

# Keepers of the Gate: Access to the Solicitors' Profession in the 21<sup>st</sup> Century

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## Keepers of the Gate: Access to the solicitors' profession in the 21<sup>st</sup> Century

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This paper is concerned with students seeking access to the solicitors' profession. It is also concerned with some of the people and institutions providing such access. The focus is the presentation and some initial analysis of results from a small-scale survey of student applicants, together with a number of in-depth interviews with Graduate Recruitment professionals and partners in a range of law firms. The general aim of this research was to explore the competencies and attributes that were assessed within the application process. The specific issues were the extent to, and means by which, 'Commercial Awareness'<sup>2</sup> and 'Professionalism & Ethics'<sup>3</sup> were evaluated, and the perceptions of the relative importance of demonstrating such competencies, and so developing this aspect of 'cultural capital'<sup>4</sup> to securing safe passage to the Training Contract.<sup>5</sup>

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<sup>1</sup> This paper is based upon empirical work undertaken with the help of Chris Wilkinson of York Law School. As well as the direct involvement in arranging and undertaking interviews (noted below), Chris provided general support across the project, as well as distribution of Survey invitations.

<sup>2</sup> No attempt is made to define this competence, but for the purposes of the paper it is a concept generally regarded as understanding of clients' needs and issues, and of law firms, as businesses operating within a commercial environment.

<sup>3</sup> Again, no attempt is made to define this, but for the purposes of the paper it is a concept associated with the ethical and other professional obligations that solicitors owe to the public, the clients, etc. This general phrase is used through the paper, save for where some particular focus might be required, such as on individual 'character', and the wording of the specific questions asked of survey respondents (see below).

<sup>4</sup> See, for example, A. Cook, J. Faulconbridge, and D. Muzio, 'London's Legal Elite: recruitment through cultural capital and the reproduction of social exclusivity in City professional service fields' (2012) 44 *Environment and Planning* 1744.

<sup>5</sup> The research is, therefore, not concerned (directly) with 'access' in the sense of social diversity – on which see, for example, H. Sommerlad *et al*, 'Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices' (2010), available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/pdf/lspb\\_diversity\\_in\\_the\\_legal\\_profession\\_final\\_rev.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lspb_diversity_in_the_legal_profession_final_rev.pdf) (accessed 10 September 2015) and L. Ashley *et al*, 'A qualitative evaluation of non-educational barriers to the elite professions' (2015), available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434791/A\\_qualitative\\_evaluation\\_of\\_non-educational\\_barriers\\_to\\_the\\_elite\\_professions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434791/A_qualitative_evaluation_of_non-educational_barriers_to_the_elite_professions.pdf) (accessed 10 September 2015).

The paper is very much a work in progress. The ambition is to produce a more developed piece, exploring the empirical work within a theoretical framework, over the forthcoming months. At the heart of the work, however, are some basic questions that can be given initial consideration without that further context:

*What do students undergoing scrutiny in seeking 'solicitor' status think they need to demonstrate in order to achieve this goal?*

*What are those charged with responsibility for such scrutiny actually seeking (in other words, 'are the students correct')?*

*What might this say about the solicitors' profession in the 21<sup>st</sup> century?*

The essential arguments being developed are: (1) the Graduate Recruitment process at the heart of qualification as a solicitor provides important messages to aspiring lawyers; (2) those messages might have implications for the profession and those working within it; and (3) whilst the situation is complex, and practice varies greatly, the overall message is that the scrutiny focuses on the business of delivering legal services more than the professional aspects.

Of course, those questions lead on to deeper issues regarding the nature of the legal profession, its ethical foundations and regulation, and so on. Beyond suggesting the need for further research, this paper will not stray into that territory. Instead, it will focus on analysis of the data produced through empirical work, with a few speculative suggestions thrown in towards the end.

Comments and questions are very much welcomed.

