**‘Public Professions and Private Practices’: access to the solicitors’ profession in the 21st Century**

Author: Dr Laurence Etherington[[1]](#footnote-1)

York Law School, University of York University

***Abstract***

*Recruitment of trainee solicitors by largely commercial organisations provides the effective gateway to professional qualification for aspiring solicitors. Professional bodies and others have sought to distinguish solicitors from other legal service providers through reference to professionalism and ethics. In this article I present the findings from a survey of the applicant experience of the graduate recruitment process and interviews with the professionals involved in those processes. The research is situated within the literature on professional identity development. The main aims are to contribute to understanding of the way in which graduate recruitment may inform the construction of professional identities, with particular focus on notions of ethicality within that. These engagements come at a critical time for professional identity construction. Despite data suggesting applicant expectations that professionalism and ethics will be important in their future practice, these early encounters do little to support that view. The influence of selection activities most likely marks the beginning of longer-term experiences that diminish the significance of ethicality in notions of professionalism. The data identifies recruiter assumptions as to appropriate ethical character. There is also evidence that the recruitment process may actively undermine ideas such as independence as relevant to legal practitioners.*

***Keywords***

*Solicitors profession, Legal Ethics, Graduate Recruitment, Professional Identity Development*

**Introduction**

 ‘The processes of entry into the professions have a particular significance, both to those inside and outside the professions, in that they have a strong and long-lasting influence over the composition of the professions,’ affecting the whole of society.[[2]](#footnote-2) Those processes may have a multi-faceted influence in that it is not only the composition of entrants, but also the values, beliefs and understandings of what being a legal ‘professional’ means that may be influenced. While the 21st century solicitors’ profession has seen seismic shifts in a number of areas, including the establishment of an ‘independent’ regulator and increasing ‘commercialisation’ in various forms, there are strong claims that effective control has been retained over entry and regulation, but with the locus of this redistributed from professional association[[3]](#footnote-3) to economic actors, in the form of law firms. Despite public statements and other references to the distinctiveness of solicitors’ work as ‘professionals’, we have also seen concern as to the ability of individuals to maintain ethicality in the face of external and organizational pressures.[[4]](#footnote-4) At the same time, law remains an highly sought after career, and enduringly popular subject for undergraduate study, with the number of law graduates in England & Wales rising from 11,149 in 2004, to 16,120 in 2014.[[5]](#footnote-5) In light of changes to the Higher Education sector itself, students are investing significant sums of money,[[6]](#footnote-6) as well as years of their lives, in pursuing aspirations to achieve ‘solicitor’ status, and join the profession.[[7]](#footnote-7)

This paper is concerned with students seeking access to the solicitors’ profession of the 21st century, and the nature of the profession that they seek to become part of. It is also concerned with some of the people and institutions providing means of entry. In particular, the focus is on the selection process for solicitor Training Contracts,[[8]](#footnote-8) what this may say about the law firms undertaking this assessment, and the applicants’ experience and understandings of these processes and the professional practice they aspire to. A central feature is, therefore, the influence of these engagements on early professional identity development. Our data[[9]](#footnote-9) and findings are presented 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. Within a broader exploration of the competencies and attributes assessed by law firms within the application process, one specific issue was the extent to, and means by which, ‘Commercial Awareness’[[10]](#footnote-10) and ‘Professionalism & Ethics’[[11]](#footnote-11) were evaluated. A second concerned perceptions of the relative importance of demonstrating such competencies, and so developing and displaying related aspects of ‘cultural capital’[[12]](#footnote-12) to securing safe passage to the Training Contract. In particular, these early interactions comprise influential sites for the development of professional identity. Much of the academic literature on graduate recruitment and identity formation focuses on (important) issues regarding ‘diversity’. This paper is concerned as much with what firms are not looking for, and the implications of this (and so as much what is absent, as the barriers in place).[[13]](#footnote-13) The views of those controlling access, reflected in their recruitment processes, inform perceptions of ‘legal professionalism’ and ‘ethical behaviour’, sending important signals to applicants, and do so at an increasingly early stage. The recruitment practices deployed most likely reflect the firms’ own culture and the longer term influence they will have on shaping legal professionals, so acting as early stages of the ‘socialisation’ process. Apparent assumptions as to applicants’ values, and future development of ‘professional identity’ made by both legal and recruitment professionals may be open to question.

This paper is in two main parts. The first sets out the context for the empirical work, including the nature and significance of the graduate recruitment process and the existing literature, with a focus on professional identity development. The second sets out and evaluates our data in that context. The argument is that the graduate recruitment process is an unusually significant stage in the development of professional identity for future solicitors. Despite some examples of positive assessment, engagements with these activities are generally, at best, neutral and, at worst, explicitly negative in communicating the importance of ethics and character within that professional identity. This sits in stark contrast with the communication and reception of messages regarding the development and display of more commercial elements of professionalism. It is also at odds with the notions of professionalism presented through public pronouncements by the profession itself.

