualification, for example, by easing the requirements and improving opportunities for traineeships. It is fair to say—although Rob Marrs might contradict me—that the Law Society has gone to great lengths to open up the traineeship market by encouraging smaller

firms and the public sector to provide traineeships and so make them easier to get.

Also, as was mentioned, an effort is being made to develop the apprenticeship model. We are not averse to developing other means of qualification.

Rob Marrs: Daniel Johnson asked about the funnel. It is useful to remember that the SRA and the Law Society of Scotland are very different jurisdictions—and very different educational jurisdictions. We have 10 LLB providers. The SRA, so far as I am aware, is regulating more than 110 academic institutions, and that is simply more difficult than regulating 10 LLB providers and six providers of the diploma.

I can tell you how we accredit and continually monitor providers, but Liz Comerford, as someone whom we accredit and monitor, might be better at doing that from her side of it.

The point to make off air is that we are looking at how we can make processes more flexible. As I mentioned, we are exceptionally keen on the apprenticeship route. It is not me, sitting in Morrison Street, thinking that it is a good idea—the profession is asking us to look into it.

The biggest single change in the promotion of traineeships that we are looking to make this year is in rewriting the admission regulations, which we are currently doing. We are the body that sets those regulations, with the concurrence of the Lord President of the Court of Session. Subject to the necessary safeguards being put in place, we would like to allow trainees to be admitted earlier in the training contract. If that were possible, small defence firms, in particular, would be more able to take on trainee solicitors. At the moment, a criminal defence firm might take on a trainee solicitor but that person cannot appear in many court matters until the point of admission, which is after one year at the earliest. We should make that possible earlier, as taking on a trainee solicitor is just uneconomical.

That proposal raises huge public protection issues, so we would have to put safeguards in place around it, but it is one thing that we are looking at under the new admission regulations, and we hope that it would make a difference. Of course, there are hoops to be jumped through and the Lord President has to agree.

Julie Brannan: Picking up on Lord Eassie's point, I thought that it would be helpful to describe the nature of the assessment. As Rob Marrs says, the SQE will have two stages. The first stage will be a test of legal knowledge; the second stage will be a test of legal skills. The latter will not be computer-based assessment but a skills assessment with role plays involving advocacy and interviewing, and the candidate will be tested on their ability to pick up a case and understand what the legal and factual issues are, what the risks to the client are, and so on. There will also be tests in legal writing, legal drafting and legal research. That is the nature of the exam.

We think that the SQE will assure better standards. Again, I will pick up on Lord Eassie's point. When we talked to members of the public for an opinion survey, three out of four people said that they would have greater confidence in the solicitor profession if all the solicitors had taken the same exam. We think that there is a public confidence issue around that. People told us that they would have more confidence in an SQE-type system.

We also very strongly believe that the SQE, as a standardised exam, enables us to address the barriers to access in the current system. It is critical in addressing the two access issues that we have identified in the current system, which are the cost of training and who gets training contracts. Tim Haddow mentioned a training cost of £16,000 for the BPTC, but I think that the cost is now £19,000. It is hard to keep track of the figures because they go up. The cost of the LPC is now up to £16,000, which is an enormous cost on top of the cost of a degree.

The Convener: We will look at barriers later.

Julie Brannan: Okay.

The Convener: I understand that your comments are very much about the system in England and Wales, as it currently operates, and how the test can address those matters. We will turn back to the diploma.

10:45

Elizabeth Comerford: Lord Eassie ably made a point about the number and scale of the providers. In Scotland, there are six providers of the diploma and 10 providers of the LLB degree. We understand that, in England, there are around 110 providers of the degree and 26 LPC providers. I think that there are around 130,000 solicitors in England and Wales and around 11,000 in Scotland, which gives a sense of scale of the professions.

I am happy to speak about the accreditation process and our involvement with the Law Society of Scotland as a regulator. We work very closely with the Law Society, which prescribes our learning outcomes for both the LLB and the degree. Every year, we have to apply for reaccreditation in order to provide the courses. That is a fairly detailed process that involves the submission of a long report—it is generally around 30 pages—on the work that we did in the previous academic year. The report is based on feedback, and external examiner reports are required to be

submitted to the Law Society. They are scrutinised in detail by the Law Society's education and standards committee, and we receive a report on its terms, which draws our attention to any points relating to good practice, which are shared with all the diploma providers, and things that ought to be addressed in the forthcoming academic year.

The close liaison between the universities and the Law Society means that the profession is very well regulated. I would like to think that the trainees who are sent out into legal practice are regarded as very well versed in what they ought to be doing. That is, ultimately, in the public interest.

The Convener: Let us move on to the issue of flexibility, which has been touched on.

John Finnie: I have a question for the Law Society, in particular, about its recent consultation on alternative routes to becoming a lawyer. That consultation said:

> "the route to qualification is not particularly flexible and does not promote equal access as well as it might."

As you know, equal access is a concern across various portfolios. Will Rob Marrs expand on that comment and say why the Law Society takes that view? What do the other panel members think? Will Rob Marrs explain how the current, more flexible ways to qualify—for instance, the pre-professional education and training contract—work?

Rob Marrs: I am happy to do that. I will address the issues in reverse order, if that makes sense.

PEAT is the official name of the two-stage postgraduate diploma and traineeship process. PEAT 1 relates to the diploma and PEAT 2 relates to the training contract. Nobody outside the Law Society's offices continues to refer to those two elements in that way, but, in our view, the distinction is important because what a person learns in the vocational stage of PEAT 1 is built on and honed during the work-based stage of the training contract. If we look at the outcomes of those two stages, we see that they clearly map across. There is negotiation in one and negotiation in the other, but how they are assessed will be slightly different.

I think that Tim Haddow alluded to the pre-PEAT 1 training contract. A person can work in a legal office for three to four years—the approach differs for individuals—and then take a series of Law Society examinations. At the end of those three to four years, the person will, in essence, have reached the academic standard of the LLB. The person will then go on to study for the diploma, and most people will then return to their original place of work or will study for the diploma part time and continue working.

