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### Distance Delivery in the Electronic Age - Professional Body Regulation

**John Fairhurst**

Department of Law, University of Huddersfield, UK

#### Abstract

In this paper, I consider the role of the professional bodies in recognising law degrees and CPE law graduate conversion courses which satisfy the Academic Stage of Training for those seeking to enter the legal profession in England and Wales. I consider the additional requirements placed upon institutions which deliver the CPE. In particular, for distance learning CPE courses, there is a requirement that students attend the providing institution for 12 days of face-to-face tuition each year. After reviewing the two different methods of delivering distance learning courses (traditional and electronic), I consider the rationale for the imposition of the compulsory attendance requirement and conclude that, in the electronic age, there is no logical reason for the imposition of a compulsory requirement, pedagogic or otherwise.

**Keywords:** Legal Education - 1995 Joint Announcement - 1999 Joint Statement - CPE - CPE Board - Distance learning - Electronic delivery - Pedagogy - Collaborative student learning

#### Introduction

The Academic Stage of Training is the first part of a two-stage training programme for qualifying as a solicitor or barrister of England and Wales. After completion of the Academic Stage students go onto the Vocational Stage of Training which involves the completion of a skills-based Legal Practice Course, two-year Training Contract, and Professional Skills Course (for the solicitors' route), or the Bar Vocational Course and one-year Pupillage (for the barristers' route).

Under the Courts and Legal Services Act 1990 (as amended) the professional bodies (i.e. the Law Society and General Council of the Bar) are responsible for laying down the qualification regulations in respect of those seeking to qualify as solicitors and barristers. They have agreed that the Academic Stage of Training can be satisfied by undertaking, *inter alia*, a Qualifying Law Degree ("QLD") or a Common Professional Examination ("CPE"). With regard to these two routes, the Law Society and Bar Council have agreed to act jointly through the issuing of periodic announcements and statements.

#### *QLD*

In days gone by, the Law Society and Bar Council imposed requirements about core subject teaching

which had to be satisfied if a degree was to be accepted as a QLD. Compliance with model syllabuses was required, and methods of assessment and minimum teaching hours were specified.

### *1995 Joint Announcement*

The current Joint Announcement for full-time QLDs was issued in January 1995 and became effective from 1 September 1995[1].

The statement provided that students had to study seven Foundation Subjects in order for the degree to be a QLD[2]. No attempt was made to lay down a detailed syllabus; so, for example, the requirement for "The Foundations of the Law of the European Union" was simply that it should cover:

"The political institutions and processes of the European Communities. The European Court of Justice and its jurisdiction. Sources and general principles of the Law of the European Union. The relationship between the Law of the European Union and National Law. An introduction to the main areas of the substantive law of the European Union."

There was no requirement for an eighth legal subject to be taken, but it was anticipated "that students will in addition, wherever possible, be encouraged to study at least one optional area of law to enable them to apply the knowledge and principles introduced in the foundations to a new area of legal study."

Minimum teaching hours were not specified, but there was a requirement that in order to be recognised as a QLD:

(i) study of legal subjects (including study of the seven Foundation Subjects) must occupy not less than one half of a student's work-load in a three year degree course and three eighths in a four year degree course; and

(ii) study of the seven Foundation Subjects must occupy not less than seven eighteenthths of a student's workload in a three year degree course and seven twenty-fourths of a student's workload in a four year degree course.

With regard to four to six year part-time law degrees, QLD recognition would be decided upon by discussion between individual institutions and the professional bodies, using as a basis the requirements for a three year full-time QLD.

The methods of assessment would be for each institution to decide. The value of employing a variety of methods of assessment where resources allow, rather than relying solely on one method such as written unseen examinations, was recognised.

The Law Society and the Bar indicated that they would exercise their discretion in relation to the recognition of QLDs in a positive, practical and flexible way which would involve the minimum of disruption for law schools.

### *1999 Joint Statement*

A new Joint Statement was issued in 1999 and will become effective from 1 September 2001, subject to the Lord Chancellor's comments[3]. The professional bodies will recognise a course of study leading to the award of an undergraduate degree as a QLD if:

i. The institution providing the course of study satisfies the professional bodies that adequate learning resources are provided to support the course of study.