**Public statements on ‘professionalism’**

Common characteristics said to define professional work and organisation include autonomy or ‘self-regulation’ in a number of forms.[[14]](#footnote-14) Whether for reasons of public protection, or more self-interested market manipulation, this includes control over entry through qualification/admission, and the regulation of conduct and ethics.[[15]](#footnote-15) Though concerns that the role of lawyers as businessmen threatens professional values are by no means recent,[[16]](#footnote-16) firms have experienced changes in the nature of the lawyer-client relationship which have exposed them to enhanced market pressures and may have inhibited their ability to maintain professional ethics in the face of pressure from powerful clients.[[17]](#footnote-17) This is reflected in concerns regarding corporate clients exercising regulatory control over ‘captured’ legal advisors.[[18]](#footnote-18) The shift of focus from profession to business is, however, apparently well understood, and approved by regulators: ‘We are not looking at a world without lawyers but lawyers are business people first and lawyers second’.[[19]](#footnote-19)

The broad range of legal service providers comprising the single ‘solicitors’ profession’ has seen intensifying competition, from a range of sources. The larger corporate firms, in particular, have seen globalisation of the legal market, and post-financial crisis client demands of ‘more for less’. Other practices have seen dramatic reductions in public funding for legal services. All have seen threats, as well as some opportunities, in the form of the liberalisation of the legal services market (opening this to new entrants, notably those backed by non-lawyer owned capital[[20]](#footnote-20)), as well as the provision of legal information, and delivery of legal services, through information technology.[[21]](#footnote-21) In the face of these challenges, one response has been to demonstrate the value of the ‘brand’ of solicitors/legal professionals by distinguishing the traditional ‘profession’ from the ‘newcomers’. At the representative body level, this can be seen through association with ‘professionalism’, including public service in the form of *pro bono* work.[[22]](#footnote-22) The independent regulator has consulted the public on professional standards in a campaign entitled ‘*A question of trust’*, stating that: ‘We know that principles such as honesty and independence are at the heart of solicitors' professionalism’.[[23]](#footnote-23) A similar approach by international firms can be observed, with the contribution made to the reputation of ‘UK law’ by professionalism and ethics, and the role of the Training Contract highlighted in delivering legal training ‘viewed globally as the gold standard’.[[24]](#footnote-24) That is not surprising, as professional reputation is likely to be a key concern: ‘a perception that English law firms are sacrificing their professional status and commitment to professional values in pursuit of profit could undermine their market position.’[[25]](#footnote-25)

As Moorhead argues, ‘[c]laiming to be more ethical is always a dangerous business, and yet lawyers routinely place their professionalism in opposition to mere business’.[[26]](#footnote-26) In part, this reflects an understanding of the commercial value of professionalism, and maintaining some power within the market: ‘The ethical obligations of a lawyer are a key element in the ‘selling proposition’ of the legal profession.’[[27]](#footnote-27) Internal support for, and espoused commitment to, the continuing centrality of professionalism and ethics to the solicitors’ profession does not reflect universal content with conduct in practice, of course. The 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’.[[28]](#footnote-28) Review and proposed reform of professional training and qualification, has identified Professionalism & Ethics as the primary competence expected of entrants.[[29]](#footnote-29) Outside the firms and the profession, there has been a broader concern with lawyers’ ethical conduct; prompting calls for character development as a response.[[30]](#footnote-30) A particular feature of these recent reports has been the challenge of individual lawyers resisting increasing commercial pressures within their organizational working environments, reflecting the development of professional character (and independence). This presents an important contrast with more simple questions of rule compliance, requiring particular qualities such as ethical sensitivity and integrity.

**Privatisation of Professional Regulation**

State intervention in the legal services industry in England and Wales has diminished market control in various ways, including regulatory bodies,[[31]](#footnote-31) and charge over entry standards and processes.[[32]](#footnote-32) At the same time, aspects of professional regulation have been ‘privatised’. The enrichment of corporate practice has shifted the locus of power from the professional association to individual firms, and attention from the professional body to individual organisations.[[33]](#footnote-33) This relocation has also been, to some degree, from individual professional to organisational entity. Both main legal professions have increasingly made organisations responsible for ethical performance.[[34]](#footnote-34) For solicitors, the shift to Outcomes Focused Regulation created a responsibility within the firm for shaping its own regulatory culture, that fits the State’s purpose.[[35]](#footnote-35) Internal processes of regulation within firms have effectively replaced the self-regulation by the Law Society.[[36]](#footnote-36) Increasing diversity and fragmentation within the profession includes the locations shaping ethical norms and forming the context for code compliance.[[37]](#footnote-37) This redistribution of effective professional values development and monitoring may be having important impacts on the substance, as well as apparatus, of legal ethics. Lee identifies how firms may identify some strong commitment to regulatory compliance, but not so much with some rules, such as conflicts of interest, and that ‘ethical’ policies might be driven by commercial reasons above professional body rules.[[38]](#footnote-38) A fundamental concern is whose ethical values might be prioritised within such a contingent and contextualised form of legal professionalism, given the pressures of contemporary legal practice.[[39]](#footnote-39) A consequence of the increased centralisation in law firms is that individual lawyers can avoid having to focus on ethical issues on a regular basis, resulting in a diminished awareness.[[40]](#footnote-40) The role of Compliance Officers for Legal Practice and perceptions of these as the ‘holders’ of professional values for firms has the potential for lessening individual lawyers’ awareness of, and interest in, their own professionalism and ethical obligations.[[41]](#footnote-41) Those implications are more broadly raised by subordinate status generally restricting capacity to challenge partner and/or client demands to act unethically, but also by making it possible for individual ethical responsibility to be absolved within the bureaucratic structure of the firm. It is always someone else’s responsibility (partner, firm, client).[[42]](#footnote-42) These structural changes to economic and regulatory environments question the extent to which ‘ethicality’ is perceived as a core feature of professional identity by individual lawyers and organisations alike.