Of course, the process could be smoother, but our difficulty is that only a very small number of people take that route each year. I entirely take Tim Haddow's point that it is difficult to compare the English barrister profession and the Scottish advocate profession simply because we are often talking about four or five people in Scotland and maybe 400 or 500 people south of the border. If more than 10 people are doing the pre-PEAT training in a given year, that is a bumper year. Typically, we are talking about—at most—five to seven people who already work in legal offices—they will be the court runner, the paralegal or the secretary. The solicitor will say, "Actually, you could be a solicitor. Let's put you through these exams and put you on this training contract." I have never seen anyone advertise for that role.

In relation to equal access, law is a high-tariff, high-value degree and profession and, although many universities have contextualised admissions, which is to be commended, we know that talented people who could be fantastic solicitors may not be able to access the LLB even with that policy. We certainly think that those people could become solicitors if the route to qualification was slightly more flexible and if we had an apprenticeship route.

We know that there are access issues throughout. A number of years ago, Tim Haddow, Ben Macpherson and others led the campaign for fair access, which made us do a number of things slightly differently. One of the things that came out of that campaign was the consultation with the profession on different routes to qualification, which contained a number of suggested alternatives. For instance, we asked the profession whether it wanted an apprenticeship route and whether there should be an articulation process so that accredited paralegals—which is a status that we give to paralegals who can prove that they meet a certain standard—could become solicitors if they so wanted. We should not think that all paralegals are frustrated solicitors, because many of them are very happy being paralegals, but we asked whether that process should exist.

The profession came back massively in favour of the apprenticeship route and less in favour of the other options, which is why we are focusing our energy on that route. Would it make access more equitable? I hope so. I suppose that the proof of the pudding is in the eating, but that is the main way in which we are dealing with the issue.

I hope that that makes a bit more sense of the pre-PEAT training contract.

The Convener: I think that Daniel Johnson wants to explore the apprenticeship route a little more.

Daniel Johnson: Absolutely. I am interested in the plans to develop an apprenticeship scheme. When is that scheme likely to be rolled out and what will it potentially look like? I assume that you are considering a graduate apprenticeship model. Will you go into that in a little more depth?

Rob Marrs: Absolutely. From the consultation responses, it was clear that the profession wanted to go down that route. It is all very well for organisations to say that, in theory, they are in favour of an apprenticeship route—everybody is—but we then asked them whether, if we created such a thing, they would actually employ apprentices, and I am happy to say that a number of private practice law firms and in-house legal organisations said that they would be keen to work with us to scope that out.

We are speaking to Skills Development Scotland about how we can do that, and we are considering whether it should be a modern apprenticeship or a graduate apprenticeship scheme. At the moment, we are leaning towards a graduate apprenticeship scheme that would work as any other apprenticeship works. There would be a number of years of experience—probably around five or six—and a series of examinations and assessments would take place during the course. There has not been much more consideration than that, but we have real sector buy-in to take it forward. Indeed, some of the universities have said that they could play a part in the external assessment and academic studies, which are an important part of an apprenticeship.

It is an exciting development. At this stage, I cannot say when it will occur, because we do not know, and I would not want to guess, but I hope that it will be as soon as we can get everyone in line to do it, because we think that it would make a huge difference.

It is worth noting that there are only so many legal jobs in Scotland. If we create an apprenticeship route, in due course, I will have to have a difficult conversation with law students, because it is likely that, after a few years of an apprenticeship scheme, there will be fewer training contracts. If the firm Marrs and Co takes 10 trainees a year, it might take three apprentices, but it probably will not need 10 trainees and three apprentices. The profession may be slightly more diverse and people may access it slightly differently, but I do not think that we will magic up jobs. We will need to have that difficult conversation with the LLB and diploma cohorts in due course. However, that is not a reason not to do it; it is just something that we have to be aware of.

Daniel Johnson: When people talk about apprenticeship routes in any profession, not just in the legal profession, they assume that having an apprenticeship route will automatically broaden access. However, the reality is that sharp-elbowed middle-class kids and their parents will get them. There are fewer training contracts. Have you looked at the apprenticeship route? We just get the same people going into the profession, albeit by a different route. There is already some evidence of that with some apprenticeship routes. Have you had any thoughts, at this initial stage, about how you can use apprenticeships to genuinely widen access rather than to provide an alternative route for the same cohort of people?

Rob Marrs: That is a great question but, given where we are in our discussions with SDS, we have not given the matter much thought. It is an entirely fair point that, if there are numerous routes in, the same people might try different pathways. At the same time, there is evidence from jurisdictions that having multiple pathways into a profession leads to the formation of informal hierarchies. People can take this or that route but, if they do not go to a certain university or training provider, whether it be for law or for another profession, they are not going to go forward. Everyone can stay at the Ritz as long as they have got the money.

Julie Brannan: I want to give a sense of how the apprenticeship model is working out in England and Wales. We launched it in 2016 and we had 25 starts in the solicitor's apprenticeship that year. We had 100 starts in September 2017, and we expect the numbers to go up again this year.

The firms that offer apprenticeships are really evangelical about it. They say that it enables them to form apprentices in the competences and skills that they need for their particular businesses. Those apprentices also become very loyal to their firms and the model enables firms to hang on to talent in a way that they like.

On Rob Marrs's point about there being fewer training contracts as a result of apprenticeships, I was recently on a panel with people from Womble Bond Dickinson, which is one of the firms that practises south of the border, and it said that it had cut its formal training contract places by 20 per cent to make space for people coming in by alternative means. There is some evidence that that will happen. However, yesterday I was on a panel with people from another firm who said that it had increased its number of training places to add apprenticeships to its training contracts. There is a difference in practice there.

On the point about sharp-elbowed middle-class people taking the apprenticeship route, I am sure that some of that will go on. However, anecdotally, we know that those who are taking up apprenticeships are predominantly working-class people who are more likely to be worried about the

fee debt in England and Wales. They do not want to pay large tuition fees, so they will go down the apprenticeship route. They have the choice of taking up an apprenticeship or going to university, because they have the grades to go to university, but they choose an apprenticeship because that avoids tuition fees, which tend to be more of a worry for people from working-class backgrounds than for those from middle-class backgrounds.