### **The context for the project**

Whilst the future of legal education and professional qualification remains far from certain, with more diverse routes opening for entry, it seems likely that some form of 'period of recognised training' will remain a key stage for aspiring solicitors. It seems probable, therefore, that obtaining Training Contracts of some kind will continue to capture future solicitors' attention as the effective 'gateway' to professional qualification.<sup>6</sup> At the same time, review and proposed reform of the Profession, its training and regulation, has identified Professionalism & Ethics as the primary competence expected of entrants.<sup>7</sup> The

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<sup>6</sup> With law firms keen to stress the significance of the Training Contract and the competitive edge it is perceived as helping to develop through the quality of training, etc. (see The Law Society, 'Report into the global competitiveness of the England and Wales solicitor qualification, available at:

<http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/global-competitiveness-of-the-england-and-wales-solicitor-qualification/> (accessed 10 September 2015)).

<sup>7</sup> The Solicitors Regulation Authority's consultation draft 'Training for Tomorrow: A Competence Statement for Solicitors' (available at:

Legal Education and Training Review found that two areas often mentioned in interviews and focus groups as lacking among new recruits are 'ethics/professionalism' and "commercial awareness".<sup>8</sup>

Anecdotal evidence from discussions with students (and overheard between them) suggests that there is a clear understanding of the need to demonstrate their Commercial Awareness as part of their 'human capital', or 'signalling', when undertaking the Training Contract application process. Whilst some connection has also been identified between Professionalism & Ethics, this has been much more equivocal. There is a clear sense that a number of students consider some aspects of their studies 'serious', and others not. Though views are divergent, Professionalism & Ethics often seems to fall within the 'not serious' category.

Given the espoused views of the profession noted above, the question that arose is why students seem to identify a need to demonstrate their Commercial Awareness, but somehow get the message that Professionalism & Ethics doesn't matter. So the project was devised to gather some more substantial data about student experience of gaining access to the solicitors' profession, and a Training Contract in particular, as well as understanding that experience from the perspective of the recruiters. The former was obtained through an online survey and the latter through a series of semi-structured interviews.

### **The student experience: Survey**

Students from a range of institutions were invited to complete an online survey. The survey tool was designed so that questions were revealed one at a time and respondents could not return to earlier questions once completed.

#### ***Section One: Respondent and experience of the Training Contract application process***

This included questions regarding:

- Respondent's stage in Education – e.g. Year 3 of undergraduate degree, or Legal Practice Course.
- Respondent's view of the most significant 'hurdle' in qualifying as a solicitor (the hardest to achieve) – e.g. acceptance onto an undergraduate degree programme, passing the LPC, or successful completion of a Training Contract.
- Respondent's experience of different elements of the Training Contract recruitment process – e.g. written applications, online testing, or vacation schemes.

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<http://www.sra.org.uk/sra/consultations/competence-statement.page>, accessed 10 September 2015) has 'Ethics, professionalism and judgement' as the first element "because of the importance [...] attach[ed] to it."

<sup>8</sup> See the Legal Education and Training Review, 'Setting Standards: The future of legal services education and training regulation in England and Wales' (available at: <http://letr.org.uk/the-report/>, accessed 10 September 2015), at para.2.70).

- Types of 'firms' respondents had experience of – e.g. public sector, large corporate/commercial (outside the City), or High Street.
- Respondent's view of the Qualities, Knowledge or Skills they need to demonstrate to Training Contract providers – an open question with respondents encouraged to think broadly.

### ***Section Two: Specific factors within the application process, and views of the solicitors' profession***

This included questions regarding:

- Whether some aspect of Commercial Awareness<sup>9</sup> was assessed as part of any of the recruitment processes experienced (irrespective of whether included in the 'Qualities, etc.' list in Section One).
- Whether some aspect of 'Ethical Awareness & Behaviour'<sup>10</sup> was assessed as part of any of the recruitment processes experienced (irrespective of whether included in the 'Qualities, etc.' list in Section One).
- If assessed, how 'Ethical Awareness & Behaviour' was assessed.
- Rating of the importance of demonstrating 'Ethical Awareness & Behaviour' in securing a Training Contract.
- Rating of the importance of 'Ethical Awareness & Behaviour' to life as a qualified Solicitor in the 21st Century?
- Whether the respondent had studied some form of Professionalism & Ethics, or Commercial Awareness as part of their undergraduate degree.

The Survey elicited 28 (fully completed) responses. The relatively low number clearly limits the claims to representativeness. The clarity and consistency of response to key questions, however, might suggest some useful indicative data. In addition, some of the narrative responses provide useful insights.

