

# The Lord Chancellor's Advisory Committee on Legal Education and Conduct

## Annual Report for 1994–1995

Laid before Parliament by the Lord High Chancellor  
pursuant to schedule 1.11 of the Courts and Legal Services Act 1990

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*Ordered by The House of Commons to be printed*  
24th October 1995

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LONDON : HMSO

**THE LORD CHANCELLOR'S ADVISORY COMMITTEE  
ON LEGAL EDUCATION AND CONDUCT  
ANNUAL REPORT FOR 1994-95**

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**Chairman's Foreword**  
**From the Right Honourable the Lord Steyn**  
**To the Right Honourable the Lord Mackay of Clashfern,**  
**Lord High Chancellor of Great Britain**

This is the fourth annual report of the Lord Chancellor's Advisory Committee on Legal Education and Conduct.

The Lord Chancellor's Advisory Committee on Legal Education and Conduct is wholly independent of the Government, the Lord Chancellor's Department, the Bar and the Law Society. It was created by the Courts and Legal Services Act 1990 as a separate and independent statutory body. It has its own premises. It has its own staff, appointed by the Committee from the civil service and recruited directly. It has its own budget. It is beholden to nobody. The Committee's guiding principles are the provisions of the Courts and Legal Services Act 1990 and the public interest.

The Committee is in the business of rendering a public service. It issues formal reports and advice from time to time. It also acts pro-actively by inviting interested parties to discuss evolving policy decisions with the Committee. The most important decisions are taken by the full Committee. But it also acts through sub-committees, which are available at short notice for informal discussions with interested parties. Interested parties are encouraged to avail themselves of such informal discussions with our sub-committees. In addition our splendid and highly qualified secretariat is always available to interested parties and the media for advice and guidance.

*Steyn*



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# 1: The Committee

## Membership

1.1 The members of the Advisory Committee are appointed under section 19 of the Courts and Legal Services Act 1990, which came into force on 1 April 1991. The Act provides that the Committee's Chairman must be a Lord of Appeal in Ordinary or a judge of the Supreme Court, and that the rest of the members must include: a judge who is or has been a Circuit judge; two practising barristers; two practising solicitors; and two people with experience in the teaching of law. In appointing the remaining 9 members, who are not to be lawyers, the Lord Chancellor is to have regard to the desirability of appointing people with knowledge or experience of:

- the provision of legal services;
- civil or criminal proceedings and the working of the courts;
- the maintenance of professional standards among barristers or solicitors;
- social conditions;
- consumer affairs;
- commercial affairs; or
- the maintenance of professional standards in professions other than the legal profession.

1.2 The Chairman of the Committee is the Right Honourable the Lord Steyn, who was appointed from 1 October 1993. He was appointed as a Lord of Appeal in Ordinary on 11 January 1995.

1.3 The first membership was appointed as from 1 April 1991 for an initial period of 3 years, with the possibility of renewal. Any person who ceases to be a member of the Advisory Committee is eligible for reappointment. On 1 April 1994 the Committee was reconstituted and 8 members were appointed to serve a further 2 years, with 8 members being newly appointed for a period of three years.

1.4 The membership at the beginning of the year was:

The Right Honourable The Lord Steyn (Chairman)	Lord of Appeal in Ordinary
His Honour Judge Gower QC (Vice Chairman)	Resident Judge, Crown Court, East Sussex
Lee Bridges	Principal Research Fellow, University of Warwick.
Professor Richard Card	Head of School of Law and Professor of Law, De Montfort University, Leicester
Eric Hammond OBE	Member of the Employment Appeal Tribunal; General Secretary, Electrical, Electronic, Telecommunication and Plumbing Union, 1984–92
Professor Bob Hepple	Professor of Law; Master of Clare College, Cambridge

Dr Neville Hunnings	Editor, Common Market Law Reports since 1964. Author of several books and contributor to many journals on European law
Ian McNeil JP	Chartered Accountant in practice. President of Institute of Chartered Accountants, 1991–92; and currently Chairman of the Institute’s Professional Conduct Directorate; magistrate and former Chairman, Hove bench
Charles Plant	Solicitor. Partner and Head of Litigation Department at City of London Solicitors Herbert Smith
Ms Usha Prashar CBE	Civil Service Commissioner; Director, National Council for Voluntary Organisations, 1986–91
Nicholas Purnell QC	Barrister; Chairman of the Criminal Bar Association, 1990–91
Professor Peter Scott	Professor of Education, University of Leeds; formerly Editor of the Times Higher Education Supplement
Graham Smith CBE	Her Majesty’s Chief Inspector of Probation
David Steel QC	Barrister, called (Inner Temple) 1966. Head of Chambers, 4 Essex Court. QC 1981. Chairman Commercial Bar Association 1989–1991
Mrs Mary Tuck CBE	Head of Home Office Research and Planning Unit 1984–90; former National Chair, Victim Support; member of the Parole Board
David Ward	Solicitor; President of the Law Society 1989–1990
David Wilkins	Educational Consultant; former Chief Inspector of Schools, Nottinghamshire

## Staff

1.5 There are 8 members of staff in the Committee’s secretariat, of whom 4 are seconded from the Lord Chancellor’s Department and 4 were directly recruited under the Committee’s power to appoint its own staff. All staff are appointed for a period of 2–3 years (renewable, in the case of direct recruits, for one further term of up to 3 years).

1.6 We are most grateful to all the staff for their invaluable contribution to the Committee’s work. Those who have worked for the Committee during the year 1994–1995 are:

- Mr A E Shaw (Secretary to November 1994)
- Mr I T Zackon (Secretary from November 1994)
- \*Ms H B De Lyon (From July 1994)
- \*Mr K M Economides
- \*Miss R M Lyon
- Ms P A Bell
- Ms J Patterson
- Miss L Gray
- \*Miss K Low (From August 1994)
- \*Staff directly recruited by the Committee.

1.7 The former Secretary, Alistair Shaw returned to the Lord Chancellor's Department in November 1994. He led the work on establishing the Committee and then the secretariat for the first three and a half years of its life.

## **Statutory functions**

1.8 The statutory functions of the Committee are described in Appendix A to this report.

## 2: The Committee's Work, 1994–1995

2.1 This report covers the year from April 1994 to March 1995. We have continued throughout this period to give the highest priority to the Law Society's application for extended rights of audience for solicitors. Over the latter stages of the year we have been preparing our advice to the Lord Chancellor, and it is expected that this will be ready for publication in June 1995.

2.2 We have also given advice on a number of applications from the Law Society and Bar Council to amend their training regulations and rules of conduct in respect of the litigation and advocacy rights they currently grant to solicitors and barristers.

2.3 We have considered in detail the application from the Institute of Licensed Debt Practitioners (ILDPA) for advocacy and litigation rights in uncontested county court debt proceedings, and have issued advice to the ILDPA.

2.4 We have considered an application from the Institute of Legal Executives (ILEX) to be authorised to grant advocacy rights to the Institute's Fellows in their own right in specialised areas of civil, criminal or coroners' court work. We have also begun work on an application for litigation rights in (broadly) construction and engineering cases in the county and Higher Courts from a new body, the Institute of Commercial Litigators (ICL).

2.5 We have devoted a considerable amount of time to work on our first major review of legal education. In June 1994 we published a consultation paper on the initial or academic stage of the legal education. The paper was considered at our annual consultative conference which was held in July 1994. We have now embarked on the second stage of the review, looking at vocational training and continuing professional development. A consultation paper is due to be published in June 1995, followed by the annual consultative conference in July 1995.

2.6 We have considered, during the course of the year, the Lord Chancellor's proposals on Conditional Fee Agreements under section 58 of the Courts and Legal Services Act 1990. We have entered into correspondence with the Lord Chancellor and his Department, and the Law Society, and have set up a Conditional Fees Working Party to consider arrangements for the implementation of the conditional fees scheme.

2.7 We have set up a Liaison Sub-Committee to hold informal talks with the professional bodies on current education issues. The Sub-Committee has met on a number of occasions to consider issues such as the Bar's approach to ending its monopoly of delivery of its vocational course and the application from the Law Society and the Bar on the Foundations of Legal Knowledge, dealing with their requirements for the initial stage.