We also see the model being used by people who might have ethnic or cultural reasons for wanting to stay at home while they are working.

Daniel Johnson: What is the profile of the firms that offer those apprenticeships? Are we talking about a magic circle? Are they national, full-service firms or are they small firms?

Julie Brannan: That is a good question. The magic circle—the top five to six law firms—tends not to offer solicitor apprenticeships, but the big national firms offer them, as do smaller firms.

The other issue to pick up from what Rob Marrs said is the idea of a hierarchy. We were concerned about the perception of hierarchies among the routes that people follow, but that is being addressed through the solicitor's qualifying exam. It is a level playing field. Everybody who qualifies as a solicitor will be able to say that they have taken the same exam, which will demonstrate that they are the equal of their peers.

The Convener: Elizabeth, do you have any thoughts on the apprenticeship from a university perspective? How will it affect the universities, if it will affect them?

11:00

Elizabeth Comerford: It is hard to know. I think that there will always be an appetite to come and study—

The Convener: Through the traditional route.

Elizabeth Comerford: Yes.

The Convener: Okay. Jenny Gilruth will move on to another subject.

Jenny Gilruth: I want to pick up the comments in Rob Marrs's submission on barriers to access. He points to the Law Society's 2014 report "Fair Access to the Legal Profession", which acknowledged that pupils from Scottish index of multiple deprivation 20 and 40 backgrounds were disproportionately less likely than their wealthier counterparts to even start an LLB. I ask the panel in general why that is still the case in 2018.

Rob Marrs: As far as I am aware—this does not make it either right or wrong—the position for law is the same as the position for many courses across the university sector. People from SIMD 20 backgrounds are less likely to commence the university experience, and that is probably more likely to be the case in subjects such as law and medicine. That is what we identified in the report as the biggest single barrier.

There is clearly a bottleneck at the end of the diploma going into the training contract, and there are access concerns with regard to the diploma. The way I described it when I spoke publicly on the fair access report was that, in many ways, the route to qualification is a triathlon. The first bit is a swim, the second bit is a cycle and the third bit is a run. Lots of people put in lots of time and effort on whether people can afford the bike, but in speaking to the report I pointed out that it came through clearly that we should be focusing on the people who cannot swim, because if they cannot get into the pool, they are never going to get to the diploma anyway.

Why is it still like that in 2018? There are any number of factors. The attainment gap in schools is one. Like all universities and professions, we are inheritors of inequality. I know that the universities are doing a huge amount of work in that regard. It is fantastic that so many universities are undertaking contextualised admissions. We have worked hard to ensure that practice units and those who take trainees understand what contextualised admissions are. There is no point in a university saying, "We're going to look at the whole individual," which is clearly the right thing to do with regard to access to university, if someone then does their degree, gets a first, goes off and does the diploma and applies for a training contract that says that they need X number of Universities and Colleges Admissions Service points.

We have worked hard with the profession to say that we almost want to forget school grades. Why look at them at all? It is pernicious to look at school grades when we know that most if not all of the universities that provide the LLB have contextualised admissions. There are access issues down the line, but I am sure that others will have views on why it is still like this in 2018.

The Convener: Are there any other views round the table? It seems not.

Jenny Gilruth: I also note from Rob Marrs's submission that the Law Society has launched a Scottish charitable incorporated organisation that funds eight students from poorer backgrounds. Of the initial eight, seven were entitled to free school meals, they all received education maintenance allowance and three were young carers. I am interested in the breakdown of those students. I note that you are hoping to increase the cohort to 40. How did you identify the students? Did they have to apply for the scheme? Did you target schools that were benefiting from the

Government's attainment fund? There is a wider agenda on closing the attainment gap, which you mentioned in your previous response.

Rob Marrs: We tried to get the scheme in front of as many eyes as possible. We did not want to hide the Lawscot Foundation away, so we worked with the schools that we work with through the street law programme and the Donald Dewar memorial debating tournament, and the various universities with the reach and pathways to the professions programmes. We also promoted the scheme via social media and in all sorts of other ways. I do not want to say that we went to the scheme that you mentioned in case we did not, but in the future we will absolutely do that. We want as many people as possible to know about and benefit from the Lawscot Foundation.

I am happy to say that, in the first year, there were eight remarkable young people. Next year, there will be another eight, and so on. Over the course of the years, there will be 40 students. If we continue to raise funds from solicitors and advocates—and others; we will take anyone's money for this—we will try to support as many pupils as we can.

It is important to note that it is not just about finance, although finance is really important. We have set up each individual with a mentor for each year. I think that the mentor will change over the course of the five years. In that way, they will begin to form a network in the legal profession, which is hugely important. The mentors who have come forward are from the highest legal offices in the land down to newly qualified people who are giving their time freely. Those mentors add so much value.

We will continue to run that scheme and we will get out information on it to as many schools—and in front of as many eyes—as possible, because as many people as possible should benefit from it.

Daniel Johnson: I have a supplementary based on what Jenny Gilruth was asking about, referring back to where we were talking about the funnel effect. Is the very fact that only 10 institutions offer a law degree pre-screening and limiting the number of people who can do a law degree and therefore go into the profession? To use your swimming analogy, it is not just that some people cannot swim; there are a limited number of places to take part in the race to begin with. Could that be part of the problem?

Rob Marrs: Potentially. If there are universities in Scotland that do not offer the LLB but wish to do so, there is no market bar to them entering. They would have to be accredited by the society, but we do not say that there is a limit of 10 institutions. In the relatively recent past, the University of Stirling also offered the diploma, although it chose to stop doing so.

Off the top of my head, I think that there are four or five universities that do not offer the LLB. Could they offer it? If they met the standards, we would accredit them. I am just conscious of the fact that, in my nine years at the Law Society, the thing that I have heard most often is that there are far too many law students. I am not sure that that is the case, because of the point that I raised earlier about the 40 to 50 per cent of students who go off to study other things or do other things anyway.