- ii. The higher education institution awarding the degree of which the course of study is part has degree awarding powers conferred by the Privy Council.
- iii. The standards of achievement expected of students undertaking the course of study are set at or above the minimum level of performance as set out in the QAA Benchmark Standards for Law Degrees in England, Wales and Northern Ireland<sup>[4]</sup>.
- iv. The course of study includes the study of legal subjects for the equivalent of not less than two years out of a three year or four year course of study.
- v. The seven Foundation Subjects must involve not less than one and a half years study. The remaining half year in law must be achieved by the study of legal subjects. The course of study will normally be spread over the full duration of the degree course.
- vi. The course of study will be one which satisfies the external examiners of the degree programme of which it forms part that, in addition to the Areas of Performance set out in the Benchmark Standards, the students on that course of study should have acquired the knowledge and general transferable skills set out in Schedule One of the Statement.

The primary amendments relate to increasing the student's exposure to law and the Foundation Subjects in particular, and incorporation of the QAA Benchmark Standards, and additional knowledge and general transferable skills.

Flexibility clearly seems to be the order of the day as far as undergraduate programmes are concerned; maximum freedom is given to institutions to develop their own courses.

### ***CPE***

Non-QLD graduates seeking to enter the legal profession are required to complete a CPE. The professional bodies have delegated the regulation and control of CPE courses to the CPE Board, which comprises of members of the professional bodies, practising solicitors and barristers, and academics. The CPE Board validates individual CPE programmes usually for a five-year period, after which there is a review and revalidation process.

The CPE Board, guided by the Joint Announcement, requires CPE courses to comprise of the seven Foundation Subjects plus an eighth area which can be achieved through research-based study. Unlike the professional bodies' approach in relation to QLDs, the CPE Board restricts the freedom of the institution in terms of delivery.

Although it adopts the same strategy with regard to the syllabus of the Foundation Subjects, minimum hours are specified. For example, part-time and distance learning courses must be delivered over two years, the duration of the course must be at least 72 weeks over the two years (i.e. 36 weeks each academic year), and there must be a minimum of 1620 student study hours proportioned over the two years.

Whereas with a QLD the institutions are given the freedom to decide on the form of assessment (e.g. coursework and/or written examination (seen or unseen)), it is a requirement that on the CPE, assessment of the Foundation Subjects includes an unseen written examination.

One of the major limitations to the institutional freedom of delivering a distance learning CPE course is a requirement that students attend the providing institution for twelve days of face-to-face

tuition each year; this is not imposed as a blanket policy for QLD recognition. Institutions are currently providing distance learning QLDs without a compulsory attendance requirement; such a requirement has been imposed by the professional bodies in only one case.

The aim of this paper is to discuss the CPE Board's two-year compulsory attendance rule to ascertain if there are any pedagogically sound, or other, reasons for this requirement in the era of electronic distance delivery.

## Delivering distance learning

A distance learning course can be delivered in two ways:

- \* Traditionally; and
- \* Electronically.

### *Traditional delivery*

Traditional delivery would include some, or all, of the following components:

- \* Student manuals for each of the Foundation Subjects
- \* Use of local library (e.g. through the UK Libraries Plus Scheme (see below))
- \* Tutor support (telephone, fax, postal)
- \* TMAs (i.e. tutor marked assignments/tutorials)
- \* Local student study groups

### *Electronic delivery*

Electronic delivery would include some, or all, of the following components:

- \* Online student manuals for each of the Foundation Subjects incorporating interactive elements (e.g. links to web sources, PowerPoint presentations, multiple choice questions)
- \* Online library (e.g. CD-Roms, Halsburys, Lawtel, Lawtel EU Interactive, Lexis etc.) and links to legal sources on the internet
- \* Use of local library (e.g. through the UK Libraries Plus Scheme(see below))
- \* Tutor support (principally by email)
- \* TMAs (i.e. tutor marked assignments/tutorials - submitted, marked and returned electronically)
- \* Email discussion boards (i.e. asynchronous communication)
- \* Live chat rooms (i.e. synchronous communication)

- \* Group work facility (incorporating both asynchronous and synchronous communication)

### ***Hybrid delivery***

A traditionally-delivered course could also incorporate elements of electronic delivery, and *vice versa* (the "hybrid model"); e.g. incorporation of email tutor support and electronic online libraries (including access to IOLIS).

### **CPE distance learning - compulsory attendance**

The rationale for the compulsory attendance requirement has centred around three issues:

- \* Development of interpersonal skills
- \* Library access
- \* Pedagogical reasons

### ***Development of interpersonal skills***

The CPE Board has accepted that the aim of the CPE is to satisfy the academic stage of training, which includes the development of legal research skills; the development of interpersonal skills are incorporated within the vocational stage of training (i.e. Legal Practice Course or Bar Vocational Course).

