Firm foundations

1 AUGUST 04

Co-author of the Society's "Foundation Document" on professional legal education in the 21st century, sets out the background and the document's objectives

by Paul Maharg

In the last few weeks the Law Society of Scotland has circulated a consultative document for discussion entitled Lawyers of the Future. It can be viewed on the Society’s website www.lawscot.org.uk. It concerns legal education, and focuses in particular on the stage of professional legal education that starts with the Diploma in Legal Practice and ends at conclusion of traineeship.

Why was it written?

The process was begun in 2001 when it was clear that there was a need for more information about the introduction of the new Diploma in 2000. Not only students, but Diploma providers, training firms, HR and personnel departments required to know more about the new Diploma, what it was attempting to achieve, and how it was going about this. They also needed to know how the Professional Competence Course and elements of the Test of Professional Competence fitted into the general programme. A first draft of the document was discussed in detail at a weekend retreat by the Education and Training Committee, and later redrafted after further helpful comments from, successively, Education and Training, President’s Committee and the Society’s Council.

What’s in the document?
The document is a consultation paper which, after the consultation period, become a foundation document for the three year professional programme. It is consultative in every aspect. It sets out a description of the current three year professional legal educational programme developed by the Law Society. However it is much more than just a programme descriptor. It sets out the reasons why we have the programme we have, and suggests models of good practice. It discusses many of the issues affecting legal education at the moment, for example:

- Changes in approaches to teaching, learning and assessment in professional education;
- Student debt;
- Growth in areas of practice and in legal information and knowledge;
- Ethnic and socio-economic diversity and access to the profession.

In addition, the document raises a number of fundamental issues that need to be discussed widely within the profession – the relationship between academic and professional education, for example. On this subject the document proposes that the skills and knowledge learned by students on the LLB should be integrated more fully into the professional educational programme. It also proposes the same integration within the professional education programme itself, so that the stages in the programme – the Diploma, the PCC and the traineeship – would dovetail with each other as far as possible.

The document also sets out (in Section 4) a number of fundamental principles that are essential to the programme. The first and possibly most important of these is partnership between the stakeholders who have an interest in professional education and training – the Scottish Executive and Parliament, the public, the profession, its clients, legal education providers, trainees and students. Professional legal education may be regulated by the Law Society, but if the educational programme is to succeed, it needs the involvement and co-operation of many different partners.

The wider context

There is a more fundamental reason for having a Foundation Document. We (and by “we” I mean the legal community in the widest sense) have never attempted to articulate in Scotland what exactly we perceive professional legal education to be. We can appreciate how surprising this is, and the reasons why it has come about, by comparing the situation of professional legal education with that of undergraduate legal education, with professional legal education in other jurisdictions, and by comparing professional legal education with the education of other professions in the UK.

Undergraduate legal education in Scotland has a plethora of documentation to guide academics and departmental administrators – the Dearing and Garrick reports, QA guidelines and the Law School Benchmarks initiative, for instance. In addition there is a growing body of research and comment on legal education in the UK generally. There are publications such as The Law Teacher, or International Journal of the Legal Profession that deal with under- and postgraduate legal education. There is the extensive work done by the UK Centre for Legal Education
at the University of Warwick in organising conferences, roadshows, and in the reports that they help fund and publish. 1 All of this is a rich ground of scholarship for academics teaching undergraduate students in Scotland.

In other jurisdictions there is wide consultation over professional legal education. In England and Wales, for instance, the Law Society circulated an initial consultation paper on professional education in 2001. This was followed up in a conference, and the set of initial responses was analysed by Professors Julian Webb and Andy Boon of Westminster University. 2 To date, a number of proposals have been put together that expand the number of routes into the profession, and suggest a general outcomes-based approach to professional legal education. 3 The Law Society of England and Wales has issued a statement on the review (May 2004) outlining “day one requirements” for all solicitors on admission. It is currently working on the framework, with a view to completing the review by the close of 2004. 4

Other professions take seriously the research into their educational practice, and the communication of that research to their members. The Association of Collegiate Schools of Architecture in the US, for instance, has for over 50 years published its own Journal of Architectural Education whose stated aim is to enhance “architectural design education, theory and practice” (see www.jaeonline.ws). Note that this means the theory and practice of architectural education, not the theory and practice of architecture. The journal is thus a forum designed for education within the profession. The articles cover a wide variety of stages of architectural education, from initial university courses to continuing professional development. In doing so, the journal takes seriously John Dewey’s plea for a closer connection between schools and life, his advice that the focus of education should be students and the educative process, not substantive content; and above all his firmly held view that education is not a preparation for life: it is life.