I accept that more universities could offer the LLB, but that is a business and academic decision for each university to make. It would be entirely improper of us to turn round to a given university and say, "You should offer a law degree." If a university thinks that offering a law degree would serve its local community and would fit in with its long-term strategy and if it meets our standards, there would be no reason not to do it.

Daniel Johnson: The question is whether the Law Society should be seeking that. My impression is that in England, there are a lot more lower-tariff universities that offer law degrees, whereas in Scotland, it is pretty much the domain of the higher-tariff—dare I say, more elite—universities. Is there a possibility there to open up access?

Rob Marrs: I would not want to comment on the tariff or otherwise of a given university. All I can say is that the law schools that come forward to us are required to meet an initial accreditation standard and to continue to do so over the course of their accreditation period, until they choose not to offer that option. Others have considered doing so in the past. I am bound by how much I can say there. However, it is entirely up to them. We are neither for nor against. We regulate in a way that we think is the right way to regulate.

Tim Haddow: There is one quick point that I want to make about the structure, with the diploma sitting as a postgraduate qualification after the LLB. Rob Marrs made an analogy between the qualification and a triathlon; he said that you need to be able to swim before you can think about buying the bike. If you are a pupil in fifth or sixth year at school and you are not sure about whether law is the career for you, you will look ahead and when it is explained to you that your tuition fees for the LLB are paid for by the Scottish Government and you get your student loan but that, come the end of the LLB, you will have to pay for your diploma, that will be a disincentive for people to get in the swimming pool at all, I think.

Although I totally accept the point about being inheritors of inequality, I think that being able to tell people at school that there is a structure that they

can go through without having to inject lumps of cash at postgraduate level might help people who are on the cusp of deciding whether they want to be a lawyer to decide that it is something that they could do.

I think that the diploma structure and costs create issues right back at the beginning of people's decision making as well as when people finish the LLB.

The Convener: Rona Mackay and Julie Brannan want to come in on that. Is the Open University starting to offer LLB courses? Someone told me recently that it is.

Rob Marrs: The university offers an LLB, but it is an English and Welsh LLB.

Julie Brannan: This is not just about the number of universities that offer LLBs; it is also a question of who gets recruited into training contracts at the end of the process. Although 110 universities in England and Wales offer LLBs—or qualifying law degrees as we call them—only about 19 per cent of training contracts go to people outside the Russell group of universities. That statistic is mirrored by a piece of work by the Department for Education that looked at the earnings of law students, by university, five years after they graduated. The top university by earnings was Oxford; five years on, its law graduates were earning an average of £61,000 a year. The bottom was the University of Bradford, whose law graduates were earning £16,000 or £17,000 a year. The big question is how we encourage law firms to recruit bright talent instead of just relying on the universities' reputation as a proxy for talent. We hope that the solicitors qualifying examination will help with that.

Rona Mackay: Tim Haddow, your evidence acknowledges that there has been an increase in student support, but you are very worried about the negative effect of having to pay for the diploma. In contrast, the Law Society's data shows that those from the lowest income backgrounds are just as likely to start the diploma as those from more advantaged backgrounds. There is a wee bit of a disconnect there. What would be the reason for that?

Tim Haddow: I do not have access to all the statistics that the Law Society has access to in its position as the regulator. When I was doing the campaign, I ran a survey—which I cannot claim was scientific—of more than 100 people in my diploma course. I tried to reduce that data back to SIMD numbers and it seemed to me that there had been a drop-off between the LLB and the diploma. However, that was within the limitations of what I could achieve as a student; I accept that the Law Society has better access to statistics than I do.

It seems obvious that a financial barrier of the magnitude of having to pay for the diploma must be a disincentive for people who are worried about the level of debt that they are in, or who do not have access to funding to help them through the diploma or avoid taking on debt in the first place.

When I was involved in campaigning on this issue, the level of student support for the diploma was about £3,400. That was against the cost of studying at the time, which was £7,000 for the fees and the same for the cost of living. There was a big gap of about £10,000.

I acknowledge that student support for the diploma is much better than it was—it is now £10,000—but the diploma fees at Edinburgh are now more than £8,000. The Scottish Government's independent report on student support suggested that £8,000 and a bit was the sort of living wage for a student, so we are talking about £16,000. There is still a £6,000 funding gap.

There are two questions there, I suppose. First, is student support the right way to fill that gap? Is there going to be more money that could help with that access issue? Secondly, should it even be the public purse that is filling that access gap? My view is that maybe it should not be. The diploma exists for a very good reason. The history of it is that a traineeship by itself was not delivering what the profession and the public needed, so the Law Society decided to introduce the diploma. That was probably the right decision at the time, but there was no access issue then because the diploma was fully funded. It is not fully funded any more, and there is a question about whether it even should be.

Rona Mackay: The system seems to be a bit out of kilter with that for other professions, such as accountancy, where there is simply a progression and people do not suddenly hit a funding hurdle. What do you think about that, Rob?

11:15

Rob Marrs: To go back to the initial point about progression, I cannot speak for people in S5 or S6 who find out about the route to qualification. I do not know whether there are some who choose not to do the LLB on hearing that the diploma requires to be paid for. We have access to statistics, but we do not have access to people whom we do not know exist. I am not denying that they exist—it is just that it is extremely difficult to find that out.

The LLB takes a number of years, and people might take time out when they graduate or do a masters. A number of years ago, we asked the 10 LLB providers and the diploma providers for statistics. When they did not give us their statistics—that was not part of the accreditation requirement—we put in freedom of information

requests. We looked at the number of SIMD 20 and SIMD 40 students who commenced the LLB in a given year. Five years later—I accept that this is not perfect—we looked at the number of SIMD 20 and SIMD 40 people who commenced the diploma. We think that the vast majority of people do four years and then go straight on to the diploma. For the three years for which we found data, we found that people from SIMD 20 and SIMD 40 backgrounds were slightly more likely to do the diploma than their more advantaged counterparts. I cannot say that there are not some people from those backgrounds who choose not to go forward because of finances—that clearly needs to be addressed—but from the years for which we did that analysis, which I repeat is not perfect, there did not seem to be any drop-off rate over the course. Should people from SIMD 20 and SIMD 40 backgrounds be better represented on the LLB? Absolutely; I think that everybody would agree with that.