As stated above, the professional bodies do not have a blanket policy requiring compulsory attendance for undergraduate law programmes. CPE students are either graduates from the UK or Ireland, or have satisfied the professional bodies as to their academic ability at graduate level, and could therefore be presumed to have a more developed level of interpersonal skills than their undergraduate counterparts.

There would not appear to be a clear link between the requirement for compulsory attendance and the development of interpersonal skills.

### ***Library access***

In order to encourage a deeper understanding of the core subjects, and to develop their legal research skills, it is essential that students have access to primary and secondary sources of law. However, it is becoming increasingly rare nowadays for distance learning students to use the on-campus library of the providing institution. Two recent developments militate against a compulsory attendance requirement the aim of which is to facilitate access to an on-campus library:

#### ***UK Library Plus Scheme***

Fifty eight higher education institutions in the UK are participating in a new initiative (from the 1999/2000 academic year) which enable, *inter alia*, distance learning students to borrow from on-campus libraries in close proximity from where they live or work; as previously they can also gain admission for research purposes.

Users of the scheme apply to their home library for up to three vouchers which can be exchanged for a borrower's card from participating libraries.

#### ***Online libraries***

The vast majority of course providers have developed online libraries which students can access over the internet from anywhere in the world. The list of resources currently available online is endless, but could include:

- \* Lawtel; Lawtel EU Interactive
- \* Lexis
- \* IOLIS
- \* Halsburys Laws
- \* Current Law
- \* Journal articles

### *Websites*

A vast amount of legal resources is freely available on the internet: e.g. House of Lords, Court of Appeal and Employment Tribunal judgments; Acts of Parliament and Statutory Instruments; ECJ judgments and Advocate General opinions; Web Journal of Current Legal Issues.

A press release on 16 March 2000, by David Lock MP, LCD Minister with responsibility for IT issues[5], stated:

"There is a powerful case for making basic raw materials of the law, legislation and case law, much more widely and easily accessible to the public and legal professions, through the use of information and technology."

He was speaking after viewing a pilot website BAILII[6] which offers free internet access to primary legal materials and which was launched in March 2000; BAILII stands for "British and Irish Legal Information Institute". Having viewed the site, Mr Lock stated:

"The Government strongly endorses the pilot website which will provide a valuable opportunity to test how this kind of service should be developed and maintained in the future. I hope that those who use it will take the opportunity to provide as much feedback as possible.

In the longer term I anticipate that the development of a requirement for the future delivery of online legal sources will be undertaken as part of the programme of work under our civil justice initiative, which will be announced in the summer [2000]."

There could be no clearer signal of the Government's commitment to free online legal resources.

The necessity for a student having access to legal resources cannot be underestimated, but requiring students to attend 12-days tuition at the providing institution, in order that they might avail themselves of the on-campus library facilities, might not be appropriate in the electronic age. The number of persons with access to the internet is growing daily; no longer do the vast majority of Internet Service Providers charge a monthly fee for using their service and it has recently been announced by some of the major players in the field that telephone charges will also be eliminated [7]. The financial cost for students in accessing the internet will therefore be minimal; the only financial outlay is for the purchase of a computer with modem.

On validation or revalidation it might be more appropriate for the CPE Board to ascertain what each individual institution is providing in terms of access to legal sources (primary and secondary): e.g.

membership of UK Libraries Plus Scheme; online libraries and weblinks (with a requirement that the student has internet access). If the providing institution satisfies the Board that the students will have access to an on-campus and/or comprehensive online library, the link between compulsory attendance and on-campus library access is tenuous.

### *Pedagogical reasons*

## **Pedagogy - taxonomy of teaching activities**

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In designing and delivering a distance learning programme, the relevant pedagogical issues centre around *categories of teaching activity*. On a conventional course, academics are used to dividing their teaching into lectures, tutorials, seminars, workshops etc.. However, lectures, tutorials etc. are not *categories of teaching activity* and it is necessary to break them down into such categories.

There are many different taxonomies of educational objectives which are used to distinguish categories of teaching activity. There is no such thing as a *correct* taxonomy; no taxonomy could truthfully claim to cover everything. A taxonomy might include the following (but not necessarily in this order):

- \* Orientation - providing a structure for learning
- \* Delivery - presentation of materials
- \* Elaboration - clarification based on student needs
- \* Feedback - individual assessment and elaboration
- \* Diagnosis - assessment for grading
- \* Evaluation - assessment for remediation
- \* Motivation - justification of the activity

The taxonomy needs to be borne in mind throughout the design stage to ensure that all these teaching activities are incorporated. In designing a distance learning programme, consideration needs to be given to the following:

- \* The course needs to be properly structured (*orientation*)
- \* Students should be provided with relevant and up-to-date materials (*delivery*) and there should be a mechanism for enabling students to contact the tutor if there are any problems understanding these materials (*elaboration*)
- \* There should be an opportunity for students to be assessed on their performance (*diagnosis*) and to be provided with sufficient information (*feedback*) to know where they have gone wrong and what they need to do to rectify their misgivings and shortfalls (*evaluation*).