### **The student experience: Results**

Most respondents were undergraduate Year 2 or 3 students. Most of their experience was with large and medium sized corporate/commercial law firms, though there was some wider experience. All had some experience of the recruitment process for Training Contracts, 23 (82%) having experience beyond the online or other written application stage.

The first question worth some exploration is Question 2: *In your opinion, what is the most significant 'hurdle' in qualifying as a solicitor?*

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<sup>9</sup> Guidance as to 'Commercial Awareness' provided: "By 'Commercial Awareness' we mean an understanding of the business context for delivery of legal services, in a very general sense. That means an understanding of legal services as a business, the commercial needs and interests of clients, etc."

<sup>10</sup> Guidance as to 'Ethical Awareness & Behaviour' provided: "By 'Ethical Awareness & Behaviour' we mean understanding of ethical issues, professional duties, or other elements which distinguish legal practice from 'general business' services."

The point of this Question was to identify what was considered to be the greatest challenge in gaining access to the Legal Profession (at least the branch that 90% enter), and so what might be considered the effective 'Gateway' determining who enters the Profession. The response was universal – 100% said Training Contracts were the greatest hurdle. There may be reasons why some other possibilities were discounted; by the time students were responding, they had accessed undergraduate degree entry at a minimum. Others were some way off in the future, such as completing the Training Contract. For the vast majority of students (Year 2 and 3) the application process was something they were going through at the time of response, or had done recently. But the responses do confirm their understanding of what seems to be generally accepted as the main challenge to qualification, supported by previous studies.<sup>11</sup>

We might also infer something as to the degree of influence the experience of different stages of this 'entry process' might have. If one part is considered the greatest challenge, what goes on in that part might be a particular focus for the applicants, and the messages that come from it may be quite important.

The next set of questions of interest were Questions 6 to 8, asking respondents to:

1. *List the Qualities, Knowledge or Skills they thought needed to be demonstrated to Training Contract providers; then*
2. *Identify whether Commercial Awareness was assessed; and*
3. *Identify whether 'Ethical Awareness & Behaviour' was assessed.*

In response to Question 6 (so without any prompting):

17 of 28 respondents referred to Commercial Awareness, either explicitly, or by clear association.<sup>12</sup>

None of the 28 respondents referred to 'Ethical Awareness & Behaviour', by either direct reference to terms such as 'ethics' or 'professionalism', or mention of anything that could be clearly associated with the general concept.

In response to Question 7, when asked specifically, a further 8 said they thought that Commercial Awareness had been assessed (giving a total of 25 (89%)).

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<sup>11</sup> See, for example, M. Shiner and T. Newburn, *Entry into the Legal Professions: The Law Student Cohort Study- Year 3* (The Law Society, 1995) and R. Sullivan, 'Barriers to the Legal Profession' (Legal Services Board, 2010) available at: [http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/publications/pdf/literature\\_review\\_on\\_diversity2.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/publications/pdf/literature_review_on_diversity2.pdf) (accessed 10 September 2015).

<sup>12</sup> As well as actual experience of graduate recruitment processes, this high degree of association may also reflect other influences, such as the high profile of Commercial Awareness in the legal profession media students are likely to access, such as the Lawyer2B (see, for example: <http://l2b.thelawyer.com/careers/junior-lawyer-life-hacks-commercial-awareness/3033986.article> (accessed 10 September 2015)).

In response to Question 8, when asked specifically, 11 (nearly 40%) of respondents thought that 'Ethical Awareness & Behaviour' had been assessed as part of the process (despite no one mentioning it 'unprompted').<sup>13</sup>

When asked 'how' this was assessed (in Question 9) some specific examples were provided, which were interesting. These included some pretty clear and detailed examples, such as:

*"In one interview such 'Ethical Awareness & Behaviour' matters were considered in relation to a fictional scenario where we were asked how we would deal with a conflict of interest, or if a client was engaging in a morally reprehensible yet legal activity."*

*"Situational judgment tests. At interview, also asked 'if working for large client as a trainee and your partner is not contactable, the client asks you to backdate work completed, what do you do?'"*

*"I got asked about spotting a mistake in a contract meaning your client would get £10000 more. Do I keep quiet?"*

On the other hand, some responses less clearly reflected a universal and or positive interest in 'ethical' behavior.

For example, one of the illustrations above is prefaced with *"Only at one firm"*.