**Training Contracts: the Gateway to Professional Status**

The process of dismantling professional self-regulation (in the sense of lawyers regulating themselves and their industry) has, however, left one element relatively untouched: the ability to control entry to (‘gatekeep’) qualification.[[43]](#footnote-43) The requirement of all newly qualified solicitors to have undertaken a period of recognised workplace training before qualification is a distinct feature of the English and Welsh qualification system, and it is likely that this will continue.[[44]](#footnote-44) As was recognised over 20 years ago, the real ‘bottleneck’ for qualification is not undergraduate or vocational examination, but securing traineeships.[[45]](#footnote-45) Recent data indicates clearly that, structurally, the key barrier to qualification remains the Training Contract.[[46]](#footnote-46) Although there are over 2,000 firms offering Training Contracts,[[47]](#footnote-47) and so a wide range of organisations act as ‘Gatekeepers’ and assess potential entrants, increasingly, that control is exercised by large firms. Despite opportunities for entry through the public sector,[[48]](#footnote-48) private practice provided 93.1% of Trainee placements in 2013-14, and the proportion of trainees joining very large firms (81+partners) has grown significantly over the past 15 years.[[49]](#footnote-49) Accordingly, larger corporate/commercial firms play a pivotal role in shaping the future of the profession and of individual professionals within it. ‘Professional associations no longer control entry to the profession. That role is now largely performed by the largest commercial law firms which are … primarily concerned with their individual position in the marketplace rather than the status of the collective profession’.[[50]](#footnote-50)

The result of this is that responsibility for entry to the solicitors’ profession lies primarily with commercial organisations. The socio-economic changes of the last 30 years have transformed the majority of firms, not only those in the (increasingly dominant) corporate sector, into capitalist enterprises.[[51]](#footnote-51) A primary feature of this modernisation has been the formalisation of recruitment and training strategies, through deployment of detailed application forms, online testing, published criteria and increasingly extensive and sophisticated assessment centre activities (alongside traditional processes such as interviews).[[52]](#footnote-52) Those organisations may be assessing suitability for entry to the profession, but they are offering employment and so evaluating significant capital investment in the prospective trainees. The limited capacity to charge clients for work done by qualifying lawyers as part of their own training (and the human capital development of their employers), together with use of organisational resources, training, and so on means that investment may comprise hundreds of thousands of pounds for a single trainee. Assessment of candidates’ ‘suitability’ for traineeships is likely, therefore, to be heavily influenced by potential return on such investment.[[53]](#footnote-53) Accordingly, the graduate recruitment process seems emblematic of the commercialised profession, and the tensions inherent within that.

The stage at which this critical event takes place is significant. In recent years, larger firms directed their attention to second year law undergraduates and third year non-law students. For the majority of potential entrants, therefore, the focus for attaining the crucial Training Contract has been around the age of 19-20.[[54]](#footnote-54) The relative lack of maturity and experience for applicants in England and Wales is a factor that may become more, rather than less, significant.[[55]](#footnote-55) The graduate recruitment process also is becoming an increasing feature of first year law student life. This intensifies those aspirant solicitors’ own concentration on those organisations with the power to grant access to their desired profession and to provide the certain opportunity for qualification at an early stage (often with financial support). Messages are sent to potential lawyers at the very beginning of, or even before, commencement of their University studies. Depictions in promotional material of the corporate workplace have meeting the needs of business clients as the dominant theme, at a key stage prior to the formal recruitment process.[[56]](#footnote-56) Although these are also awash with references to individualism, this rests uneasily with the degree of social conformity that is clearly demanded as a trainee.[[57]](#footnote-57) In the same way that Law Schools are promoted through and perceived by students, law firms are ranked and evaluated on the basis of league tables. These reflect both the size and financial performance of firms.[[58]](#footnote-58) The ability of recruits to contribute to these business metrics becomes the critical factor in assessment, and is reflected in the increased competition to secure core capital for future commercial success through more intensive and earlier recruitment. Messages are strongly reinforced by the ‘trade media’, with numerous references to, and advice/support for, developing and demonstrating ‘commerciality’.[[59]](#footnote-59)

**Development of Professional Identity**

Though the autonomy of the individual agent should not be downplayed,[[60]](#footnote-60) an increasing role has been identified of professional organisations as sites and sources of professional regulation. This includes that played by those firms in regulating, forming and even producing the professional identities of the practitioners they employ. They seek to inculcate appropriate skill-sets and mind-sets in their employees, using a bundle of increasingly sophisticated HR practices (including selective recruitment) to mould their recruits into effective corporate professionals: a process which involves the socialisation into new priorities such as client focus, commercial awareness and efficiency. Identity regulation is becoming an increasingly intentional means of organisational control and, in the absence of counter discourses, increased identification with corporate values can be expected. That requires compatibility with other sources of identity formation and affirmation.[[61]](#footnote-61) Work in the professional service sector ‘spawns conflicting loyalties between professional affiliation and organisational responsibility that compound difficulties in retaining bureaucratic means of control’.[[62]](#footnote-62) For the solicitors’ profession, however, the construction of ‘professionalism’ and regulation of that [influence on] identity is increasingly within the scope of identity regulation by commercial actors. Though education and professional identity may be important mediators, ‘the construction of knowledge and skills are key resources for regulating identity in a corporate context as knowledge defines the knower: what one is capable of doing (or expected to do) frames who one ‘is’’.[[63]](#footnote-63) Establishing norms about the ‘natural’ way of doing things, defining contexts for operation (such as the market) invokes a particular ‘actor identity’[[64]](#footnote-64) (such as client servicer, rather than legal advisor).