\* The course should be designed to ensure that students are sufficiently *motivated* to complete the course to the best of their ability.

It follows from this that, in the case of electronic delivery for example, simply placing lecture notes online would satisfy the delivery and orientation activities, but it does little else.

## **Pedagogy - electronic delivery**

This section seeks to illustrate how these teaching activities can be incorporated into an electronically-delivered distance learning programme, without the necessity of face-to-face tuition. This could also apply to a hybrid model of delivery (i.e. traditional and electronic combined).

### **\* Structure**

A user-friendly electronic learning environment, and a clearly structured programme (e.g. each core subject divided into study Units with start and end dates for the completion of each Unit) will provide students with the necessary *orientation* to complete the course.

### **\* Student materials**

It is possible to incorporate a variety of different media into the *delivery* of student materials:

- text (including HTML)
- files (word-processing documents, slide presentations etc.)
- audio
- video

Appropriate use of different media can have a positive impact upon a student's *motivation*. However if audio and/or video are incorporated it is all the more essential that the programme is piloted beforehand to ensure it can be successfully delivered over the internet; at the present time, download speeds can be quite slow; if it takes a student 20 minutes to download an audio file this would have an obvious impact upon their motivation! Live video conferencing over the internet is available but is not considered to be a viable option at the present time because of the same reason.

### **\* Online tests**

Another *motivational* influence is to build in plenty of activities into the *delivery* of the student materials. Students will soon become bored if all they have to do is point and click. Learning can be more effective and enjoyable if there is interactivity in the form of completion of tests and quizzes.

The incorporation of Multiple Choice Questions can provide students with more interactivity (and therefore aid their *motivation*), but there is very limited provision for *feedback*. If the student fails to understand why they have selected the incorrect answer, there is little possibility that they will be able to *evaluate* what needs to be done to rectify the error. It is possible to enhance *feedback* through the development of multimedia applications using Macromedia Shockwave, but this is very time-consuming and therefore expensive.

### **\* Online library and weblinks**

As discussed above, online libraries and weblinks can add to the student's knowledge base, lead to a deeper learning of the subject and increase their *motivation*.

\* Tutor support and TMAs

It is possible to incorporate a facility to enable students to email the tutor for individual guidance where they have problems with the student materials (which would include the online tests), thus providing the student with *elaboration*.

TMAs (i.e. Tutor Marked Assessments) are the ideal way to provide students with individual *feedback*. The equivalence of a TMA is a one-to-one tutorial. This feedback will enable the student to know where they have gone wrong and what needs to be done to rectify the situation (*evaluation*). The TMA can be graded or ungraded; if it is graded then it satisfies the *diagnosis* activity, otherwise a formal coursework element could step into the breach.

\* Facilitating collaborative student learning

Student interactivity can be incorporated using discussion boards (asynchronous communication) and chat rooms (synchronous communication) features, both of which can promote collaborative student learning.

Empirical studies have indicated that collaborative learning is superior to traditional learning methods. Jones R *et al* [8] has stated that there is:

" ... compelling evidence of the relative effectiveness of collaborative learning in terms of learning achievement, student satisfaction with the learning process and outcomes, and quality of interpersonal relationships and the emotional climate of the learning environment. The following are the main findings of the research on collaborative learning:

- Co-operative learning experiences tend to promote more learning than individualistic learning experiences.
- Co-operative learning experiences compared to competitive and individualistic ones tend to promote higher motivation to learn, especially intrinsic motivation.
- Co-operative learning experiences promote intellectual growth.
- Collaborative learning procedures have been shown to enhance student satisfaction with the learning and classroom experience.
- Collaborative learning situations promote a more emotionally positive learning environment, compared to competitive and individual learning environments."

They conducted a review on whether or not Computer Mediated Communication could provide the basis for collaborative learning on the internet, and stated that:

"It has been argued that CMC [i.e. Computer Mediated Communication] extends and equalises information exchange, that it releases the individual from the proximal power of others and from certain debilitating influences from the group, and that consequently it cultivates diversity and democracy in collective activities (i.e. learning) and decision making ... The growing body of empirical evidence in the field suggests that CMC can serve to reduce social barriers to communication, and thus the impact of status differentials, resulting in greater equality of participation."