2.8 During the year we finalised documents inviting tenders for research to monitor the effect of extended rights of audience. A tender board was established which included representatives from the Law Society and the Bar, as well as an independent statistician. Research was put out to tender and in November 1994 we commissioned three projects. The first, a pilot indicators project, is being carried out by the Law Society's Research and Policy Planning Unit, (with the assistance of Professor Joanna Shapland). A Consultative Committee has been set up to steer the projects. The other two projects are in-depth research on the effects of

extended rights of audience, one by Westminster University and the other by Bristol University.

2.9 We are still awaiting the implementation of the sections of the 1990 Act on probate services, which we now understand is to be implemented in the autumn of 1995.

2.10 All these areas of our work are discussed in greater detail in sections [3–11] below.

2.11 Our basic working pattern of two full days each month has continued, some of these days being devoted to briefing visits rather than the full Committee meetings. In order to cope with our considerable work programme, however, much work has been delegated to sub-committees and small working groups meeting outside the regular committee programme, but reporting to the full Committee. Membership of the sub-committees and working groups is as follows:

*Conduct Sub-Committee* Judge Gower (Chairman)  
Mr Bridges  
Mr Hammond  
Mr McNeil  
Mr Purnell  
Mr Smith  
Mrs Tuck  
Mr Ward  
Ms De Lyon (Secretary)

*Education Sub-Committee* Professor Scott (Chairman)  
Professor Card  
Professor Hepple  
Mr Hunnings  
Mr Plant  
Ms Prashar  
Mr Steel  
Lord Steyn  
Mr Wilkins  
Mr Economides (Secretary)

*Education Review  
Sub-Committee A* Professor Scott (Chairman)  
Mr Hammond  
Professor Hepple  
Mr Hunnings  
Mr Purnell  
Mrs Tuck  
Mr Ward  
Mr Economides (Secretary)

*Education Review  
Sub-Committee B* Judge Gower (Chairman)  
Mr Bridges  
Professor Card  
Mr McNeil  
Mr Plant  
Ms Prashar  
Mr Steel  
Mr Smith  
Mr Wilkins  
Ms De Lyon (Secretary)

<i>Education Review Planning Group</i>	Professor Card (Chairman) Professor Hepple Professor Scott Mr Wilkins Mr Zackon (Secretary)
<i>Liaison Sub-Committee</i>	Professor Hepple (Chairman) Professor Card Mr Plant Ms Prashar Mr Smith Mr Steel Mr Zackon (Secretary)
<i>Probate Sub Committee</i>	Judge Gower (Chairman) Mr Hammond Mr McNeil Mr Ward Mr Wilkins Ms De Lyon (Secretary)
<i>Conditional Fees Working Party</i>	Judge Gower (Chairman) Mr Hammond Mr McNeil Mr Plant Mr Steel Mr Zackon (Secretary)
<i>Working Party on Royal Commission on Criminal Justice and Related Issues</i>	Ms Prashar (Chairman) Mr Bridges Mr Purnell Mrs Tuck Mr Zackon (Secretary)
<i>ILEX Sub-Committee</i>	Mr McNeil (Chairman) Ms Prashar Mr Smith Mr Zackon (Secretary)

Lord Steyn as Chairman is an ex-officio member of all sub-committees.

2.12 Members have continued to make briefing visits in connection both with specific applications and with the education review. Guest speakers have attended a number of our regular meetings to keep us informed on aspects of legal education and professional practice.

2.13 We are most grateful to all those who have helped to organise visits, offered hospitality, responded to our various consultation papers and taken the time to talk to us about their work.

## **Accounts**

2.14 The financial statement and accounts can be found at the end of this report.

# **3: The Law Society's Application for Extended Rights of Audience for Solicitors**

## **History of the Application**

3.1 This application from the Law Society, to extend the rights of audience that it is authorised to grant to solicitors, was originally made in April 1991. The Society sought to be able to grant to suitably qualified and experienced solicitors the right to appear as advocates in the higher civil or criminal courts, or in all higher courts. Our first annual report, for 1991–92, records that on 3 April 1992 the Committee published its advice to the Society on that application, together with advice to the Lord Chancellor on a question raised by the Director of Public Prosecutions (DPP) and the Head of the Government Legal Service (GLS), under a separate provision of the Courts and Legal Services Act 1990, as to whether employed barristers' rights of audience should continue to be restricted to the lower courts. Both pieces of advice were reprinted in the Committee's Annual Report for the year 1991–1992 (HC268, 1992). We advised the Society that its draft qualification regulations and rules of conduct for higher court advocates should be amended in a number of ways in order better to comply with the general principle or to further the statutory objective.

3.2 Our Annual Report for 1992–93 records that, having had regard to the Advisory Committee's advice, and following further discussions with the Committee on some aspects of the application, the Law Society amended its qualification regulations and rules of conduct early in November 1992 and submitted an application to the Lord Chancellor for those amendments to take effect. The Lord Chancellor referred the application to the Advisory Committee for advice later that month. Early in 1993, the Law Society made three subsequent applications, first to the Committee and then to the Lord Chancellor, for approval of amendments to the rules in its November application. Each application followed discussions with the Advisory Committee.

3.3 Our last annual report, for 1993–94, records that in May 1993 the Lord Chancellor asked the Committee for advice on those subsequent applications, and therefore on their effect on the main application. On 2 July 1993 the Committee submitted advice to the Lord Chancellor. The Committee's advice was that the regulations governing higher courts rights of audience for solicitors in private practice could be approved; but that the application overall, however, should not be approved, because it did not contain all the provisions relating to employed solicitors that the Committee considered necessary. On 8 December 1993 the Lord Chancellor wrote to the Committee to inform it that the designated judges and the Lord Chancellor had unanimously agreed to grant approval of the application as regards solicitors in private practice, whilst at the same time remitting the issue of employed solicitors back to the Committee to complete its advice. The effect of that decision is that CPS and all other employed lawyers remain without the extended rights of audience now available to solicitors in private practice until such time as the Lord Chancellor and designated judges may, after receiving the further advice of the Committee and the Director General of Fair Trading, approve the application.

3.4 Following the decision of the judges, the Committee asked the Law Society, the CPS and GLS whether there were comments or additional information they would wish the Committee to consider before completing its advice. Having considered that material, the Committee took the view that it would not be possible to complete that advice before the retirement of 8 members of the Committee, and their replacement by new members in April 1994. The Chairman therefore met the parties to the application and explained to them that it would be sensible to plan on the basis that the newly constituted Committee would want to consider all the issues afresh including the issues of principle; and that any submission made to the Committee would need to be made on that basis. It was agreed that further submissions should be prepared, to be submitted to the newly constituted Committee.

## **Recent Developments**

3.5 Further written submissions were received by the Committee from the Law Society, the Government Legal Service, and the Crown Prosecution Service in May and June 1994. The Law Society stated that it did not propose to make any amendments to its rules of conduct at that stage. It contended that the rules it had already made provided a more than adequate framework within which advocacy in the higher courts by employed solicitors, alongside their private practice colleagues, could be developed. On 28 July 1994 the Secretary to the Committee wrote to the Law Society, the GLS, the CPS and the Bar informing them of the topics that the Committee would wish to consider. All parties replied in the late summer 1994. Following those responses, the Secretary to the Committee wrote to the Law Society on 13 October 1994 informing the Society of the Committee's concerns in advance of the meeting of 24 October at which representatives of the Law Society, the CPS and the GLS were to give further oral evidence.

3.6 Early in 1995 the Law Society told the Committee that it might wish to amend the application so as to restrict the types of criminal proceeding in which advocates employed by the Crown Prosecution Service might be permitted to appear. On 23 January 1995 the Committee received further oral evidence from the Law Society and the CPS concerning that possibility.

3.7 The Committee is expecting to publish its advice to the Lord Chancellor in June 1995.<sup>1</sup>

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<sup>1</sup>Outside the period covered by this report the Committee has now published its advice to the Lord Chancellor on this application. The advice, together with a dissenting report, was submitted on 21 June 1995.



## **4: Authorisation Applications Already Received**

**Note: Appendix B sets out the stages of an application for authorisation.**

### **Chartered Institute of Patent Agents**

4.1 In September 1991, the Chartered Institute of Patent Agents submitted an application to become authorised to grant to its members the right to conduct litigation in patent proceedings and certain other intellectual property matters in the High Court. We have considered the application in some detail, and our last annual report records that Professor Card met representatives of the Chartered Institute to discuss in greater detail its present training arrangements, and how they should be extended to provide suitable training for litigation work in this area of the High Court.