The training could be done in another way. For example, the training could be provided in the same way that the accountancy training is provided. There are many ways to create a professional route to qualification.

I have focused on the statistics, but it might be best to illustrate my point with an anecdote. Last year, I was on a panel at the Royal Faculty of Procurators in Glasgow, where the motion for debate was, "This house believes that the route to qualification is fit for purpose." A sheriff said that the quality of newly qualified lawyers was higher than they had ever known it to be. The chairman of one of Scotland's largest independent firms said that they had issues with the route to qualification but that, on balance, the trainees it got were of very high quality on day 1 and that it hoped that they were of a higher quality at the end of the training. A professor of law at the University of Dundee was slightly more critical and gave a qualified yes in support of the motion.

I thought that I had gone along to that event to be the Law Society patsy, at whom everybody would have a go and throw tomatoes, but the three people in front of me all said that we were turning out high-quality lawyers, which is the primary purpose of the process. An extremely important secondary purpose is providing access. There are access issues with all professions, regardless of how the process is put together. If we moved to the accountancy model, we would find that there were issues with it. There are also issues with the medical model, which involves a five-year undergraduate course, followed by training. Are there issues with our model? Yes, but at the moment we feel that things are improving. We are turning out high-quality new lawyers.

Rona Mackay: Does that not suggest that, to an extent, the legal profession is raking in the benefits of students having to pay? Trainees do not get much money. It is good that the training process is going well, but is there not an imbalance in the sense that the law firms and the universities get a lot of money from students who go on to become skilled professionals, but the cost to the profession is low?

Rob Marrs: There is, to an extent. Each year, I write the paper on the recommended rate of remuneration for trainees. Trainee solicitors around the country will be delighted to learn that I always suggest an increase. Whether the Law Society's council agrees with my recommended rate increases is a different matter, but I have never written a paper that has not suggested an increase. At the junior end of the profession, pay is an issue, particularly when we consider other professions and the legal sector in the City of London. My point is similar to Tim Haddow's one about the difficulty with the advocate profession: on one hand, devilling is unpaid, but on the other, it is fantastic training—I have not done it, but Tim Haddow has—that trainees do not pay for. Similarly, trainee solicitors have a lower graduate salary than people who take roles that they can walk straight into, but those trainees get, while they are being paid, high-quality professional training during the two years.

I entirely understand the point about the diploma. We are where we are unless or until we move to a model that is more akin to teaching, in which the state picks up far more of the financial costs.

Liam McArthur: I am slightly disturbed by Rob Marrs's comparison with the teaching profession, in which the state pays because the state is providing the education that is delivered. The point that Rob Marrs makes on training is well understood. The law profession is not unique in there being a period in which a person is earning not so much, with the expectation that they will, on the back of the training that they receive, be able to earn more in the future.

The concern has been that the state picks up the tab for the diploma, which is a professional requirement, in a way that does not happen, as you have acknowledged, in other professions—accountancy is the profession that is most often cited. Following the Law Society's consultation, nobody doubts that there are many options and that there might not be unanimity among Law Society members, but during these times, in which budgets across the piece are under more strain, there is an expectation of willingness to engage with a model that eases some of the pressure on the public purse. Is that not reasonable?

The Convener: I will add to that question. Rob Marrs keeps saying that the aims of the current system are to ensure high standards and to produce lawyers who are fit to practise law. Our society is changing economically following the financial crisis and as we face the challenges of Brexit. Industry will have certain needs. At what stage do the Law Society and the people who give the accreditation ask whether they have moved with the times? We will still need to teach the original jurisprudence because that is the basics, but we also need to address industry's need for proper legal advice from properly trained people. We encourage that training because, as has been said, a limited number of criminal lawyers—and perhaps commercial lawyers—are needed in the profession. Has the profession moved forward with the times? Is the current system fit for purpose?

Rob Marrs: I am delighted to say that it is. In 2011, we reformed the route to qualification. Those around the table who have qualified will remember the old elective system in which there was one elective choice on the diploma—between studying public administration law or company and commercial law. If people were going off to the Government legal service for Scotland or the Crown, they studied public administration law, and everybody else studied company and commercial law. However, up to 50 per cent of the diploma is now elective content. Certain standards still need to be met, but that gives university providers much more choice.

One of the Law Society's annual plan objectives is to ensure that content in the route to qualification is up to date. Over the past few weeks, we held a number of round-table discussions with academic and diploma providers, and with in-house and private practice units, on topics that included whether we have got tax right. At the moment, tax is almost entirely taught in the diploma, so we discussed whether that is correct.

The Convener: How do you judge whether you have got that right?

Rob Marrs: We listen to our members and to the academic providers. We hear all the time what people feel—that trainees are light on this, heavy on that, good on this or could be better at that. The teaching of tax changed in 2011: seven years on, it is right to look at whether the change was correct, and to evaluate it.

The Convener: Do you go to firms or to the clients who seek tax advice and say that they find it difficult to get that advice?

Rob Marrs: I would not delineate that because, as tax is pervasive, it is taught pervasively. To sum it up, I note that we need all new lawyers to be tax-aware lawyers. We do not necessarily need to create lots of tax lawyers, although I presume—

The Convener: That is what accountants are for.

Rob Marrs: Perhaps not—we should not get carried away. Private client lawyers and lawyers who do domestic conveyancing need tax knowledge, and lawyers who do company and commercial law need to know about business taxes and so forth.

The single biggest transformative change in the legal sector, as in all other sectors, has been the impact of technology. Although most of the LLB providers and, I think, all the diploma providers do more on legal tech, we have asked whether we could change our outcomes on technology—there are already some—to make them more reflective of practice now and in the near future.

The Convener: We will probably discuss that subject today.