Here, it was being acknowledged that traditional face-to-face tutorials can be dominated by students of higher ability to the detriment of students of lower ability, even if the aim of the tutorial is to support collaborative learning. Similarly, other factors may inhibit a student to involve themselves in a face-to-face discussion, e.g. age, sex, ethnicity, social class. Computer Mediated Communication can assist in alleviating this domination and neutralising the other factors.

Although the aim of discussion boards and chat rooms is to *facilitate* collaborative learning between students, it is usually necessary for the tutor to initially be actively involved in the activities in order to ensure that collaborative learning is *achieved*. Once students themselves become used to using the discussion boards and chat rooms, the tutor's presence can be less dominant.

In my evaluation of the University of Huddersfield's CPE electronically delivered distance learning course[9], one of the reasons for the lack of student involvement in the discussion boards was identified as being the limited involvement of academics in the early stages. This has been highlighted as a pre-requisite to achieving collaborative student learning by Grantham D[10] (10), who has stated that, in the context of discussion boards:

"I had to work quite hard to get students to make initial postings to the electronic legal forum. However, once they had made that all important first step, most of them contributed quite freely ... It is the tutor's role to lead them forward, to be alive to the need for gentle persuasion and to the timing of electronic interventions."

Reverting back to the taxonomy of teaching activities, incorporating a discussion board and/or chat room features will undoubtedly *motivate* students. If there is tutor participation this can satisfy the *evaluation* and *feedback* activities.

Some electronic learning environments enable students to work in groups, with their own private discussion boards and chat rooms. They could then work on individual tutorials in smaller groups and submit a joint effort for marking and feedback.

## Conclusion

This paper has given consideration to the possible rationale for the 12-day compulsory attendance requirement. However, it has been demonstrated that the necessity for a blanket policy to apply in the electronic age has diminished.

The recommendation is that each course provider should be freed from this constraint so that they can decide whether their course should incorporate:

- \* no face-to-face tuition;
- \* voluntary face-to-face tuition;
- \* compulsory face-to-face tuition;
- \* mixed compulsory (e.g. at the start of each academic year) and voluntary (e.g. at intervals throughout the academic year) face-to-face tuition.

At the validation or revalidation stage, the CPE Board would be at liberty to decide whether or not a condition for compulsory and/or voluntary face-to-face tuition should be imposed where the providing institution does not, for example, provide students with a comprehensive online library (or access to a local on-campus library), and/or fails to demonstrate that the taxonomy of teaching activities are incorporated within their programme.

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[1] Full text at: <[http://www.lawsociety.org.uk/dcs/fourth\\_tier.asp?section\\_id=3191&ictop=0](http://www.lawsociety.org.uk/dcs/fourth_tier.asp?section_id=3191&ictop=0)>.

[2] The seven Foundation Subjects are: Obligations 1 (Contract); Obligations 2 (Tort); Foundations of Criminal Law; Foundations of Equity and the Law of Trusts; The Foundations of Law of the European Union; Foundations of Property Law; and Foundations of Public Law.

[3] Full text at: <[http://www.lawsociety.org.uk/dcs/fourth\\_tier.asp?section\\_id=3192&ictop=0](http://www.lawsociety.org.uk/dcs/fourth_tier.asp?section_id=3192&ictop=0)>.

[4] For full details of the QAA's Benchmark Standards see:  
<<http://www.qaa.ac.uk/benchmark/index.htm>>.

[5] Full text at:  
<<http://195.44.11.137/coi/coipress.nsf/283b67283b5315e38025673500584c3c/1761fb26b36f843e802OpenDocument>>.

General LCD Press Statements can be found at: <<http://www.open.gov.uk/lcd/pressnfr.htm>>.

[6] BAILII website can be found at: <<http://www.bailii.org>>.

[7] See, for example: <<http://www.altavista.co.uk>>, <<http://www.callnet0800.com>>, <<http://www.lineone.net>>.

[8] Jones R and Scully J, 'Effective Teaching and Learning of Law on the Web', 1998 (2) *Web Journal of Current Legal Issues*, <<http://webjcli.ncl.ac.uk/1998/issue2/jones2.html>>.

[9] Fairhurst J, 'Evaluation of an Internet-based PgDL (CPE) Course', 1999(3) *Journal of Information, Law and Technology (JILT)*, <<http://www.law.warwick.ac.uk/jilt/99-3/fairhurst.html>>.

[10] Grantham D, 'IOLISplus - The Second Chapter', 2000(1) *The Journal of Information, Law and Technology (JILT)*, <<http://www.law.warwick.ac.uk/jilt/00-1/grantham.html>>.