4.2 Towards the end of 1994 the Chartered Institute indicated that it would like to hold further discussions, and we readily agreed to this suggestion, but the Institute had not by the end of the year followed up its proposal.

### **Institute of Licensed Debt Practitioners**

4.3 In October 1992, we received an application from a new body, the Institute of Licensed Debt Practitioners (ILDP) in England and Wales, to be authorised to grant rights of audience and the right to conduct litigation in uncontested proceedings for the recovery of debt in the county courts. Our last annual report records that we considered this application in some detail.

4.4 In June 1994 we wrote to the Institute giving our provisional thinking on its application. We considered that the application would need to be very substantially amended in order to further the statutory objective and comply with the general principle. In particular we considered that there were two fundamental points. First, we were concerned about the appropriateness of granting litigation rights that continue only as long as the case is not defended. Secondly, we had serious doubts as to whether the Institute had an effective mechanism for enforcing its rules of conduct, and whether it was likely to enforce them, as required by the general principle. We also raised a number of other issues concerned with rules of conduct and training regulations.

4.5 In November 1994 the Institute wrote to us indicating that it did not consider that it would be appropriate to proceed with the application, and that it wished to hold the application in abeyance while it considered the points raised by the Committee.

## **Institute of Legal Executives**

4.6 In November 1993 the Institute of Legal Executives (ILEX) submitted an application to become authorised to grant extended rights of audience in particular types of proceedings to Fellows of the Institute who are suitably qualified and experienced. The Institute proposed three separate certificates, authorising Fellows to appear:

- (i) in open court in county courts on all matters within the general jurisdiction of the district judge; in magistrates' courts in (broadly) civil matters, including licensing and betting and gaming; and before tribunals;
- (ii) in the county courts before district judges and in the (magistrates') family proceedings courts in a wide range of specified matrimonial proceedings; and
- (iii) before coroners' courts.

4.7 Our last annual report records that in December 1993 we issued a consultation paper asking for views on the application generally, and for comments on a number of specific points, to be received by April 1994. In August 1994 the Committee considered the responses to the consultation.

4.8 Between September and December 1994 we undertook a series of briefing visits to relevant courts. In February 1995 we established a sub-committee to lead work on the application. In March 1995 the Chairman of the Committee wrote to ILEX seeking further written evidence on a number of issues of concern to the Committee.

4.9 During May and June we will be taking oral evidence and in October we expect to meet the Institute and the Law Society. We hope to issue advice to the Institute by December 1995.

## **Institute of Commercial Litigators**

4.10 In December 1993 we received an application from a new body, the Institute of Commercial Litigators, which sought to be authorised to grant to Fellows of the Institute litigation rights in the High Court or county courts as appropriate in a range of actions including actions of a commercial nature arising in contract, tort and commercial law, apart from personal injury actions (including Commercial Court actions, but excluding the Admiralty Court), in winding up companies and bankruptcy, and Official Referees' business; and all associated appeals.

4.11 Our last annual report records that in January 1994 we held a preliminary meeting with representatives of the Institute to find out more about the construction, engineering and surveying firms that had joined to form the Institute and about the purpose of the application. We pointed out that the statement of the rights sought was potentially very broad, and then invited the Institute to consider a redefinition which stated more broadly the intention to practise in matters connected with the construction industry and engineering. We also pointed out a number of more minor matters which might help to clarify the application.

4.12 In March 1994 we received the revised application, and issued a consultation paper asking for general comments on it, as well as on a number of specific areas, by June 1994.

4.13 In September 1994 we received a response prepared by ICL to the replies by consultees, and we considered this as well as the responses to the consultation. In February 1995 we began a series of briefing visits to acquaint ourselves with the work of the Official Referees' Court, the work of the firms in membership of the Institute, and of firms of solicitors and sets of barristers' chambers specialising in building and construction litigation. We hope to complete these visits by the end of September 1995 and give the Institute advice on its application early in 1996.

# **5: Applications from Authorised Bodies For Amendments to Qualification Regulations and Rules of Conduct**

5.1 Throughout the year we have continued to receive a number of applications from the Bar and the Law Society under section 29(3) of the Act, which provides that alterations to the qualification regulations and rules of conduct of authorised bodies must be approved within the framework set up under schedule 4, so far as they relate to advocacy or litigation rights granted by the body in question.

5.2 The procedure for dealing with these applications is essentially the same as that which applies to substantive applications for new or extended rights of audience or litigation rights. It comprises a number of stages: initial consideration of draft regulations or rules by the Advisory Committee, followed by advice to the applicant on the extent to which (if at all) the draft regulations need to be amended to comply better with the general principle or the statutory objective. Then a formal submission from the authorised body must be made to the Lord Chancellor, who must in turn seek the advice of the Advisory Committee and of the Director General of Fair Trading. The Lord Chancellor then sends copies of the advice to the applicant body, which has 28 days in which to make representations on the advice. At the end of the 28 day period, and taking account the advice and any representations he has received, the Lord Chancellor considers whether the application should be approved. He then informs the designated judges of his decision, and they in turn consider whether or not the application should be approved. The application succeeds if the Lord Chancellor and each of the designated judges agree that it should.

## **QUALIFICATION REGULATIONS: THE BAR**

### **Distinguished academics**

5.3 In April 1994 the Bar made a formal application to the Lord Chancellor to amend its training regulations to simplify the provision in relation to calling distinguished academic lawyers to the Bar. We advised the Lord Chancellor to approve the amendments.

### **Aptitude test for qualified practitioners**

5.4 In August 1994 the Bar made an application for approval to amend the Consolidated Regulations of the Inns of Court relating to the aptitude test for qualified legal practitioners seeking admission to the Bar of England and Wales. The amendments involved the parts into which the test was divided, mitigating circumstances, the award of a conditional pass and the format of the provisions of the test. The amendments provided for the test to consist of such written and oral

papers and tests as the Council of the Board of Studies may from time to time prescribe under the Examination regulations'. We raised various questions with the Bar. The Committee has not yet concluded its consideration of the Bar's responses to those questions.

## **QUALIFICATION REGULATIONS: THE LAW SOCIETY**

### **The Legal Practice Course and training contract**

5.5 In April 1994 the Law Society applied to amend Regulation 22 of the Training Regulations 1990. The amendments dealt with time counting towards the period of the training contract. The first proposed amendment was aimed at accommodating a part-time Legal Practice Course which was spread over 3 years and was designed to rectify the anomaly of disadvantaging students who studied part-time over a longer period by allowing them to count time spent in a solicitor's office towards the period of the training contract. The second amendment was designed to provide greater flexibility in dealing with experience gained outside a training contract, such as periods of secondment to a law centre or legal department of a client firm. The Committee advised in favour of the amendments.

### **Qualified Lawyers Transfer Regulations 1990 (As Amended)**

5.6 In August 1994 the Law Society applied to make further amendments to its Qualified Lawyers Transfer Regulations. As recorded in our last annual report, the proposed amendments were to update, following a review, the training requirements for foreign lawyers who wish to be admitted as solicitors. The 1990 Regulations followed changes introduced by the Courts and Legal Services Act 1990, under which the arrangements for admission of lawyers from other jurisdictions as solicitors became matters for the Law Society's general powers to make regulations about solicitors' education and training.

5.7 When introducing the 1990 Act, the Lord Chancellor explained that the Law Society planned to introduce a coherent and consistent regime for the admission of both EC lawyers and those qualified in the jurisdictions for which provision was made in existing legislation. The Law Society would then proceed to review the list of jurisdictions. The first aim was achieved by the 1990 Regulations. The application represented the continuing endeavour to accomplish the undertaking to review the position more generally.

5.8 The need to extend the Regulations progressively to other jurisdictions from which applications are commonly received was heightened by the introduction of the Legal Practice Course and the consequent abolition of the Final Examination. Lawyers from certain jurisdictions, notably the United States of America and South Africa, were granted exemption from certain heads of the Final Examination and were in some cases granted exemption also from the requirement to attend the course leading to the examination. With the ending of the examination there was a need for those jurisdictions to come within the scope of the Qualified Lawyers Transfer Regulations.