One response referred to *"Corporate Responsibility type stuff"* (so might be considered very loosely associated with the concepts of 'ethics' and 'professionalism').

When looking at the raw 40% association, one narrative response was especially illuminating: *"Only one firm out of the five that I did vacation schemes at asked anything about ethical behaviour at interview. That firm was asking whether my ethical views would be a barrier to me completing work for them."*

The final questions suggested that respondents may have been atypical in some respects, as the vast majority (27 (96%)) had studied Professionalism & Ethics (despite this not being a requirement of Qualifying Law Degrees). Around 38% had studied Commercial Awareness in some form. That suggests that in terms of 'sensitising' through prior experience/study, Professionalism & Ethics was almost universal amongst the respondent group. It might be inferred, therefore, that the respondent group would be at least as likely as the target population to identify issues and assessment around Professionalism & Ethics.

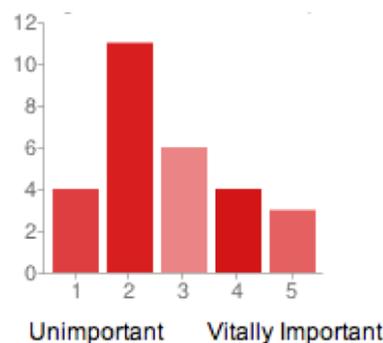
The initial conclusions that may be drawn from the Survey are that:

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<sup>13</sup> This included one respondent who did not have experience beyond the written application/online testing stage.

1. Applicants with experience of the Training Contract recruitment process identify Commercial Awareness as something that they need to demonstrate. Unless prompted, however, they do not identify Professionalism & Ethics.
2. When asked specifically, there clearly is some perception of the assessment of (and so some understanding of the need to demonstrate) Professionalism & Ethics.
3. As well as being much more limited than Commercial Awareness, however, that assessment and understanding is also less clear in what it is thought that the assessors are looking for. In some cases, that might be seen as actually comprising an aspect of Commercial Awareness.
4. Despite some very clear examples of Professionalism & Ethics assessment (such as the use of hypotheticals and Situational Judgement Tests), this might not have as clear an impact on, or send such clear messages to, applicants that testing for Commercial Awareness seems to. No one raised this as something they needed to demonstrate, without specific prompting.

On the two other main questions, given the earlier views, the responses to “*Whether or not you think it was assessed...how important do you think ‘Ethical Awareness & Behaviour’ is in securing a Training Contract?*” (Question 10) were not too surprising:



The Majority of Respondents thought it of less than average importance.

Question 11 on the importance of this to practice as a solicitor will be considered later.

### **The view from the recruiters: Interviews**

In order to provide some triangulation, through understanding the same recruitment processes from the perspective of those involved in assessing applicants, the second stage of the project was to undertake a series of semi-structured interviews.<sup>14</sup> There were nine interviews in total (averaging around one hour each). Participants were from six law firms:

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<sup>14</sup> These interviews were arranged by Chris Wilkinson. Chris also conducted around half of the interviews. Some were conducted jointly with two interviewers.

- Two international/global firms (City of London offices);
- One large regional firm;
- One medium regional firm;
- One small regional firm; and
- One small ('niche/specialist') regional firm.

All of those firms could be considered broadly 'Corporate/Commercial', other than the 'specialist' firm. Although that firm had a substantial Corporate/Commercial services practice, there was more of a balance with Private Client services (and Criminal work, in particular). A number of other firms also offered non-Corporate/Commercial services.

The participants were from different backgrounds in the sense of being partners involved in graduate recruitment (four) and recruitment professionals (five).

Though much more discursive, the structure of the interviews was very similar to that of the Survey:

- Discussing recruitment processes and experience generally;
- Asking for the Qualities etc. that were assessed and desirable;
- Then asking specifically about Commercial Awareness; and finally
- Asking specifically about Professionalism & Ethics.

### **The recruiters' perspective: Results**

Unprompted, almost every participant (8 (89%)) was very clear as to the fact that they assessed Commercial Awareness. It was one of the main things mentioned without suggestion (albeit not always using the precise term). There was also a lot of unprompted detailed information about why and how that was assessed.

When prompted, the one participant who had not raised Commercial Awareness maintained that it was not important (though thought that others involved in graduate recruitment at the firm might look for this).