‘[I]t is during the processes of selection that that firms begin to make the next generation of lawyers.’[[65]](#footnote-65) The workplace has great significance for identity formation, with Training Contracts providing a sometimes brutally effective site for this, with deliberate ‘breaking’ and ‘re-building’ in the image of the firm.[[66]](#footnote-66) It is clear that the process of professional socialisation begins at a much earlier stage, however, from the first stages of marketing and recruitment by firms, through Vacation Scheme placements,[[67]](#footnote-67) and beyond. So the recruitment process is aimed, in part, at effecting this ‘transformation’, as well as assessing capabilities. Although management literature has tended to emphasise post-entry organisational influences in newcomer socialisation, pre-entry experiences and exposure to professional employers, or ‘anticipatory’ socialisation, is also influential.[[68]](#footnote-68) As well as comprising a social process whereby applicant and employer identify ‘matches’, students ‘gather information about organisation goals, values, climate and work practices’.[[69]](#footnote-69) As such, these engagements act as precursors for identity regulation within law firms.[[70]](#footnote-70) The literature explains how a range of actors and processes may shape identity ‘construction’ in the work environment. This includes individuals, organisational agents (in the form of managers and structures, etc), organisational discourses (narratives at organisational level that may provide normalising positions for subjects such as ‘professionalism’, for individuals to adopt), as well as broader societal and cultural discourse (such as notions of being a ‘good citizen’).[[71]](#footnote-71) Organisations may exercise influence on what appears to be a process of free self-categorisation and identification. Identity control or regulation may be ‘accomplished through the self-positioning of employees within managerially inspired discourses’,[[72]](#footnote-72) including induction and training. At the same time, individuals deal with their complex work experiences through ‘identity work’, ‘the ongoing mental activity that an individual undertakes in constructing an understanding of self that is coherent, distinct and positively valued’.[[73]](#footnote-73) Part of professional identity development is a desire to establish identity ‘claims’ of difference, such as those between professional and client.[[74]](#footnote-74) Identity ‘resources’ may be used to establish and maintain an identity position, including hard to access status, such as qualification for professional status.[[75]](#footnote-75)

Cook *et al* identify the graduate recruitment processes of global top-10 law firms as both limiting the extent to which future ‘identity regulation’ is required to fit firms’ models of ‘professionalism’ and as reproducing particular understandings of what being ‘professional’ entails.[[76]](#footnote-76) Those procedures provide applicants with information about the culture and attributes of the individual organisation,[[77]](#footnote-77) but also the broader profession. Faulconbridge *et al* identify how the purpose of the Training Contract is to socialise recruits in the culture, practices and systems of their employer as well as those of the wider profession.[[78]](#footnote-78) Marketisation and managerialism in knowledge-based organisations connects professionals with their work organisations, rather than their professional occupations and associations. Work competence becomes primarily defined and assessed by the work organisation,[[79]](#footnote-79) as does entry to the profession itself. ‘Quality’ focus shifts from competence relating to professional standards to client relations and customer satisfaction.[[80]](#footnote-80)

As a result, only those applicants possessing certain types of capital are recruited through graduate recruitment processes.[[81]](#footnote-81) Cook *et al* have shown how demonstration of this can ‘imbue an individual with competitive advantage by signalling conformity with the values, assumptions, and expectations (doxa) of a particular field.’[[82]](#footnote-82) Such capital may be embodied and made visible through qualities such as personal appearance, and accent; signalling conformity with accepted professional standards, conventions and imageries.[[83]](#footnote-83) The research highlights how ‘being a professional’ involves much more than possessing technical expertise and includes qualities, capabilities and attributes such as; responsibility, client focus and commercial awareness, commitment and willingness (or ‘resilience’), teamwork,[[84]](#footnote-84) physical presentation, and cultural ‘fit’ with firm and ‘the City’.[[85]](#footnote-85) Sommerlad provides clear empirical evidence for the importance of applicants demonstrating ‘business savvy/commercial awareness.[[86]](#footnote-86) The elevation of customer service focus may be seen as a switch to a service industry, from autonomous profession, demanding ‘commerciality’ of recruits,[[87]](#footnote-87) so that ‘…this is now the prime selection criterion.’[[88]](#footnote-88) Firms may not expect entrants to have all of the desired qualities, but the capacity to develop these; firms evaluate the ability and willingness to be ‘shaped’ by firms into ‘business professionals’.[[89]](#footnote-89) Similarly, the literature suggests that students recognise the need to ‘adapt’ to the properties of the professional role, and that this may be of its appeal.[[90]](#footnote-90)

Both Cook *et al* and Sommerlad identify how these recruitment processes filter out individuals by assessing already existing identities and ‘fit’ with firm values, as a source of organisational (re)production (including significant diversity issues). Our research is concerned with the influence of early encounters with law firms on applicants’ conceptions of ‘professionalism’ (and so development of professional identity) more generally – irrespective of whether or not they demonstrate sufficient ‘fit’ to be accepted within those particular organisations. We also seek to contribute to understanding of what it is that recruiters and firms are looking for, and so their conceptions of the ‘professional identities’ they wish to shape. In particular, our interest is with the extent to which ‘ethicality’ (in forms such as character, or independence) is valued and assessed.

Law firms have an important function in shaping how individual practitioners come to understand and perform their role as professionals,[[91]](#footnote-91) undertaking a process of ‘identity regulation’ for shaping ‘attitudes, values, subjectivities and ultimately behaviours’, and so an understanding of who they are and how they should act.[[92]](#footnote-92) At the same time, we see reducing professional association influence, and a diminishing concept of individual professionalism, but continued gatekeeping by increasingly commercialised, and self-regulating firms. Aspirant professionals are becoming exposed to, and engaged in, these systems at an earlier stage in their personal and professional development than before. Some questions that arise are, therefore, how potential entrants experience the graduate recruitment process and, in particular, what they understand they need to demonstrate in order to jump the greatest hurdle in the race to professional qualification. Further questions relate to the demands and expectations of recruiters. In other words, whether the applicants are correct in their understandings. Our empirical research[[93]](#footnote-93) was designed to explore some of these issues.

**Student Applicants and Recruiters in the Training Contract Application Process**

There were two elements to our data collection and analysis. First, a survey was undertaken of students with experience of the solicitors graduate recruitment process. Secondly, interviews were arranged with a number of professionals involved in that recruitment process.