5.9 This year's application proposed the addition of Botswana, Channel Islands, Cyprus, The Gambia, Ghana, Israel, Kenya, Lesotho, Namibia, Nigeria, The Seychelles, Sierra Leone, South Africa, Swaziland, Switzerland, Tanzania, Uganda and Zaire, all for the first time. As a result of the review, the Law Society also applied to relax the requirements for Malawi and Zimbabwe. As the Swiss did not

ratify the European Economic Area (EEA) Treaty, Directive 89/48/EEC on the mutual recognition of higher education diplomas does not apply and separate provision for Swiss lawyers needed to be made in the Qualified Lawyers Transfer Regulations. The Committee had previously discussed these important matters and its approach to them. We approved the amendments.

## **QUALIFICATION REGULATIONS: APPLICATIONS FROM THE BAR AND THE LAW SOCIETY**

### **Certificates of Eligibility**

5.10 In February 1995 the Committee advised the Lord Chancellor to approve parallel but separate applications from the Bar and the Law Society to amend their regulations for students wishing to enter for the Common Professional Examination course. The changes proposed the abolition of certificates of eligibility.

### **Foundations of Legal Knowledge**

5.11 In February and March 1994 the Committee received applications from the Law Society and the Bar to amend their training regulations to replace the existing 6 core subjects required in a qualifying law degree with 7 foundations of legal knowledge which would include European law, and to make consequential improvements in the Common Professional Examination.

5.12 Initially, the Committee had reservations about approving the amendments. The first of those reservations related to the proposals that the proportion of a mixed degree which ought to be devoted to the study of law need be no more than 50%. We thought that there were arguments for requiring a larger proportion. More fundamentally, the Law Society and the Bar were proposing the amendments at a time when the Committee was engaged on a thoroughgoing review of legal education generally. This raised the prospect of law schools being required to cope with two major overhauls of courses within a short space of time.

5.13 The Committee's Liaison Sub-Committee met representatives from the Bar and the Law Society on 18 July 1994 to discuss the applications. The full Committee subsequently met the Bar and the Law Society to resolve outstanding issues. Much of the initial discussion with the Law Society and the Bar centred on the professional bodies' need to introduce, along with the new foundations, a revised method of calculating the minimum period of legal study needed to acquire a qualifying law degree. The 1990 Statement provided that each core subject should constitute not less than 1–15th of a student's load in a typical three year single honours degree in law. The core subjects would therefore occupy not less than 40% of such a course. This proportion was easy to apply in a traditional three term, three year degree, but became progressively more difficult to follow rigorously as more and more universities introduced modularisation or semesterisation or both.

5.14 The applications' proposed requirement assumed an eighteen module degree with three modules in each semester. The proposals therefore envisaged each of the foundations being covered in not less than one module of an eighteen module course. The Committee received representations from universities who were concerned by the proposals because they had adopted a different model of modularisation.

5.15 The applications also provided for consequential changes to the CPE course which was based on the 6 core subjects. The CPE Board had also decided that students should be required to take an eighth, optional, subject. To accommodate these proposed changes the professional bodies sought approval to extend the course to 36 weeks.

5.16 After further consultation with the Committee the professional bodies submitted formal applications to the Lord Chancellor to approve the revised Joint Announcement and amendments to the Directions to the CPE Board, and to the Law Society's Training Regulations 1990. The formal applications addressed three main issues:

1. The Joint Announcement included European Union law as a compulsory element;
2. The Joint Announcement expressed its requirements in a way which was compatible with semesterisation and modularisation of university courses;
3. The Law Society's Training Regulations were to be amended to clarify the Law Society's ability to consider the adequacy of resources in deciding whether or not to recognise a course as a qualifying law degree.

5.17 Our original concern as to possible pre-emption of the Committee's own review was solved by the inclusion in the Joint Announcement of an undertaking on the part of the professional bodies to review it further in light of the conclusions of the Advisory Committee's review. The Joint Announcement went on to state that:

“That review will be undertaken by 1998, with a view to the professional bodies deciding by the end of July 1998 whether an application should be made under the terms of s29(4) Courts and Legal Services Act 1990 to amend the Joint Announcement to take account of the conclusions of the Advisory Committee's review, and both bodies fully expect such an application will be made.”

5.18 The Joint Announcement also contained an undertaking that the professional bodies would exercise their discretion in favour of granting waivers for those institutions unable to amend the regulations in time for a 1995 commencement of the revised Joint Announcement.

5.19 As a result of the incorporation of these two undertakings, which directly incorporated the Committee's views, the Committee advised approval of the applications.

## **RULES OF CONDUCT: THE BAR**

### **Aspersions on victims etc during mitigation**

5.20 In August 1994 the Bar applied to amend its Code of Conduct concerning aspersions on victims during mitigation. The application was made to strengthen and widen the prohibition on unnecessary aspersions on witnesses to include victims or any other person. The Committee raised queries about the apparently inconsistent use of the term “defamatory aspersions” in relation to some situations and only “aspersions” in relation to others. The Bar were invited to clarify their thinking behind the use of these terms. A response has been received and the Committee will be making a decision in the new financial year.

# RULES OF CONDUCT: THE LAW SOCIETY

## Anti-discrimination

5.21 As we reported in our last annual report, the Law Society had applied to amend its rules of conduct to introduce new anti-discrimination measures. These included a new Practice Rule, prohibiting discrimination on the grounds of race, sex, disability or sexual orientation; a revised Code of Practice, dealing with discrimination in the most common areas of a solicitor's practice; and a model Anti-discrimination Policy for adoption by firms, which included targets for employment of ethnic minorities.

5.22 We are required by the Courts and Legal Services Act to have regard to the desirability of equality of opportunity between persons seeking to practise any profession, pursue any career or take up any employment, in connection with the provision of legal services. As emphasised in our last annual report, our approach was based on the principle that anti-discrimination measures should seek to ensure that people are allowed to enter the profession, and to succeed within it, on the sole basis of how good they will be, or are, at the job, and not on any other grounds. That in turn requires arrangements for the choices which need to be made between people for the purposes of recruitment, career development and promotion to be made on criteria based directly, and only, on ability to perform the tasks of the job in question.

5.23 We advised the Law Society of our views on their application and these are recorded in last year's annual report. The Law Society submitted its formal application to the Lord Chancellor in March 1994. The formal application to the Lord Chancellor did not comply with the Advisory Committee's advice to the Law Society in two respects: the Committee favoured the inclusion of religion as a prohibited ground of discrimination, and making absolute the prohibition on discrimination on grounds of disability.

5.24 On the issue of religion, the Committee had advised that the Law Society should consult widely with a view to prohibiting solicitors from discriminating on grounds of religion. The Committee had received correspondence from the Association of Christian Law Firms and the Federation of Christian Lawyers which made it clear that they would vigorously oppose any measures which would require solicitors to act in a way contrary to their conscience, particularly in relation to the employment of practising homosexuals. On this issue the Committee advised the Lord Chancellor that whilst it did not consider the present anti-discrimination measures made satisfactory provision in relation to religion, to avoid further delay to what was otherwise a positive step the proposals ought to take effect. The Committee also advised the Law Society separately that it should take immediate action on the question of religious discrimination.

5.25 On the issue of disability we had advised the Law Society to adopt in the draft rules wording similar to that used for race, sex and sexual orientation. This was because we believed that the correct approach was that fair choice between individuals should depend on their ability to perform the tasks of the job in question. The Law Society retained the distinction between discrimination on the grounds of disability and discrimination on other specified grounds. Its reasoning was that disability was different from race, sex or sexual orientation, in that disability could be relevant to performance (unlike the other grounds) if it prevented the solicitor from carrying out the work in hand. It might be possible for disability to be overcome and so the words "unfairly and unreasonably" were retained to distinguish between surmountable and insurmountable disabilities. The Committee advised that it had concluded that "the form of wording the Society proposes is not, in fact, incompatible with its own general approach to the issues."

5.26 The Law Society's application otherwise accepted the Committee's advice. The Committee, therefore, advised the Lord Chancellor that the amendments should have effect. Given the aspirational nature of target-setting, we suggested that it might be desirable to make clear that what the Society was setting were aims rather than absolute requirements. The Committee also reemphasised the need for proper monitoring and reviewing arrangements to ensure that the proposed targets were used as they ought to be.

## **Supervision and management of a solicitor's office**

5.27 In January 1995 the Law Society made an application to amend its Rules of Conduct dealing with the supervision and management of a solicitors' office. The application was made pursuant to a general consultation carried out by the Law Society in 1993. The existing Rule 13 seeks to ensure that a solicitor's office is run by someone who is competent to manage it. The consultation indicated that there was a need to change the Rule as it was not working effectively.