By contrast, unprompted, no one mentioned anything very close to Professionalism & Ethics. In fact, the only thing that came anywhere near was mention of presentation, or 'looking like a lawyer' (meaning how applicants dressed).

When it was raised specifically, however, most participants (7 (78%)) said they thought Professionalism & Ethics was important, and that it was assessed. Only one was very clear that it wasn't assessed. Many interviewees could also give some examples of how this was assessed. In comparison with Commercial Awareness, however, the picture was far less clear. There was a significant variation in approach – as to the consistency in being assessed, the means of doing so, and also what it was that assessors were looking for. This ranged from having absolutely nothing (and being clear that it was not assessed), through some fairly general suggestions as to things people might look out for in

interviews, or during exercises (though not always being able to point to anything in particular), to more rigorous/specific elements in Situational Judgement Tests, and other activities. Even with those scenarios, there was only one firm that seemed to use these consistently, rather than as an element that 'might' be included in some cases.

When talking about what was being looked for in applicants, again the notable feature was the contrasting degree of clarity and consistency seen with Commercial Awareness. Some participants referred to the need to behave ethically in a conduct, or regulatory sense. Others talked of looking at ideas of 'Integrity' and 'Character'. Some referred to factors that might relate to much more general matters; focusing on things like 'charitable work', or being 'professional' when clients are shouting.

The variation in many notions of Professionalism & Ethics probably reflects the breadth of the concept, or it may reflect a lack of clarity in the question design/phrasing. It also chimes with the students' wide understanding of the concept. It does, however, suggest that the responses in both elements of the empirical work were at the upper limits – i.e. if aspects such as charitable work (or Corporate Social Responsibility) are excluded, the proportion of participants identifying Professionalism & Ethics as part of the assessment reduces. Significantly, neither set of participants made any reference without prompting. That may say something about the relative importance in participants' minds.

A further commonality between the student and recruiter responses on the question of Professionalism & Ethics can be found in one of the examples given by an interviewee when asked about the subject specifically. A question that had been explored with applicants during interview with a partner related to: *"Getting a sense of how they would cope with something that they might not personally agree with; then how they would deal with that from a business perspective...It focuses on the candidate's ability to recognize that, at the end of the day, in this type of law, well in any kind of law, if you are a lawyer, you are representing your client and you need to represent your client in a professional way and regardless of, most importantly, that you help the client uphold the law, and you are doing a job as a professional service representative, so it's, I guess as an extreme example you would be concerned about recruiting someone who just said well I just wouldn't agree with it – you know, I'd tell the client I wouldn't want to act for them. And I don't think it's ever that black and white, sometimes it is, but most of the time there are other issues at play here. So I guess it's a candidate taking a step back and seeing the bigger picture – but recognizing that they are part of an organisation which is about making money, if you're a lawyer in this type of organisation, and it's about doing the best you can for your client, regardless of whether or not they are going to be the people you want to invite round for dinner, or you know they're doing something that might be affecting people that you know. So I guess in that sense it's just someone having an appreciation of the realities of the sector that they are joining."*

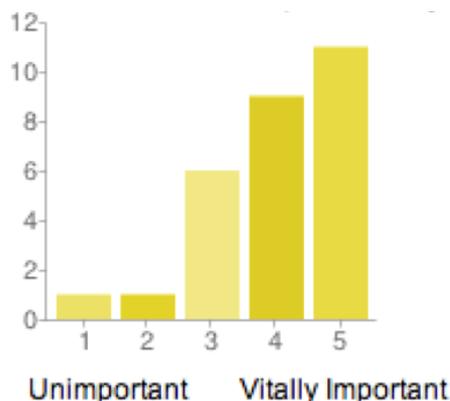
That interview included a number of points about the importance of integrity in the profession, and the sector, and concerns about managing risk. On many

levels, the approach may be viewed as reflecting a standard approach to legal ethics: that the lawyer should act for clients irrespective of their perceived morality (or that of their case).<sup>15</sup> But there are a couple of points that arise from this. First, there may be danger that students/applicants get a slightly different message from this type of interaction (possibly that junior lawyers need to do what they are instructed to do, without complaint or questioning). Secondly (and much more clearly), the scenario tends to frame the issue in a 'business' context: the message is that this is the right thing to do primarily for commercial reasons, rather than ethical ones.