We can see the same process at work in medicine, where there are journals devoted to medical education, centres within universities that specialise in forms of medical training, and organisations dedicated to the study and promotion of healthcare education. 5 An example of the last is the UK-based Association for the Study of Medical Education (ASME). Among the values they promote are the following (see www. asme.org.uk):

- Education and learning are central to the delivery of high quality healthcare;
- Education must be an important component in the strategies of Governmental and other healthcare organisations;
- Good healthcare educators are central in planning, delivering and evaluating high quality healthcare;
- High quality research is necessary for the development of healthcare education;
- Vision, innovation and leadership in healthcare education are to be fostered.

The Association can emphasise vision, innovation and leadership as it does because it already has a strong community of interest in universities, hospitals, and professional associations – a community based in journals and conferences as well as in the practice of medical education. There are three aspects of this that we should note for our own profession. First, what is striking about medical education is that it uses the evidence-based
approaches to knowledge that are characteristic of medicine itself. Education is thus firmly re-conceptualised as medical education, and it is a mark of the sophistication and maturity of the educational research culture in medicine that this is so. Secondly, this scholarship is in the public domain. It is peer-reviewed, open to comment, and can be used by others to learn from and build upon. It is part of the public, democratic network of evidence-based knowledge that creates and sustains the community and its developing practice. Thirdly, this knowledge supports and updates the key educational statements of the profession, most notably those contained in Tomorrow's Doctors.

Compare the situation of professional legal education in Scotland. There are few organisations apart from the Law Society of Scotland that focus on professional legal education. There are few publications: a number of unpublished reports, occasional brief papers that go before the Society’s Education and Training Committee, and articles by practitioners in the Journal or Gazette. At a time when there has been radical change in the training programmes of other professions and when the legal profession itself has undergone a transformation in the last three decades, professional legal education in Scotland has added little of comment to the debates, or explained its own developing practice, to the profession and to others.

Why is this so? In part it is down to resources. Scotland is a small jurisdiction and the Society simply cannot devote to legal education the resources that are available, for instance, in England and Wales. As a unit of resource within universities, law receives less funding for training and education than medicine. In addition, legal practice units in universities, in-house training units and other providers are much smaller than in other jurisdictions. And within universities, Diploma staff have not in the past been perceived as research units that add to the literature on the scholarship of teaching, but often as organisational centres for teaching.

Changing the culture

And yet in spite of this, there is fine work being done in professional legal education in Scotland – the excellent training programme set up and maintained in the Faculty of Advocates by Professor John Sturrock QC and others, the expert tutoring carried out by many practitioner-tutors on the Diploma, and much good work done by in-house and other providers on the PCC is proof of that. But for all of us involved in professional legal education in Scotland, this is the challenge: we need to create a community of interests built on partnerships, on evidence-based scholarship and on good practice that will transform the culture of education in our profession.

How might we do this? Look again at the ASME bullet points above. Substitute “law” or “legal” for “healthcare” and you will begin to appreciate what we need to do to change the culture. The consultative Lawyers of the Future is a modest start. Please do read and respond. The Society will be holding a conference later in the year at which those of you interested in professional legal education can attend and discuss the document and its approaches.

In addition to the conference, and as part of the profile-raising process, over the coming year there will be a more or less regular column in the Journal dealing with
professional educational topics. We’ll be discussing what works in e-learning, giving examples of good practice in education design, and presenting ideas for learning at every stage in the process of legal education. The first couple of columns are being written at the moment. We’re looking for writers from any sector involved in professional legal education, with experience of what works, what doesn’t, and who are willing to share the evidence with the profession – and that includes students and trainees! Our approach is non-doctrinaire, evidence-based. If you have ideas you want to discuss, contact me at paul.maharg@strath.ac.uk.

*Paul Maharg is a Professor in the Glasgow Graduate School of Law at the University of Strathclyde*