5.28 The current Rule requires every office to be supervised by a solicitor, with at least three years' post qualification experience; the office can be managed by a solicitor, a Fellow of the Institute of Legal Executives and in certain circumstances by a licensed conveyancer. The Law Society's proposed amendment would require an office to have at least one solicitor "qualified to manage" for whom that office is his/her "normal place of work". The amendment also makes it clear that "the responsibility of a solicitor to manage is a full-time responsibility." It also makes amendments to the rules about foreign lawyers managing a solicitor office. The new rule is designed to come into full force in 10 years' time and it provides for transitional arrangements to cover those intervening years.

5.29 The Committee has entered into initial discussions with the Law Society about the application and has set up a Sub-Committee to consider the proposals in more detail.



## **6: Miscellaneous Matters**

### **Conditional fees**

6.1 Our first annual report records the Law Society's application to amend the Solicitors Practice Rules so as to enable solicitors to enter into agreements for conditional fees under the terms of section 58 of the Courts and Legal Services Act 1990. We took the view that our advice on this application should await consideration of the terms of the Lord Chancellor's proposed Order under section 58. In January 1992 we responded to the Lord Chancellor's consultation on the form of the conditional fees scheme. Our annual report for 1993–1994 recorded our concerns with regard to the draft Order and Regulations published by the Lord Chancellor's Department in May 1993. Chief amongst these was our concern about the maximum "uplift" of 100% of the fee chargeable in the event of success.

6.2 In May 1994 we responded, having first met representatives of Bar and the Law Society, to the Lord Chancellor's letter of 29 April 1994 which sought our views on his revised draft Order and Regulations. Our response described our continuing concerns on a number of aspects of the scheme including the proposed maximum permitted uplift of 100%, the lack of any limit on the proportion of damages payable towards legal fees, the relatively limited amount of information that the draft Regulations required to be given to the client, and the question whether barristers should themselves enter into contracts directly with lay clients. We welcomed the Lord Chancellor's proposal to monitor the operation of the scheme.

6.3 Following the Lord Chancellor's answer on 18 July in the House of Lords to a question put down by Lord Ackner, there was further correspondence between the Lord Chancellor and the Committee in which we continued to express our concerns. The matter was debated in the House of Lords on 1 November. Our Conditional Fees Working Party met representatives of the Bar in December to discuss aspects of the scheme most relevant to the Bar.

6.4 In March 1995 the Lord Chancellor sought our views on revised drafts of the Order and Regulations which he intended shortly to lay before Parliament. The Chairman and Vice-Chairman met the Lord Chancellor towards the end of March 1995. Following that meeting we sent a further letter reiterating, as well as other more detailed matters, our main concern about the maximum uplift of 100%, the need (should that maximum remain) to set a limit on the proportion of damages payable towards legal fees, our continued concern that taxation in individual cases would not prove an effective alternative safeguard, the need to await details of the proposed insurance arrangements before seeking Parliament's approval for the Order and Regulations, the position of a barrister "retained" under a conditional fee agreement and the importance of effective monitoring.

6.5 At the end of the year we were about to respond to the Lord Chancellor's Department's consultation on amendments to rules of conduct in relation to conditional fee agreements.

## **ICSL selection**

6.6 In our last annual report we recorded the progress which had been made on the Inns of Court School of Law (ICSL) selection procedure. We also reported on the discussion held with Dame Jocelyn Barrow in connection with her Inquiry into the issues raised by the disparity in the pass rates between ethnic minority and white students on the Bar vocational course.

6.7 In April 1994 the Committee received a letter from the Bar indicating that the ICSL selection procedure was still not working well. A sizeable proportion of students with scholarships or bursaries from the Inns of Court were failing the selection tests, and it was clear from other correspondence that the universities thought the selection procedure was not always selecting the best students. The Committee held exploratory discussions with the Bar and the Council of Legal Education (CLE) in May 1994 to try to ascertain what had happened. Although the selection procedure for the 1994/5 course was subject to proceedings for judicial review, the Committee was able to discuss the history behind the selection procedure.

6.8 Subsequently our Liaison Sub-Committee met the Chairman of the Bar Council and other Bar representatives to discuss their proposals for a “rescue package” for the 1994/5 course. The Committee continued to have reservations about some aspects of the application process, while acknowledging that the ICSL had made considerable improvements in order to make the system fairer.

6.9 The Liaison Sub-Committee also met with Dame Margaret Booth, the Chairman of the Central Selection Board, to discuss the draft proposals for the selection procedure for the 1995/6 course. At this meeting, the Sub-Committee emphasised the need to take academic achievement into account. In November the Committee wrote to the CLE commenting on the final selection forms which it had discussed in full Committee. Although it thought the new procedure was a considerable improvement on the one used in 1994/5, the Committee raised concerns about the weightings given to the various sections of the application form and procedure, “model” answers which were included with the application forms, the issue of the weighting given to degrees from European Union countries, and the guidance to be given to assessors to ensure uniformity. The Committee accepted that it could not alter the procedure for the 1995/6 course, but made its comments in the hope that it could be of assistance to the CLE in the continuing development of a selection procedure for the Bar vocational course.

## **Court Dress: Advocates’ Wigs**

6.10 In August 1994 the Lord Chancellor wrote to us seeking our views on whether solicitors should be allowed to wear wigs in all or any of the higher courts. Similar letters were sent to a wide variety of bodies. After careful consideration a majority of us were of the view that the Practice Direction of July 1994 should be amended to allow solicitor advocates to wear wigs in the higher courts in common with barristers should solicitor advocates wish to do so, and we wrote to the Lord Chancellor to that effect. We suggested in our reply that perhaps the right way forward would be to consider the issue *de novo* and on its merits, since with the conferment of rights of audience on solicitor advocates, an entirely new legal and professional order had been established.

## **Anti-Discrimination: The Inns**

6.11 In October 1994 we received a letter from the President of the newly formed Bar Lesbian and Gay group, Martin Bowley QC, which noted that the Bar Council and the Law Society had introduced rules of conduct which went

well beyond the existing statutory provision prohibiting discrimination on grounds of race and sex. In contrast, while all of the Inns of Court had decided to introduce anti-discrimination policies, only the Inner Temple had decided that its policy should include discrimination on such issues as disability and sexual orientation. The others had confined themselves to the statutory areas. Since the Bar was itself pursuing this issue we decided that it would not be appropriate for us to intervene at this stage and therefore we alerted the Inns to the concerns raised by the Bar Lesbian and Gay Group. We are awaiting further developments.

## **Proposal for a directive on lawyers' right of establishment**

6.12 In January 1995 the Lord Chancellor sought our advice on the European Community's proposal for a directive on lawyers' right of establishment, and in particular on whether the period of practice and the limited aptitude test proposed in the draft directive would be sufficient to maintain the standards required of those providing legal services, and the balance to be struck between the need to maintain those standards and the free market in legal services provided for in section 17 of the Courts and Legal Services Act 1990. In reply we expressed concern at the proposal to limit the freedom to practise under home State title to 5 years, since we believed this would create a restriction that did not then exist and was not consistent with the statutory objective of the 1990 Act. We made a number of detailed points about the proposals concerning aptitude tests. We were concerned that the proposals could have the effect of undermining the aim of raising standards in legal education if the UK were seen to support them. We believed for all these reasons that the draft directive proposed by the Associations of Bars and Law Societies of the European Community (CCBE) was preferable to this draft. At the end of the year the draft directive was still under consideration.

## **Institute of Legal Executives: Application under s113 Court and Legal Services Act 1990 (Commissioners for Oaths)**

6.13 Section 113 of the 1990 Act allows the Lord Chancellor to prescribe bodies whose members may administer oaths. Applications under this section are made direct to the Lord Chancellor. ILEX had made such an application, and we were asked in February 1995 by the Lord Chancellor's Department for comments, bearing in mind that we were considering an application on extended rights of audience for ILEX Fellows. We replied giving our support for the application on the grounds that Fellows of the Institute had sufficient and suitable qualifications to carry out the duties required of them.