A fairly consistent characteristic of the discussions on how Professionalism & Ethics were assessed was that, where this was undertaken, the approach was to look for exceptional cases and extreme behavior. 'Alarm Bells' going off was the kind of phrase used. It seemed that the general assumption was that applicants had the right sort of 'Character'. It was explicitly stated by at least one interviewee that they assumed that people would comply with regulatory rules and requirements. It was also very clear that (consistently across firms) ethical and professional conduct was viewed as something that would (and could) be instilled and developed through: (a) 'external' regulation; and (b) internal training and monitoring (handbooks, induction sessions, and so on), and that any misbehaviour would be picked up. This will be considered below.

### One final question

Returning to the survey of students, it was very clear that 'ethical behaviour' was thought to be relatively unimportant in getting a Training Contract. As we saw earlier, that stage is seen as the main 'Gateway' to qualification as a solicitor. But that did not mean that these same people thought that this reflected a lack of importance of ethical behaviour in *practising* as a lawyer. The answers to the Question 11: "How important do you think that 'Ethical Awareness & Behaviour' are to life as a qualified Solicitor in the 21st Century" suggest quite the opposite:



This question was not followed up so there was no attempt to drill down into any reasoning underlying the basic view provided. Potential reasons (without any

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<sup>15</sup> Elements of the concept of 'Neutral Partisanship'.

foundation in the data) for the significant difference between the views here and those in relation to securing Training Contracts might include:

*Respondents want the Ethical dimension to be more important than they might have perceived it* – they possibly think this a desirable characteristic of the profession they aspire to join; that it is more than a mere vocation. They may also be conscious of the ethical foundations of that profession, and so the justifications for limiting the delivery of certain services (and so appreciate the connection with, albeit diminishing, market control). Discussions on other issues certainly suggest that some students consider that others who have not gone through the same study and qualification process should be excluded from the profession.

*It could be that respondents think that Professionalism & Ethics is important, but it is either:*

- (a) *Something for them as individuals, and not of interest to Firms,<sup>16</sup> or*
- (b) *Something that is a matter of 'external regulation' – that they will be taught and regulated by others.*

This is further speculation, of course, but both of these reasons would be cause for concern. The first may undermine the sense of coherent value placed upon professional and ethical standards across the profession and powerful organisations within it. The second may be even more worrying as it would suggest that Professionalism & Ethics is considered something that is divorced from the entrants own individual responsibility; possibly that is a matter of 'rule compliance', rather than the development individual character or values (at least in part).<sup>17</sup> The focusing on individual responsibility is a matter of some interest to the SRA.<sup>18</sup>

*A further potential reason is that the response is misleading as it is skewed by the Survey.* There might be some sense of 'guilt' in not identifying this aspect until prompted, when later questions suggest it is/should be important. When the opportunity is provided to agree with this view, its importance may be exaggerated.

In all likelihood, the reasoning underlying the view of importance in practice may include a mix of these reasons, and others: or possibly none of them. Without that understanding it is hard to know whether to be encouraged by the views expressed.

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<sup>16</sup> It is, of course, possible that students think it is of interest to firms, but that seems unlikely given their perception as to relative lack of importance in demonstrating this to those firms.

<sup>17</sup> On the limited effectiveness of Rules/Codes without development of 'professional moral character' see, for example, D. Nicolson, 'Making lawyers moral? Ethical codes and moral character' [2005] Legal Studies 601.

<sup>18</sup> Paul Philip, Chief Executive, Solicitors Regulation Authority, 'Power, Practice and Professional Values – a Regulatory Perspective' (a paper presented at the June 2015 Symposium on 'Corporate Lawyers and Corporate Clients' in Birmingham).

## **Some (potential) implications**

So the overall picture seems to be that Professionalism & Ethics in being a practicing lawyer might be thought important by potential entrants into the profession, though they do not generally think it is assessed as part of the most significant challenge to entry. And they are partially correct about this. Most firms are clear that this is something they look for in applicants. There are some very clear examples of Professionalism & Ethics being assessed, with some using sophisticated methods. But the extent to which its value is demonstrated,<sup>19</sup> and to which it actually plays a part in decision-making by the effective 'Gatekeepers' to the profession is less clear. This is in contrast to 'Commercial' skills and knowledge, which are almost universally valued, and are actually assessed in clear and sophisticated ways. There is also some suggestion, from students and assessors, that assessment of Professionalism & Ethics may sometimes be framed in the commercial context.