George Adam: Rob Marrs has not answered Liam McArthur's question.

The Convener: I am sorry, Liam. Did I paraphrase something?

Rob Marrs: I am sorry—I had not answered the question.

I used the teaching analogy simply because I could not think of any other profession for which there is a postgraduate diploma and then a role; teaching is the closest. I accept that it is a state profession on the whole, whereas we are a private profession on the whole, although a good number of our members go on to work for the state—either in local or central government or for the Crown.

I have never previously considered the matter from the perspective of whether we should create a route to qualification because of the financial burden on the state. I am not sure that that would be the primary motive for how we would create a route to qualification, although obviously we must be cognisant of what is going on.

Previously, when law firms have said that the route to qualification could be shorter, I have said that there could be a three-year law degree. However, the practice in Scotland is that people, the market and, I presume, clients want honours degrees. It is entirely possible to do a three-year law degree, which would in some ways reduce the cost to the public purse because there would not be the fourth year of the LLB.

The Convener: Liam—does that answer your question?

Liam McArthur: I am not entirely sure that it does. There has been a debate about moving from a four-year to a three-year degree across the piece, and not just in relation to law. I will be guided by others on what is part of the academic requirement and what—as we were told at the

outset—is the purpose of the diploma, and how you either weave that into the degree or have it as part of the training. If the diploma were to be part of the training, it would be captured in the part of the process in which individuals are earning something—albeit not a huge amount—so the burden would not be shouldered so much by the state and the public purse.

Tim Haddow: It is important to make the point that the cost of the diploma is not the only issue. There is also the fact that most people who start the diploma do not start it knowing that they have a traineeship at the end. They cannot know that. About 70 per cent—according to Liz Comerford's figures—of people who start the diploma do so speculatively; they are hoping to get a traineeship. Rob Marrs's figures from the Law Society are that 80 per cent of people who do the diploma get a traineeship, which means that 20 per cent do not—that is about one in four of the people who start without one. There is not just the cost issue; there is also risk. For someone in a slightly financially precarious position who is wondering whether to invest a year of their life and to invest money when they do not know what the outcome will be, the traineeship risk is as much of a barrier.

I want to pick up on a couple of points about the diploma itself. I fully accept that there needs to be external educational input to the professional training, which is currently provided by the diploma. However, my question is whether the diploma is the best way of doing that.

11:30

We have heard that 50 per cent of the diploma course is elective. That is a tacit admission that the other half is not required in order to start practice on day 1. It is nice to have a good and broadening education, but it is not required for day 1. We also talk about the diploma taking a year, but most diploma courses start in September and are finished by the end of the March, so they actually last only about six months. I therefore wonder whether course elements could be broken up and included in the same or a longer traineeship. We previously proposed that students do their traineeships during the day and do the diploma course at the same time. They could do part-time diplomas, but the one job that they could not do while they do so is trainee solicitor.

Julie Brannan: I want to pick up on Tim Haddow's points about the length of law degree courses and the electives. Since we proposed the SQE, we have discovered that universities are looking at integrating the professional stage of training into their law degree courses so that instead of having four years until admission we will have three years. I am aware of one university that is even looking at a two-year route to admission.

We have removed the requirement for study of elective subjects for exactly the reason that Tim Haddow suggests. We can do so because we will keep a grip on standards. Throughout the SQE, the standard will be assessed independently and objectively so that we can ensure that people are at the right level to practise safely, but if universities think that they can get through the course in a shorter time, it is open to them to do so.

Elizabeth Comerford: I want to make the point that, in the proposed model, if firms can somehow provide part-time diploma training and compress it into a training model—

Tim Haddow: I am not suggesting that academic training be provided by firms. I am not an expert on it, but in the accountancy model, people who are doing accountancy traineeships do the education part with external providers, which could be the universities, but they do so for a day or a week at a time—not for six months.

Elizabeth Comerford: I just wanted to point out the intensive rigour of the diploma course. We currently give students 24 contact hours per week in which to cover the core subjects. That would have to be looked at in relation to any proposed model and in relation to the demands that professional firms now make on trainees to earn fees and create income.

The Convener: We are discussing this subject today because Ben Macpherson has been very keen to look at it. You will finally get to have your questions answered, Ben.

Ben Macpherson: Thank you, convener. I thank the panel for their contributions so far. It has been very interesting to go through the subject and to hear the different perspective from England and Wales.

The reason that all sorts of people from different backgrounds who train to be a solicitor in Scotland do the professional diploma in legal practice—rather than take one of the few less popular alternative routes—is that the vast majority of them do not have a choice. The fact that apprenticeships might become more prevalent is interesting and welcome, from my perspective, but, in the status quo, people go through the diploma course because they do not have a choice—they have to do it in order to qualify as solicitors in Scotland. I recognise that the diploma creates quality graduates who go on to undertake traineeships. However, as has been stated, it comes at a high cost—both to the state and to the private individual—and with risk, in terms of the possibility of getting a traineeship at the end.

What has interested me more than anything else, both throughout this process and when I did the diploma, is that students do a lot of courses

that they end up not using, depending on which areas of practice they go into—criminal or civil—and on whether they end up working for the state or for private firms.

The point has been made that we could have a three-year LLB. I have thought for some time that, equally, we could have a three-year traineeship, with integrated professional training in the academic institutions, through collaboration with the profession, so that the profession, rather than the private individual, contributed to the production of a high-quality, trained solicitor at the end of the process. I think that that is where this debate needs to go. How are wealthy, successful organisations—I am talking about the big firms; I appreciate that for smaller firms this might be more challenging—contributing to the process, and should they be contributing more? I want to hear more about the integrated approach that Tim Haddow proposed, which I think is at the root of my question.

Rob Marrs: I am happy to talk about the integrated approach. I am bound, to an extent, in relation to what I can say about it, because I am the secretary of the society's education and training committee, which looked at the issue previously.

A number of organisations came to the society to propose an integrated professional education and training model that would, to some extent, merge the diploma and the training contract, as Ben Macpherson described. I looked over the notes last night. There was some going back and forth between the groups and the committee, which took time, and where it got to was that the committee agreed in principle to such an approach but had a number of questions about how it would be done. In the end, one of the firms involved dropped out and the others chose not to pursue the issue.