## 7: Professional Standards

### Bar Standards Review Body

7.1 Our last annual report records that in December 1993 the Bar Council had announced the appointment of a Bar Standards Review Body under the chairmanship of Lord Alexander of Weedon QC. Its aim was to consider what measures were needed to improve standards of quality and service, in the light of the recommendations of the Royal Commission on Criminal Justice, and of public expectations generally. We also reported that in February 1994 we had met the Review Body.

7.2 In April the Bar Council published a consultation paper, and the Committee agreed that it should not respond in substance, since the result of consultation might be an application to the Committee to change the Bar's rules.

7.3 In July the Committee met Lord Alexander of Weedon and other representatives of the Bar Standards Review Body to discuss the consultation paper, raising issues of concern to individual members of the Committee rather than giving a Committee view on the paper. Both parties agreed that this had been a valuable meeting.

7.4 In September the Bar published its final report *Blueprint for the Bar*, and in October we wrote to the Bar noting the contents of the report and stating that we would consider any proposals put before us in due course.

## 8: Probate

8.1 In our second annual report, for 1992–93, we reported on the establishment of the Probate Sub-Committee to make preparations for implementation of the provisions in the 1990 Act that permitted applications from professional or other bodies to become “approved bodies” for the purpose of authorising their members to act as probate practitioners. In February 1993 we issued a consultation paper setting out our preliminary views on the training and conduct requirements we expected to see included in applications for “approved body” status. Our last annual report records the results of the consultation exercise, which included the preparation of a note of guidance giving an indication of what we will look for in considering what advice to give on application. This was sent out to prospective applicants, and to other interested parties, in November.

8.2 We have not taken any further steps on this matter, since we are still awaiting implementation of the relevant sections of the 1990 Act. We understand that this is to take place in the autumn of 1995.

## **9: The Standing Conference on Legal Education**

9.1 Separate from the Advisory Committee, the Standing Conference on Legal Education exists to encourage links between the teaching and practising branches of the legal profession, and the Committee. As in previous years, it met on two occasions during the year, and discussed a wide range of issues.

9.2 As reported in the last annual report, the Standing Conference decided to appoint our Secretary as the Secretary to the Conference. This arrangement has worked well and has provided closer links between the Committee and the Standing Conference.

9.3 The Standing Conference continues to be an important focus for our consultations on the review of legal education (paragraphs 10.1–10.12). We are grateful for the assistance members of the Standing Conference have given us with our work. We believe that the Conference has a valuable wider role to play and look forward to continuing the links between the Conference and the Advisory Committee.

# 10: The Review of Legal Education

10.1 The Courts and Legal Services Act 1990 requires us to keep under review the education and training of those who offer to provide legal services, and to give advice with a view to ensuring that such education and training is relevant to the needs of legal practice and to the efficient delivery of legal services to the public. In our second annual report, for 1992–93, we recorded our decision to start with a thorough-going review of legal education, beginning with the education and training of barristers and solicitors. We also recorded details of a wide, general consultation seeking views on the more important trends and developments in legal education, and our initial discussions and briefing visits.

10.2 In last year's report we recorded that we had decided to use the consultation exercise as the basis of a conference in July 1993, which focused on two broad areas: the content of the initial stage of legal education, and how that stage should be delivered. We then prepared for the production of a Consultation Paper addressing "The Initial Stage", of the education and training of barristers and solicitors. This Consultation Paper was issued in June 1994, and was followed by a Consultative Conference in July 1994, fully recorded in a conference report published in August 1994. The consultation period ended in December 1994, and early in 1995 the Committee considered an analysis of the extensive responses received. They assisted us greatly in the planning of our future review activity and will contribute to the formulation of final recommendations.

10.3 Our aim is to prepare a further consultation paper on the vocational stage and continuing professional development of lawyers. We hope to publish this paper in June 1995, following which it will form the basis of a consultative conference in July 1995. In order to prepare this consultation paper we have continued a wide-ranging programme of discussions with interested bodies and completed a further round of visits. During this process we have met the Dean of the Inns of Court School of Law and the Director of the Institute for the Study of the Legal Profession at Sheffield University to discuss the Bar Course; and the Head of Legal Education and the Chief Training Officer of the Law Society, and their consultant researchers, to discuss preparatory skills training for trainee solicitors. Over the past year we have visited a wide range of vocational course providers offering the new Legal Practice Course (LPC), taught at both old and new universities; as well as the Bar Vocational Course (BVC) at present provided only by the Inns of Court School of Law (ICSL). We have visited a number of law firms and chambers in order to see vocational education in action, both pre- and post-qualification. We have visited European institutions such as the Court of Justice of the European Communities in Luxembourg and the Faculty of Law in the University of Leiden in order to understand better the European dimension to legal education, as required by the 1990 Act.

10.4 Our work on the review has been led by the Education Review Planning Group which met on three occasions during the year, and supported by a consultative panel (see paragraph 10.5 below). For detailed consideration of this stage of the review the Committee divided temporarily into two sub-committees, one of which focused on content and the other on structure and finance.

10.5 We have also benefited from discussions with representatives of the professional bodies, the Standing Conference on Legal Education and

educationalists familiar with developments in other jurisdictions and professions. The Consultative Panel set up to assist us with our work on the initial stage of legal education proved very valuable. We therefore continued to use a panel of experts to guide our thinking, particularly in relation to vocational legal education and legal skills training. The present Consultative Panel comprises the following members who worked with us on the initial stage consultation paper: Ann Halpern (Norton Rose), Professor Martin Partington (University of Bristol), Professor William Twining (University College, London); and the following new members: Fiona Boyle (Trainee Solicitors' Group), Vivienne Gay (Pupil Supervisor), Roger Jones (Law Society Training Committee), Dr Alexandrina le Clezio (The College of Law) and John Stanford (Council of Legal Education). We are very grateful to all those who have contributed to our work. The Panel met twice during the year.

## **The Context of Reforms in Legal Education**

10.6 Our last two annual reports record our concerns about the accumulating evidence of students' increasing difficulties in obtaining finance for fees and living expenses for support during the vocational stage of legal education. It is clear that this situation has not improved. On the contrary, evidence suggests that it continues to worsen. This concern is compounded by the evidence that increasing numbers of students are successfully completing vocational courses to become barristers or solicitors, but are unable to find places in pupillage or on a training contract. The Committee is mindful that it is against this disturbing background that the review of legal education is being undertaken.

10.7 We are aware of the extensive interest and development in the field of legal education at all levels. University legal education and scholarship, apart from our own review, has been considered by the Funding Councils which are currently discussing ways of measuring more effectively the quality of teaching and research. The professional bodies have recently issued a new Joint Announcement on Qualifying Law Degrees, while the Society of Public Teachers of Law (assisted by the Committee) is in the process of producing an important new restatement of the minimum holdings for law libraries. At the vocational stage of education and training, the Bar Vocational Course (BVC) and Legal Practice Course (LPC) are both still relatively new and the professional bodies are starting to monitor closely standards of practical training under supervision, whether in pupillage or under a training contract. At the post-qualification stage, there are several initiatives seeking to remind and assist seasoned practitioners to update their legal knowledge as well as develop understanding of new areas of law, alongside new skills, such as those associated with modern practice management.

10.8 Contemporary legal education is therefore in a state of flux. Teaching institutions are experimenting with new methods of teaching and assessing legal knowledge and skills. The professional bodies are relaxing some of their controls over both the initial and subsequent stages of legal education, permitting the involvement of academic institutions in practical legal training (and commissioning research from academics about this education/training).

10.9 As a consequence it is difficult to draw firm conclusions from the relatively limited experience of some recent reforms. The BVC has been running for six years, but as yet we do not know whether, and if so what, institutions outside the ICSL will contribute to its further development. The LPC has been running for two years, and many institutions offering the LPC are only in their first year of operation. Although there does seem to be a consensus among teachers and practitioners that skills training is essential, views about intellectual rigour and about an appropriate balance between the teaching of skills and substantive legal knowledge are divided.



## Issues and Themes

10.10 In this context we had thought to avoid taking sides in many of the important educational debates which are still underway, particularly in relation to the assessment of legal competence and which precise skills need to be taught at a particular point in a legal career. Rather, we are seeking views on a framework which will best support a pluralistic and accessible educational system capable of serving diverse goals. We recognise that legal services in the future will be offered through a wide range of individuals, located in different working environments and to a variety of clients with disparate needs and expectations. We wish to see the kind of educational system that is most likely to produce flexible lawyers capable of meeting changing needs.