It is hardly surprising that commercial organisations place an increasing emphasis on the extent to which potential employees and partners understand, and contribute to, that business and its clients needs. But at the same time, those businesses have a special role in society, and some special privileges related to that. Access to the firms and the training they can offer also presents the most significant hurdle to those aspiring to enter the solicitors' profession. So why does the concern seem to be on one set of capabilities far more than the other? This was not really explored in any depth in many interviews. Some potential reasons may be offered here. These are a little less speculative as they reflect themes that can be identified from the interview data and/or supported through logical reasoning.

Despite the examples of specific methods of assessment, there was an assumption amongst many participants that Professionalism & Ethics would not be lacking in applicants (often reflected in those assessing for this quality not doing so as rigorously as with others). The question that arises is why this is assumed of applicants, and yet many other important qualities and capabilities are not. A further element of this was an assumption that training and monitoring (both internal to the firm and external by regulators) would be effective in ensuring that entrants would have the required character and capabilities. But there was no such assumption that training would be effective, or sufficient, elsewhere. The question that arises here is whether Professionalism & Ethics, or 'character', can be taught more readily than something like Commercial Awareness. In an effective form, the latter no doubt requires a deep and genuine interest in the business world, for example. But that seems no more challenging than developing values, which is an inherent part of the latter, unless conceived as something more akin to mere rule compliance.

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<sup>19</sup> In the sense of being referred to without prompting.

A slightly different rationale suggested in the interviews may be a reliance on external assessment; that this will be a matter for the regulators and profession, rather than firms. Given the likely significance of Professionalism & Ethics in the new Competence Statement and the likely assessment of this through the new centralised assessment regime, this may be perfectly reasonable on one level. There are, however, a number of other skills and areas of knowledge that are assessed by universities and others. In broad terms those 'external' judgements played a role in decision-making,<sup>20</sup> but they were also checked very carefully by the firms. Intellectual ability and communication skills were not left to the external assessment of academic markers, for example. These were evaluated carefully by the firms and their recruitment processes.

Finally, it might be that this ethical dimension is actually considered less important than the others. That seems difficult to square with the statements and purported values espoused by the profession itself, by many firms (including almost all of those interviewed), and by many lawyers and other professionals working within them.

## **Conclusions and future research**

Outside the firms and profession, there is also a broader concern with lawyers' ethical conduct; prompting calls for character development as a response.<sup>21</sup> Despite graduate recruiters in law firms being fairly clear that this is of interest to them, that is not as clearly identifiable as other matters. In particular, potential entrants do not seem to consider that this is of importance to their clearing the most significant barrier to entry.

One question that arises is where, and how, this 'character' assessment and building takes place. In particular, what might the roles of law firms, and their recruitment processes specifically, be here? If firms value this quality and try to assess it, how do they do so, and how might they be supported in doing so? Alternatively, if the responsibility is to lie elsewhere (with external assessment), then having a clearer picture of what Graduate Recruiters are doing in this regard (and are not), and what they are looking for in potential entrants, may be helpful. So a claim can be made as to the need for further research, to:

(a) Understand the extent to which Professionalism & Ethics is valued (and assessed) by Graduate Recruiters, including what this means to them, across the solicitors' profession;

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<sup>20</sup> High school grades, degree classifications and module marks being important factors, for example.

<sup>21</sup> See, for example, J. Arthur *et al*, 'Virtuous Character for the Practice of Law' (The Jubilee Centre for Character and Virtues, 2014), available at: <http://www.jubileecentre.ac.uk/1553/projects/gratitude-britain/virtuous-character-law>, accessed 10 September 2015.

(b) Identify in detail the various approaches and techniques employed to evaluate entrants in this regard, across as broad a range of different Training Contract providers as possible'; and

(c) Develop a 'toolkit' of evaluation methods that might be used by different types of firms, to match scale, resources, existing recruitment processes, etc.

Given the extent of research and public interest, some evaluation of the impacts of current and potential approaches and methods on social diversity, and so access to the professions from that perspective, may also be of value