The survey element of the research was undertaken during 2012 and 2013. We developed an online tool and invited students from five Higher Education institutions to complete this. Those institutions included representatives from a range of university groups (Russell Group, University Alliance, and Private), offering undergraduate, masters and vocational programmes. Information regarding the survey and a link to complete it was distributed to students within those institutions through Careers departments and (in one case) the student law society.[[94]](#footnote-94) Dissemination of that information was through email, Virtual Learning Environment, and Facebook page. The survey was promoted as a general graduate recruitment survey, with no mention of Professionalism or Ethics. All of those involved in distribution of information were informed of the need to not to disclose this aspect of the research. None of the information in the Survey tool made any reference to this focus, until the specific Questions relating to it (see below). The Survey elicited 28 (fully completed) responses.[[95]](#footnote-95) Respondents included students in years 2 and 3 of undergraduate law degrees, Masters students, GDL, and LPC[[96]](#footnote-96) students. The survey design included purely quantitative elements (with ‘yes/no’ responses) and more qualitative components, with narrative text responses.

In order to provide some triangulation,[[97]](#footnote-97) 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.[[98]](#footnote-98) These were held during spring and summer 2014. Interview agendas, with ‘prompt questions’ for each section were developed in order to assist with consistency across the interviews, and interviewers. This also helped to ensure that full discussion of subjects would take place before the specific focus of the research was ‘revealed’ (seeking to mirror the survey design). Nine interviews were undertaken in total, with participants from six law firms. Those firms were selected to provide some variation in size, specialism, and geographical location, within ‘commercial’ legal practice:

* 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. Four participants were partners involved in graduate recruitment and five were recruitment professionals. All interviews took place in the participants’ offices (averaging around one hour each). Interviewees were remarkably cooperative in agreeing to participate, accommodating in making time for the interviews, and in consenting to the interviews being recorded. As with the survey, no claim is made as to the representativeness of interview responses. The consistency in responses in some important areas, however, is notable.

*The Student Experience: Survey*

Most respondents were undergraduate Year 2 or 3 law students, though participants included those on LPC, GDL and Masters programmes. The majority of their engagement 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. An early question confirmed (accurate) applicant perceptions as to the greatest challenge in gaining access to the solicitors’ profession, and so what might be considered the effective ‘Gateway’ determining entry to that (100% identification of the securing of Training Contracts).[[99]](#footnote-99) Something might be inferred as to the degree of influence the experience of different stages of this ‘entry process’ could have. If one part is considered the greatest challenge, what goes on in that element might be a particular focus for the applicants, and the messages that come from that aspect of ‘pre-socialisation’ important. The literature on identity development suggests that this is very likely to be the case, and that sites such as recruitment activities may be especially important generators of individual identity construction. Though ‘identity work’ may be conceptualised as a continuous process, there may be heightened awareness and more concentrated identity work stimulated by particularly stressful encounters or unstable contexts. ‘Conscious identity work is thus grounded in at least a minimal amount of self doubt and self openness, typically contingent upon a mix of psychological existential angst and complex or problematic social situations’.[[100]](#footnote-100) The increasingly early age of those engaging in recruitment activities may also enhance the influence on identity development.

The next set of questions of interest asked respondents to state the qualities, knowledge or skills they considered were required to be demonstrated to Training Contract providers (Question 6) (an open question with respondents encouraged to think broadly); irrespective of whether included in the previous response, whether some aspect of Commercial Awareness[[101]](#footnote-101) was assessed as part of any of the recruitment processes experienced (Question 7); and (again, irrespective of the initial response) whether some aspect of 'Ethical Awareness & Behaviour’[[102]](#footnote-102) had been assessed (Question 8).

In response to Question 6, 17 of 28 respondents referred (without any prompting) to Commercial Awareness, either explicitly, or by clear association.[[103]](#footnote-103) So as well as explicitly stating ‘commercial awareness’ (once, by one student, in capital letters for emphasis), responses included *‘By and large though the firms were looking for evidence that someone was proactive and genuinely interested in the commercial side of law’* [‘SA 8’], and *‘show an awareness of the business world’* [‘SA 12’]. By contrast, 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%)).

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).[[104]](#footnote-104) When asked ‘how’ this was assessed (in Question 9) some clear and detailed examples were provided, 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’* [‘SA 4’];

*‘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?'‘* [‘SA 15’];

*‘I got asked about spotting a mistake in a contract meaning your client would get £10000 more. Do I keep quiet?’* [‘SA 7’]

Eight respondents referred to interviews as a means of assessment here, including being:

*‘… asked about what I would do in certain hypothetical situations’* [‘SA 12’]

One also referred to a broader evaluation:

*‘Subjectively by the opinion of the interviewers / on the basis of responses given or conduct during assessment (for example, the decisions you make in a group exercise at an assessment centre)’* [‘SA 6’]

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’,* and anotherreferred to *‘Corporate Responsibility type stuff’* [‘SA 9’] (so might be associated with a very broad concepts of ‘ethics’ and ‘professionalism’).[[105]](#footnote-105)

The 40% ‘prompted’ recollection of ethical assessment is also potentially misleading. One narrative response was far from clear that the reference was actually to assessment of Professionalism or Ethics:

*‘The interviewers asked questions that allowed for follow up questions to test the decision-making process behind the answer. They were able to probe the justification for the decision and whether it was motivated by emotion or reasoned thought.’* [‘SA 14’]

Another followed up the initial scenario with:

 *‘Then again, the answer was simply that litigation processes would prevent the client ever getting that money. Therefore, not so much ethical really...’* [‘SA 7’]

A further 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’* [‘SA 24’].

The final questions suggested that respondents might have been atypical in some respects, as the vast majority (27 (96%)) had studied Professionalism & Ethics.[[106]](#footnote-106) 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, and so at least as likely as the target population to identify issues and assessment around Professionalism & Ethics.

Four initial conclusions can be drawn from the Survey. First, 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. Secondly, when asked specifically, there clearly is some perception of the assessment of (and so some understanding of a possible need to demonstrate) Professionalism & Ethics. Thirdly, 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, or even seen in conflict with that clearly desirable attribute. Fourthly, 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. None of the respondents raised this as something they needed to demonstrate, without specific prompting.