10.11 We aim to recommend a framework which would not become operative until the early years of the next millennium, by which time the effects of current reforms will have been worked through, understood and evaluated. We wish to encourage a consensus on the broad aims and functions of legal education. Our emphasis is on laying foundations for an integrated system of legal education and training which will ensure that educational, professional and client needs are balanced and, so far as possible, operate in harmony with each other. We seek a comprehensive and coherent continuum rather than piecemeal reform of different aspects of the present system.

10.12 We perceive five underlying themes for reform:

- (i) the need to create an integrated educational continuum;
- (ii) the value of common education and training, whereby the maximum degree of commonality of education for the different branches of the legal profession is achieved;
- (iii) the importance of high quality, and in particular that vocational legal education and continuing professional development are both intellectually challenging and relevant;
- (iv) the need to take account of access, to ensure that people from diverse backgrounds with diverse skills and personalities are offered the opportunity to provide a range of legal services; and
- (v) the value of diversity, not only as student intake, but also of course provision.

# 11: Research

## Rights of audience

11.1 During the year work continued on proposals to monitor the effects of granting rights of audience to solicitors in private practice. The Committee invited tenders for research projects during the autumn and commissioned three independent research teams in early 1995.

11.2 The first project is a 6 month pilot study to help the Committee determine the most appropriate and accurate means of monitoring significant changes in the advocacy market. The emphasis is on the design of a reliable and tested instrument which the Committee's researchers will use in their periodic monitoring of the market for advocacy services in England and Wales. This project is being carried out by Carole F Willis of the Law Society Research and Policy Planning Unit.

11.3 In order to be able to begin to explain changes in the advocacy market, the other two projects are 'in-depth' studies which focus on the impact of changes in advocacy provision in the London and Bristol areas. The London study is led by Dr John Flood of the School of Law, University of Westminster while the Bristol study is under the direction of Professor Ruth Annand, Head of Department of professional Legal Studies at the University of Bristol. Both of these studies began just before the end of the financial year and are due for completion in 1996.

11.4 All three projects are being supervised and guided by a Consultative Committee which was set up to ensure that the research is both independent and of the highest quality. The Consultative Committee includes representatives from the Lord Chancellor's Department, the Legal Aid Board, the Office of Fair Trading, the General Council of the Bar, the Law Society and the Crown Prosecution Service, as well as an independent researcher. Professor Joanna Shapland, who has particular expertise on research issues concerning the Bar, has been acting as a consultant to the Consultative Committee.

**The Lord Chancellor's Advisory  
Committee on Legal Education and Conduct**

Financial statements  
for the year ended

31 March 1995



# The Lord Chancellor's Advisory Committee on Legal Education and Conduct

## Receipts and payments account for the year ended 31 March 1995

	Note	1995		1994	
		£	£	£	£
<b>HMG Grants received:</b>					
Grant received from Class X Vote 1			857,695		850,000
<b>Less: Amount held back due to excess cash balances</b>					
			<u>(128,500)</u>		<u>—</u>
			729,195		850,000
<b>Expenditure</b>					
Committee members' remuneration	3	128,008		108,649	
Staff costs	4	212,278		245,255	
Other operating payments	5	418,652		339,132	
Furniture, machinery and computer		<u>12,708</u>		<u>11,472</u>	
Total expenditure			<u>771,646</u>		<u>704,508</u>
<b>(Deficit)/excess of receipts over payments for the financial year 1994/95</b>					
			<u>(42,451)</u>		<u>145,492</u>

Approved by the Lord Chancellor's Advisory Committee on Legal Education and Conduct on 27 June 1995.

For and on behalf of the Committee

R Zackon  
Secretary

The notes on pages 36-38 form part of these financial statements.

### Statement of cash balances at 31 March 1995

	1995	1994
	£	£
<b>Cash and bank balances</b>		
Balance at the beginning of the financial year	152,306	6,814
(Deficit)/excess of receipts over payments for the financial year	(42,451)	145,492
<b>Balance at the end of the financial year</b>	<u>109,855</u>	<u>152,306</u>

The notes on pages 36-38 form part of these financial statements.

### Notes forming part of the financial statements for the year ended 31 March 1995

#### 1 Accounting policies

The financial statements have been prepared on a receipts and payments basis as directed by the Lord Chancellor in accordance with Schedule 1, Paragraph 9(2) of the Courts and Legal Services Act 1990, and in accordance with applicable accounting standards except for the policies set out below. The following principal accounting policies have been applied:

There have been no changes to the accounting policies adopted in the year.

#### *Funding*

The Committee is funded by an annual grant from the Lord Chancellor's Department with the approval of the Treasury.

#### *Fixed assets*

Fixed assets purchased are written off in full in the year in which they are acquired.

#### 2 Grant received

An amount of £128,500 was deducted from the first quarter's grant in aid which was paid to the Committee in April 1994 in accordance with standard government accounting procedure.

Due to the excess cash balance held at the end of the year, an amount of £92,225 has effectively been repaid to the Lord Chancellor's Department by reducing the grant paid to the Committee in April 1995.

#### 3 Committee members' remuneration

	1995	1994
	£	£
Fees	<u>128,008</u>	<u>108,649</u>
The emoluments of the Chairman	—	—
The emoluments of the highest paid member	<u>12,250</u>	<u>9,186</u>
Other members' emoluments fell into the following ranges:	<b>Number</b>	<b>Number</b>
£Nil – £5,000	1	2
£5,001 – £10,000	<u>14</u>	<u>13</u>

There are no pension costs for Committee members.

#### 4 Staff costs

	1995	1994
	£	£
Wages and salaries (see note 7)	168,670	186,234
Social security costs	14,098	16,062
Other pension costs	11,388	16,769
VAT	18,122	26,190
	<u>212,278</u>	<u>245,255</u>

Chessington Computer Centre hold a salary deposit of £20,046. This amount has been paid in previous years and will be deducted from a final salary payment in the event of A.C.L.E.C. ceasing to use their services.

During the course of the financial year, the Secretary of the Committee, Mr Shaw, returned to the Lord Chancellor's Department, and was replaced by Mr Zackon.

The total remuneration of the Secretary to the Advisory Committee, including bonus and taxation benefits was £40,816 and £4,351 for Mr Shaw and Mr Zackon respectively.

The following number of senior employees received remuneration falling within the following ranges:

	1995	1994
	Number	Number
£30,001 – £40,000	<u>1</u>	<u>2</u>

The average number of employees during the year was made up as follows:

Office and management	<u>8</u>	<u>8</u>
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#### 5 Other operating payments

	£	£
Agency staff	7,540	8,395
Recruitment	11,200	11,196
Training	1,831	1,396
Research	45,137	7,000
Maintenance, heating and lighting	12,426	24,255
Office supplies, printing and stationery	6,109	4,562
Postage and telephones	11,850	8,966
Office machinery, rental and maintenance	3,482	5,257
Travel and subsistence	51,323	24,598
Conferences and catering	9,258	7,410
Books and newspapers	8,998	5,858
Miscellaneous	7,137	4,808
Rent and rates	241,009	224,109
Audit	1,352	1,322
	<u>418,652</u>	<u>339,132</u>

Travel and subsistence payments above includes an amount of £23,500 paid to the Inland Revenue in respect of income tax and national insurance relating to underpayments in previous years. The under payment arose due to a reassessment of advice given to the Committee by the Lord Chancellor's Department in respect of Members' Expenses.

## 6 Pensions

The Advisory Committee operates a staff pension scheme for directly appointed staff. It is, by analogy with the Principal Civil Service Scheme, non-contributory, except that members of the scheme contribute 1.5% of gross salary towards widows'/widowers' benefits.

## 7 Post year end payments

Payments in respect of directly recruited staff salaries for March totalling £9,977 and members' fees for February totalling £11,052 were paid on 4 April 1995. Seconded staff salaries for February in the sum of £11,247 were paid on 18 April 1995. These sums are not included in these financial statements.

## 8 Post year end commitments

During the year the Advisory Committee made payments in respect of a number of research projects and to which it is committed to make additional payments at the end of each project. The following commitments exist at the year end in respect of such projects:

	1995	1994
	£	£
Commitments due within:		
Less than one year	9,200	—
One to two years	32,625	—



# Report of the Auditors To the Lord Chancellor

We have audited the financial statements of the Lord Chancellor's Advisory Committee on Legal Education and Conduct set out on pages 35 to 38 which have been prepared under the accounting policies set out on page 36.