The questions that the committee had asked were reasonable, and the committee had agreed in principle to the approach, subject to its concerns being addressed. The committee's membership has changed—membership of committees changes all the time, of course—but I am sure that if the issue came up again the committee would consider it fairly, and that if its questions and concerns about the impact on people and so on were answered it would take the approach forward and run it as a pilot or more widely.

A point that I missed earlier was the cost to the state. Yes, there is an initial cost to the state, but it is a loan that the state makes to people. I do not know the figures, because it is a relatively new loan, but we all have to pay loans back when we take them out. Over time, the money should be returned—or the vast majority of it should be; I know that people default on loans. On the whole, that is how the system should work.

Let me follow up another of Ben Macpherson's points. We often get comments such as, "Why did I need to do criminal law, when I was going off to a commercial firm?" That is particularly true for people who are commercial partners in England and Wales and want to requalify in Scotland. Heaven forbid that a corporate client might want advice on money laundering—or anti-money laundering—or health and safety matters, which are both criminal issues.

Ultimately there are reserved areas for solicitors, and it is entirely appropriate that solicitors should have at least a grounding in the areas that are reserved to them—and that the public should expect that. Once a person has qualified as a solicitor they are technically omnicompetent; they can work anywhere. We hope that people would not make poor professional decisions—such as doing a corporate traineeship before going off to work in criminal defence law; we would inculcate in people that that would be a bad idea—but ultimately solicitors are omnicompetent, as long as we do not move to a system of sectorised practising certificates, which I think would be extremely problematic for many people, for many reasons. That is why we have a broad base.

The society has listened to what has been said about testing alternatives. On the one occasion when an alternative approach got quite far, the firms chose not to take it forward. I cannot speak to why they made that decision. The education and training committee is within its rights to ask reasonable questions about a new and untested route to qualification.

Ben Macpherson: I agree that there is advantage in omnicompetence and in qualified solicitors having the wider understanding that you talked about.

I was making the point that there might be efficiency through greater collaboration in integrating practice and professional training through the academic institutions, while still keeping that breadth of knowledge. An extended traineeship might have advantages in both areas, as people would continue to learn in a broad way and make professional and academic progress, while applying knowledge in a focused way on a daily basis.

On the point about the cost to the state, I recognise that the current arrangement is a loan, and that is right. I was just being cognisant of the fact that, in the past, it was a grant. I do not think that we should go back to that.

Rob Marrs: I see what you mean.

Ben Macpherson: Your point was well made.

Tim Haddow: I agree that there are lots of advantages to an integrated approach. The feedback between doing something academically and doing similar things in an office and bringing the two experiences together is important. An integrated approach also eliminates at a single stroke the question of the barrier caused by the structure. If a person is selected and recruited on to one of those integrated traineeships—if that is what they become—that person knows that they have a traineeship and will be earning a salary.

Even if there is not a Government loan, the firm may pay for the training or the person may have a salary from which to pay for it. In accountancy, some of the bigger firms will pay for their trainees to do their training and others will give a salary and expect the trainees to pay for their own tuition and exams.

There are a number of advantages to the integrated approach. On the particular proposal to the Law Society, with which I was involved, we felt that the level of detail that we were being asked to give on a scheme that we were designing ourselves was too much. Too much was being asked of the firms. That is why I suggested that there was risk aversion. My disappointment was that we had education and training professionals from three of Scotland's main law firms saying, "Yes, we can do this," and in effect the committee did not accept that.

The Convener: That is a point for the Law Society.

Julie Brannan: South of the border, it has been possible for many years to do a part-time training contract and a part-time legal practice course. It is not an integrated programme, but we see people in that sort of model doing a training contract, getting some time out of the office and doing their legal practice course during the work day, at weekends or in the evenings. It does not seem to have caused any difficulties.

Lord Eassie: I have one or two points. At an earlier time, there was grant support for a limited number of diploma students. That was the situation at the time of the campaign for fair access to the legal profession.

At that time, the vice-convener of the JSCLSE and I had meetings with the then cabinet secretary for education. The view was taken in Government that there should not be an exception for law and that it should be equiparated with other professions for which there was a postgraduate vocational course, such as education. Indeed, since then, the loan system has seemed to work better than the grant for many people.

The next point is on education for lawyers in general. It is important to build in adaptability for the future. When a person embarks on law, they do not know where they will end up. They will have to adapt to many different situations. Looking back on my past, I know that much of what I have operated on, both as a judge and as an advocate, was at the time new material for me, for which I was equipped by the general study of law.

Finally—for the moment, anyway—I may be the only person in this room who is old enough to remember when there was no diploma. When I qualified there was no diploma, and no one would want to go back to that situation. It was unsatisfactory for the universities—who found themselves trying to teach a little bit of practice—and very unsatisfactory for the profession. The quality of training that was provided by what was then called an apprenticeship was very variable and depended on one's apprentice master, as they were known—there were very few apprentice mistresses. The diploma is worth retaining; it has made a great improvement to legal education in this country.

11:45

The Convener: Does Rob Marr want to add anything?

Rob Marrs: I had my hand up, but I have probably said too much already.

The Convener: With that, I thank all the witnesses for what has been a superb round table. We have gone in lots of different directions, heard lots of food for thought and received reassurance, in some respects. Thank you all for attending.

11:45

Meeting suspended.

11:53

On resuming—

The Convener: Under item 3, I ask for the committee's agreement to delegate to me, under rule 12.4.3 of the standing orders, the power to authorise witness expenses for the round-table discussion that we have just had. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Act of Sederunt (Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court) (Amendment) 2018 (SSI 2018/186)

11:54

The Convener: Item 4 is consideration of an instrument that is subject to negative procedure. I refer members to paper 3, which is a note by the clerk.