Given the earlier views, the responses to Question 10 (‘*Whether or not you think it was assessed [on a scale of 1 ‘Unimportant’ to 5 ‘Vitally Important’]* *how important do you think ‘Ethical Awareness & Behaviour’ is in securing a Training Contract?’*) were not surprising:



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

*The View from the Recruiters: Interviews*

Though much more discursive, the structure of the interviews was very similar to that of the Survey. Early questions prompted discussion of recruitment processes and experience generally. Questions were then asked to elicit information as to the qualities etc. that were assessed and considered desirable. A specific question was asked regarding the assessment and desirability of applicants’ Commercial Awareness. Finally, a specific question was asked about the assessment and desirability of applicants’ Professionalism & Ethics.

*Commercial Awareness*

Unprompted, almost every participant (8 of 9) 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 (despite some recognition of challenges in seeking to do this: *‘It’s very hard to assess Commercial Awareness’* [‘GR 2’]). This was across the different firms: *‘About 50% of the interview is about Commercial Awareness’* [‘GR 4’]; *‘It’s the first thing we are looking for at interview’* [‘GR 8’]; and *‘To understand that we are running a business, who just happen to be lawyers…Businessmen running a legal practice, not the other way round… [commercial awareness is] the key to our business – the old approach to the legal profession has disappeared as far as we are concerned.’* [‘GR 7’]. Even with smaller firms, overt entrepreneurialism was desirable: *‘Not necessarily pre-prepared Commercial Awareness answers – selling the socks as well as the shoes’* [‘GR 9’].

When prompted, the one participant who had not raised Commercial Awareness directly maintained that it was not important (though thought that others involved in graduate recruitment at the firm might look for this). That interviewee had also mentioned (unprompted) as very important the: *‘Need to be personable – Get on with Clients…for criminal clients, you need street cred and to talk on the same level. They have to like you’* [‘GR 3’]. That may be viewed as a form of commerciality, or perhaps of ‘social awareness’,[[107]](#footnote-107) and is certainly an example of the importance of ‘client satisfaction’.

Two further aspects of the responses in this part of the interviews were of interest. The first was the mention of the need for ‘geographical’ fit, and so a form of social capital:[[108]](#footnote-108) *‘Local connections are very important – people who can build up local personal relationships’* [‘GR 7’]; *‘A genuine interest in a long term career and the geographical area’* [‘GR 8’]; and *‘[By the second interview] Cultural and geographical fit is most important’* [‘GR 9’]. That attribute also demonstrated a broader focus on the ability to provide ‘value’ from the investment made by the firm in their recruits: *‘Need to understand that the sector is increasingly competitive, partners are investing in recruits’* [‘GR 4’]; one feature being an increasing focus on commitment to the type of work, so that trainees would want to remain post-qualification (and so provide return): *‘Assessing motivation and commitment – that’s a more recent factor’* [‘GR 1’]

So the earlier sections of the interviews demonstrated very clearly the desirability of future professionals cast in the mould of Sommerlad’s ‘entrepreneurial professionalism’.[[109]](#footnote-109) These elements of recruits’ existing capital and aspects of identity, as well as likely conformity with future professional identity regulation by firms reflecting the findings within the literature on organisational (re)production. The next set of issues was the extent to which other notions of professionalism, and qualities such as independence, and character, were similarly features of the firms’ notions of professional identity to be desired and developed. Though not explicitly incorporated within the criteria of ‘being a professional’ suggested in the literature,[[110]](#footnote-110) these qualities are not inconsistent with the commercial professional, and so might be considered of comparable importance.

 *Professionalism & Ethics*

By contrast, unprompted, none of the interviewees mentioned anything clearly related to Professionalism & Ethics as a quality they looked for in applicants. The closest reference was to presentation, or ‘looking like a lawyer’ (meaning how applicants dressed), confirming previous findings as to the importance of communicating the firm’s image and so looking and sounding ‘right’:[[111]](#footnote-111) *‘Do they look like a solicitor? We’re more relaxed now, but still expect business attire’* [‘GR 5’], and *‘Visual impression is important’* [‘GR 7’].

When it was raised specifically, however, most participants (7 of 9) said they thought Professionalism & Ethics was important, and stated that it was assessed. Only one was very clear that it was not considered: *‘We don’t directly ask any questions...I can’t think of any opportunities they have to demonstrate [it]’* [‘GR 9’]*.* Many interviewees could also give some examples of how this might be 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 any assessment taking place, the means of doing so, and also what it was that assessors were looking for. This ranged from having nothing, through some fairly general suggestions as to things people could look out for in interviews, or during exercises (though not always being able to point to anything in particular: *‘The standard of behaviour is high at this firm. Personal integrity is paramount…we don’t ask specific questions’* [‘GR 8]’), to more rigorous/specific elements in Situational Judgement Tests, and other activities: *‘We do test for ‘No Go’ areas, such as clients behaving illegally, fraud, and so on…It’s harder to evaluate character than Commercial Awareness – you need a lot of time.’* [‘GR 2’] 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 compliance 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. Sharing of views on ‘professionalism’ included concerns about that of competitors, comparing poorly with that perceived of the interviewee’s own organisation: *‘The level of professionalism in some other firms is a concern – the way they behave and respond to you. A concern with these ABS coming in – they haven’t had the breadth of training and experience of conduct issues…Our culture is very much we do the right thing – serve our clients, not our own interests…get the impression that that some others look at their own’* [‘GR 7’]. This provides an interesting example of the self-identification of the firm and it’s lawyers as ethical, and an identity ‘claim’ of difference through a focus on ‘professional categorisation’,[[112]](#footnote-112) with common professionalism a point of differentiation from new entrants.