## *Respective responsibilities of the Committee and auditors*

As described on page 40 the Committee is responsible for the preparation of the financial statements. It is our responsibility to form an independent opinion, based on our audit, on those statements and report our opinion to you.

## *Basis of opinion*

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes an examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Committee in the preparation of the financial statements, and of whether the accounting policies are appropriate to the circumstances of the Advisory Committee, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

## *In our opinion:*

- (i) the financial statements present fairly the receipts and payments to and by the Advisory Committee for the year ended 31 March 1995 and of the balances held at that date;
- (ii) proper books of account have been maintained and a statement of account prepared therefrom in accordance with Schedule 1, sub-paragraphs 9(1) and 9(2) of the Courts and Legal Services Act 1990 and the direction of the Lord Chancellor.
- (iii) receipts and payments have complied with relevant statutes and directions of the Lord Chancellor.

BDO STOY HAYWARD

*Chartered Accountants  
and Registered Auditors*

London

27 June 1995

# The Lord Chancellor's Accounts Direction

The Lord Chancellor, with the approval of the Treasury, in pursuance of paragraph 9(2) of the Courts and Legal Services Act 1990, hereby gives the following direction:

1. The statement of accounts which it is the duty of the Lord Chancellor's Advisory Committee on Legal Education and Conduct to prepare in respect of the financial year ending 31 March 1995 and in respect of any subsequent year shall comprise:

- a) a foreword;
- b) a receipts and payments account; and
- c) a statement of balances

including such notes as may be necessary for the purposes referred to in paragraph 2 below. The Advisory Committee should observe all relevant guidance given in "Government Accounting" and the Treasury booklet "Trading Accounts: A guide for Government Departments and Non-Departmental Government Bodies" as amended or augmented from time to time.

2. The statement of accounts referred to above shall present fairly the receipts and payments account of the Advisory Committee and of its year-end balances. The accounts shall also reflect best commercial accounting practices insofar as these can be applied to the account of the Committee.

3. The statement of accounts mentioned in paragraph 1 above shall include the information set out in schedule 1 to these directions.

4. The statement of accounts shall be sent to the Lord Chancellor by the 30 June after the financial year to which the accounts relate whether or not it has been audited by that date.

5. This Direction (excluding Schedule 1) shall be reproduced as an appendix to the accounts.

6. This Direction supersedes the Direction issued on 21 October 1992.

MACKAY OF CLASHFERN C

*Lord Chancellor*

24 June 1993

# Appendix A

## Statutory Functions of the Committee

A.1 The statutory objective of the Courts and Legal Services Act, which governs all the Committee's functions, is:

“The development of legal services in England and Wales (and in particular the development of advocacy, litigation, conveyancing and probate services) by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice.”

### General Duty

A.2 The Act confers on the Advisory Committee the general duty of assisting in the maintenance and development of standards in the education, training and conduct of those offering legal services. It requires the Committee, in carrying out its functions, to have regard to—

- (i) the practices and procedures of other member states of the European Community in relation to the provision of legal services, and
- (ii) the desirability of equality of opportunity between persons seeking to practise any profession, pursue any career or take up any employment, in connection with the provision of legal services.

A.3 The Committee may make any recommendations it thinks appropriate on any matters which it is required to consider or to keep under review. In discharging its specific functions, the Committee must have regard to the need for the efficient provision of legal services to people who have special difficulties in making use of those services, in particular in expressing themselves or in understanding.

### Specific Functions

*Rights of audience and the right to conduct litigation*

A.4 The Act establishes a new basis for the grant of rights of audience and the right to conduct litigation. Hitherto these rights have been based partly on statute and partly on common law. The Act preserves existing rights, but establishes a framework under which they are in future to be granted by authorised bodies to their members. The Committee is a central part of the framework set up by the Act to consider applications from professional and other bodies to be authorised, or to change the rights they grant or the regulations and rules which govern them.

A.5 The principle governing the Committee's work in this area (set out in section 17 of the Act and known as the “general principle”) is that the question whether persons should be granted advocacy or litigation rights in any court or proceedings should be determined only by reference to:

- whether they are qualified in accordance with the appropriate educational and training requirements;
- whether they are members of a professional or other body with rules of conduct which are appropriate in the interests of the proper and efficient administration of justice;

- whether the body has an appropriate mechanism for enforcing its rules of conduct, and is likely to enforce them; and
- (in the case of a body granting rights of audience) whether it has an appropriate rule preventing advocates from discriminating between clients.

A.6 The detailed procedure for dealing with applications from professional or other bodies is set out in Schedule 4 to the Act. The first step is for the Advisory Committee to advise the applicant body whether the qualification regulations and rules of conduct submitted as part of the application need to be amended in order better to comply with the general principle or further the statutory objective, or both. The final decision on an application rests with the Lord Chancellor and the four designated judges (the Lord Chief Justice, the Vice-Chancellor, the Master of the Rolls and the President of the Family Division), who receive advice from the Advisory Committee and from the Directory General of Fair Trading.

A.7 Once a professional or other body has become authorised to grant advocacy or litigation rights, any amendments to its qualification regulations or rules of conduct (insofar as they relate to advocacy or the conduct of litigation), and any alterations to the rights granted by the body in question, must be submitted for approval through the same procedure as an initial application for authorisation.

A.8 Full rights of audience in the higher courts (the High Court, Crown Court, Court of Appeal and House of Lords) have previously been exercisable only by barristers. Solicitors, who have the right to conduct litigation in all courts, also have full rights of audience in the magistrates' courts and county courts, and limited rights in the high Court and Crown Court. The Act confers on the Law Society and the General Council of the Bar the status of authorised bodies, and deems their qualification regulations and rules of conduct to have been approved in relation to the rights currently exercised by solicitors and barristers.

*Legal education and training*

A.9 The Committee has a general duty to keep under review the education and training of people who offer to provide legal services, and to give particular consideration to continuing education and training. The Committee is also specifically required by the Act to consider the initial practical training required for advocates and litigators, and in other areas concerned with the provision of legal services.

*Specialisation schemes*

A.10 The Committee is required to consider whether specialisation schemes should be established by any professional or other body in any particular area of legal services, to keep under review specialisation schemes maintained by these bodies, and to consider and advise on any proposal for a specialisation scheme referred to it by a professional or other body.

*Probate services*

A.11 The Act contains provisions for bodies approved by the Lord Chancellor to permit their members to prepare for reward the papers on which to found or oppose an application for a grant of probate. Before deciding whether an application for approval should be granted, the Lord Chancellor must seek the advice of the Advisory Committee and of the President of the Family Division. These sections of the Act have not yet been brought into force.

# Appendix B

## Application for Authorisation

1. Any professional or other body that wishes to become an authorised body under section 29 of the Courts and Legal Services Act 1990, in order to be able to confer rights of audience or rights to litigate under sections 27 or 28 of the Act, must send to the Advisory Committee drafts of its proposed qualification regulations and rules of conduct for those members it proposes to allow to exercise those rights; and a statement of the rights it proposes to grant. The Committee should also be provided with any necessary explanatory material, and the Committee may ask for additional information.
2. The Committee then considers the application before advising the applicant of the extent to which (if at all) the draft regulations or rules should in the Committee's opinion, be amended in order better to further the statutory objective, or comply with the general principle. This stage of the process may take some considerable time since it is the Committee's practice to carry out both written and oral consultation with bodies who have an interest in the application, and to undertake briefing visits in order to inform itself about the application.
3. Once the applicant has received advice from the Committee it will need to decide whether it wishes to proceed with its application for authorisation. If it does, then at that stage an application must be submitted to the Lord Chancellor for its qualification regulations and rules of conduct to be approved in relation to the proposed rights. The Lord Chancellor may ask for any additional information he requires. He then sends a copy of the application to the Advisory Committee, the four designated judges and the Director General of Fair Trading. The Committee and the Director General of Fair Trading then advise the Lord Chancellor on the application, and the Lord Chancellor sends the Committee's and the DGFT's advice to the applicant. The applicant has 28 days to consider these and make representations. The Lord Chancellor considers the application, and sends his proposed view and the advice of the Committee and DGFT to the designated judges. The designated judges then consider their view and inform the Lord Chancellor of their decision. If the Lord Chancellor or any of the designated judges has refused to approve the application it will fail. The applicant is then informed of the result.





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