Before I invite comments from the committee, Having asked the clerks about this Scottish statutory instrument, and in the context of the discussions in the Conveners Group about the notes that accompany SSIs and how easy it is to understand exactly what instruments are intended for—whether they are in layman's language—I believe that this is a prime example of what should really not be happening. I have asked the clerks to take up the matter with officials to tell them that the policy intent of SSIs should be clearly set out for committee members or any member of the public who is looking at an SSI to understand. Having seen this Scottish statutory instrument, I have asked the clerks to write to the Lord President and to the Minister for Parliamentary Business making the general point that we expect SSIs to be accompanied by a clear explanation of what an instrument will do and why.

It is a particularly important issue because there is no doubt that, in the coming weeks and months, the number of SSIs that this and every other committee will be dealing with will increase substantially. The point must be made now, because we are aware that the number of SSIs that the Parliament will have to consider in order to update the statute book because of the United Kingdom's decision to leave the European Union is going to grow. A letter will go to the Lord President to make that point about clarity and about making SSIs easy to understand, and to raise awareness of the general point that SSIs are going to be a bigger factor in our business. The committee already deals with a large number of SSIs, and the clerks should not have to make phone calls and spend time trying to determine exactly what an SSI will do.

Daniel Johnson: I understand that the SSI makes provision for a 5 per cent increase in fees across the board. I want to make the general point that court fees can present an access-to-justice issue. We have seen above-inflation increases in fees being made for a number of years. Although I understand the need for the courts to recoup their fees, and I accept that there has been a decrease in the number of cases, we should note that fees can be an issue and that that should be borne in mind in the future.

John Finnie: I absolutely agree with Daniel Johnson. We need to be vigilant about court fees. The increase is not something that we see being replicated in salary increases and the like.

I would also like to comment on your general remarks on SSIs, convener. The matter has come up in other committees, so it is not simply an issue with the Lord President's office—although I know that you are not suggesting that. In the past, we would look to explanatory notes, but the explanatory notes seem increasingly just to replicate what the instruments say, which is less than helpful. You also mentioned the fact that the public watch these proceedings. Of course we understand that there will be some highly technical legal matters, but we need to understand the generality of what is proposed, and if we have any questions we can then delve deeper.

The Convener: The clerks have already taken up the point with Government officials, and the Lord President is the next person in their sights.

Liam Kerr: I may not have understood Daniel Johnson's point entirely, but as regards the clarity of the SSI, I read it as applying only to the fees of the solicitors in an award of expenses at the end, rather than the court fees that are levied to access the courts. I am just a bit confused by his point.

The Convener: Gael Scott will clarify that.

Gael Scott: Yes—that is the case. The issue is the tables that the court uses to determine the award of a solicitor's expenses at the end of the case, rather than the court fees that individual litigants have to pay for the different stages of court proceedings.

Liam Kerr: So, it is not necessarily an access-to-justice issue, although I concede that the litigant may say, "Okay what am I potentially in the hole for at the end of this?"

The Convener: That just demonstrates the point that that was not clear in the briefing papers that we got. If we are asked to pass SSIs and to know exactly what we are being asked to pass, it must be absolutely crystal clear.

The more general issue is that court fees have tended to go up. Daniel Johnson's point was well made, but it is perhaps not relevant to the SSI.

Are members content to make no recommendation on the SSI, other than to say that the explanatory note should have been clearer?

Members *indicated agreement.*

Justice Sub-Committee on Policing (Report Back)

12:00

The Convener: Item 5 is feedback from the Justice Sub-Committee on Policing on its meeting of 21 June. Following the oral report, members will have the opportunity to make brief comments and ask questions. I refer members to paper 4, which is the clerk's note.

John Finnie: When the sub-committee met on 21 June, we took evidence on Police Scotland's digital, data and information and communication technology strategy, and we took further evidence on Police Scotland's use of digital triage systems, which are also known as cyberkiosks. The sub-committee took evidence from Kenneth Hogg, interim chief officer at the Scottish Police Authority, and, from Police Scotland, David Page, deputy chief officer; Martin Low, acting director of ICT; James Gray, chief financial officer; and Detective Chief Superintendent Gerry McLean, head of organised crime and counter-terrorism.

The sub-committee heard that the scale of and investment in the ICT strategy are much bigger than for the previous i6 programme, and that the SPA board will consider the strategy again in the autumn, when there will be more detail and greater clarity about costs.

The sub-committee considered the level and detail of scrutiny that the SPA undertook before investing in cyberkiosks with a view to introducing them throughout Scotland. It is fair to record that we were disappointed that no impact assessments were undertaken before the two trials of cyberkiosks, or as part of consideration of extending use of cyberkiosks. However, we were assured that Police Scotland is compiling privacy impact and data assessments and that they are en route to the sub-committee for scrutiny.

The sub-committee also considered its work programme and agreed to write to the SPA and Police Scotland about their joint decision not to make ex gratia payments to the four officers who were affected by the counter-corruption unit investigation. The sub-committee will meet again on 13 September. I am happy to answer members' questions.

Daniel Johnson: I have a brief comment, which I made at the sub-committee's meeting. The scale of investment means that the programme will be one of the largest information technology projects to be undertaken in the public sector in Scotland and, indeed, in the UK. Given that, and the issues in the past, the programme merits further scrutiny by the sub-committee, and this committee might want to consider whether we need at least to keep a watching brief on the programme, if not to scrutinise it more.

The Convener: The committee is to undertake post-legislative scrutiny of how the Police and Fire Reform (Scotland) Act 2012 has operated in the past six years. I have no doubt that in that scrutiny a lot of issues will come up, including IT investment. The sub-committee was certainly more than a little concerned about scrutiny of the proposals and about whether the cart was being put before the horse. Given the contract's value, which Daniel Johnson referred to, we need to keep a watching brief.

As there are no more comments, that concludes the public part of the meeting. Our next meeting, which will be after the summer recess, is scheduled for Thursday 6 September, when the committee will hold its rescheduled meeting with the Secretary of State for Scotland on Brexit and justice matters. I wish all members, clerks and other staff a relaxing and stress-free recess.

12:04

Meeting continued in private until 12:45.

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