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 (both applicants and recruiters) 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 to the participants.

 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, … if you are a lawyer, you are representing your client and you need to represent your client in a professional way and … you are doing a job as a professional service representative, … 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.” … 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*’ [‘GR 4’].

That interview included a number of points about the importance of integrity in the profession, and the sector, and concerns about managing risk. 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).[[113]](#footnote-113) 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, potentially that junior lawyers need to do what they are instructed to do, without complaint or questioning.[[114]](#footnote-114) 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.

As Moorhead identifies, priming lawyers to think of their own value in primarily economic terms may pose risks, increasing a ‘business frame’,[[115]](#footnote-115) where different decisions can be made according to how an issue is contextualised.[[116]](#footnote-116) Behaviour such as overbilling may be seen as a business issue, not one of professional ethics, and as a hierarchical matter serving the firm and deferring to its hierarchy. This seems to be a common feature of experienced practitioners, Moorhead finding that they see ‘ethical problems not principally through the lens of professional principles, but through the social and economic lenses of business’.[[117]](#footnote-117) As well as that contextualising of decision-making, socialisation of entrants to the profession includes peer influence establishing standards for ethical behavior through actions and inactions, combined with a desire to obey and please authority, where ethical leadership may be key. These influences are particularly powerful for new lawyers, who are particularly vulnerable to problems of wrongful obedience or complicity with improper practices.[[118]](#footnote-118) The role of organisational discourses,[[119]](#footnote-119) such as this, in shaping identity, may be significant.

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: *‘We don’t want loose cannons’* [‘GR 1’]; *‘If an issue arose from the application, or scheme, we would pick that up (such as giving deceitful information)…they can trip themselves up if they are really unethical’* [‘GR 8’]. It seemed that the general assumption was that applicants had the right sort of ‘character’. This is despite plenty of evidence to the contrary to such assumptions of ethicality, so that the issue is dealing with ‘rogues’.[[120]](#footnote-120) *‘We are bound by the SRA Code and expect everyone to abide by this. We would hope that they are aware of this and that they have to conduct business in certain ways’* [‘GR 5’]. *‘Character is important, but that’s almost a given…We could pick up being a maverick in role plays…Are there any ‘Alarm bells’ ringing about character’* [‘GR 6’]. This approach also reflects a view that ethicality is something that can be a negative (and so a reason to exclude), but not something that can be a positive (in the sense of enhancing the applicant, beyond minimum acceptability).

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. *‘It’s not easy [to sustain our value of ‘doing the right thing’] through the recruitment process…we try to ingrain into candidates when they join us, including the induction process…to instil the attributes when they join the firm’* [‘GR 7’]. *‘We have to factor in limited understanding of ethics for someone at second year university level – But they will know when they arrive… We have training including an internal Handbook, covering policies and procedures… They get a full induction in those things.’* [‘GR 5’]. This assumption reflects a belief of only the ‘right’ people being employed and an expectation that people naturally absorb the ethical nature of the business through ‘osmosis’, working with others.[[121]](#footnote-121)

Such training and socialisation processes are, of course, increasingly an element of internal/privatized regulation. Lee identifies how considerable confidence is placed in firms’ closed internal systems that provide the effective reality of regulation, whatever the external supervision, though these are governed as much by commercial as by ethical or regulatory considerations.[[122]](#footnote-122) Evidence of ethical induction, training and broader ‘infrastructure’ within firms is limited.[[123]](#footnote-123) The extent to which such systems are always effective, or even in place, is open to some doubt, as Moorhead illustrates, quoting an associate from a leading law firm:

*I don’t think I’ve ever come across any support or encouragement on [the ethics] front. …it’s assumed that you’ve …gone through your ethics training …and you are meant to know it all. Nothing has ever, really ever, been said to me…from the partners or in terms of training that in any way encourages it or supports it*.[[124]](#footnote-124)

A lack of systematic training and development on professional obligations has been identified, with very few firms able to point to regular (or even any) training on matters of independence, for example: reliance instead being placed on ‘culture’.[[125]](#footnote-125) It is notable that assumptions as to inherent ethicality, or ‘character’, together with the ability of training to further instill and develop this, are not made in relation to other desirable qualities (including commercial awareness).

The specific reasons for the recruiters’ approach to ‘Professionalism & Ethics’, including those assumptions about possession of the ‘right character’ (so looking for exceptions), and the effectiveness of further training, were not part of the interview discussions (when this would have been a rich area for exploration). In a number, though by no means all, of the interviews, there was a palpable sense of discomfort when this omission was pointed out. We can offer some potential reasons (without any foundation in the data, and so speculative). Perhaps the most obvious is that, beyond narrow conceptions (such as dress, commitment to client, etc), Ethics, rather than broad notions of Professionalism, is not considered commonly relevant to the work of these firms. This lack of ‘ethical consciousness’[[126]](#footnote-126) could be seen as a reflection of the corporate, rather than litigation, focus of the participating firms, it being ‘challenging for…corporate lawyers…to see ethical considerations arising in their own field’, so that the role ‘simply do[es] not engage questions of ethics’.[[127]](#footnote-127) Though only a single participant, it is interesting however, that the recruiter working in the field of criminal litigation displayed no more concern about assessing this aspect of applicants’ qualities. This narrow conception of ethics relevant to the firm’s business also means that the qualities required to perform this aspect of the role are similarly limited, to simple rule compliance and acting within the law. To the extent that Professionalism and Ethics is considered relevant within the site of law firms, rather than undertake specific assessment, it seems likely that demonstration of this element of cultural capital (to the extent that its sharing amongst applicants is not assumed) may be signified through proxy. Cook, Faulconbridge and Muzio, identify the role of ‘institutionalised cultural capital’, such as attendance at an elite university and membership of sports clubs, as ‘symbolic evidence of the skill-sets and identities – i.e. the types of dispositions, norms and values – required to fit in and perform as a professional within the firm’.[[128]](#footnote-128) Concern with selection as a ‘precursor’ to identity regulation by firms appears limited to the future development of the entrepreneurial professional, with little (positive) concern for traits such as independence.

In isolation, we can see each of these factors providing a basis for downplaying assessment of applicants’ character. In combination, the reason for apparent omission becomes very powerful. In terms of shaping individuals’ values and understandings, the plurality of discourses and processes of identity formation limits the influence of organisational processes of regulation.[[129]](#footnote-129) Consistency of experience (both across different recruitment processes, and in the continuing exposure to less formal influences, such as embodied practices, as well as more formal organisational discourses[[130]](#footnote-130)) may, however, be influential.

**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, ands so to securing the status, or identity resource’, that flows from this. 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 [on a scale of 1 ‘Unimportant’ to 5 ‘Vitally Important’]’* suggest quite the opposite:



As with the recruiters’ approach to assessment of Professionalism & Ethics, this question was not followed up so there was no attempt to drill down into any reasoning underlying the basic view provided. We can see four potential reasons (again, without any foundation in the data) for the significant difference between the views here and those in relation to securing Training Contracts. First, respondents may 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; with some special status. 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). Secondly, respondents may think that Professionalism & Ethics is important, but it is something for them as individuals, and not of interest to Firms.[[131]](#footnote-131) That would be a cause for concern as it may undermine the sense of coherent value placed upon professional and ethical standards across the profession and powerful organisations within it. Thirdly, respondents may think Professionalism & Ethics important but a matter of ‘external regulation’ – that they will be taught and regulated by others. This could be more worrying as it would suggest that this is considered something that is divorced from the entrants own individual responsibility; possibly that is a matter of ‘rule compliance’, rather than the development of individual character or values (at least in part).[[132]](#footnote-132) The focusing on individual responsibility is a matter of some concern to regulators,[[133]](#footnote-133) and Lee found that ‘Younger solicitors in particular had a narrow view of regulation that is based much more on notions of regulatory compliance than some wider professional ethic’,[[134]](#footnote-134) contrasting lawyers looking to regulatory systems based on limited rule compliance models with richer concepts of upholding professional ethics.[[135]](#footnote-135) Finally, the data may reflect ‘Response Bias’ and ‘Social Desirability’,[[136]](#footnote-136) so that the responses are misleading as they are skewed by the Survey. There might be some sense of ‘guilt’ in not identifying this aspect until prompted, when later questions suggest it is/ought to be considered important. When the opportunity is provided to agree with this view, its significance may be exaggerated.[[137]](#footnote-137)

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 here. Something that this data suggests more clearly, however, is that the applicants’ personal identity, and initial imaginings of their professional identity – who they are and (by implication) how they should act[[138]](#footnote-138) - may be responsive to the inclusion of ethicality as a central feature of the latter. The understandings that individuals internalise as to ‘who professionals are and how they should act…often come into conflict with individuals’ existing understandings of what it means to be professional’, however.[[139]](#footnote-139) Though providing potentially fertile sites, early engagements through recruitment may do little to encourage this ethical dimension, and neglect may even contribute to its fading.

**Conclusions**

While 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 most future solicitors’ attention as the effective ‘gateway’ to professional qualification. This assessment process is also critical for law firms looking to invest their own capital in the future development of their business. The broader impact, beyond individual applicants and firms, is the development of the solicitors’ profession of the future. This influence comprises both the individual professionals permitted entry, and the qualities, skills, competencies and perhaps most importantly their values and professional self-conception. At the same time, it seems that the primary ‘site’ of regulation is increasingly found with individual firms, where effective professional norm generation and monitoring takes place. Those firms, together with professional bodies, profess a fundamental concern with integrity, professional character, and ethical behaviour, and there are sound business reasons for this. When selection of the ‘right’ candidates for those organisations (and the profession itself) is considered, however, there is a marked contrast between the attention given to assessment of more direct commercial qualities. Professionalism and ethics appears very much a secondary matter (if evaluated at all), with inconsistent approaches and narrow conceptions.

Instead, there is a heavy reliance on future training (and to a lesser degree previous education and assessment), with assumptions that recruits will have the appropriate professional character (or at least the basis for this being developed) but with little clarity as to what this looks like. It is suggested that the current system of legal education and training is somewhat lacking in this respect, with a need identified to strengthen requirements for education and training in legal ethics, values and professionalism at all stages of training.[[140]](#footnote-140) Legal educators, regulators and practitioners share a professed treasuring of professionalism and ethical conduct, and its continuing importance for the ‘profession’. ‘[U]nless dedication to the client’s interests is counterbalanced by a commitment to broader social concerns, there is a real risk that the profession’s ethics will be eroded, which could pose a threat both to clients [e.g. risk management] and to the broader community’.[[141]](#footnote-141) Legal professionals and academics, however, both question the impact of such standalone training and assessment approaches.[[142]](#footnote-142) Moorhead argues:

[E]thical leadership in lots of firms is, I would say, generally weak...we need to talk about ethics more, we need to teach it more and better, research it a whole lot more, and firms need to manage significantly more and more effectively. They should not assume – as many do – ethics is safe because **they have chosen the right sorts** and those ‘right sorts’ had training on it on the LPC.[[143]](#footnote-143)

Professional values are most powerfully communicated and inculcated in the workplace.[[144]](#footnote-144) Trainees learn what they see: modelling behaviour.[[145]](#footnote-145) ‘As a crucible for shaping ethical behaviour and sentiment, local communities of professional practice are often viewed as more than compliance systems…Law firms...need to be aware of the influence of their organisations on ethical practice.’[[146]](#footnote-146) The firms themselves exhort the need for ethics as part of professional identity, and identify the Training Contract as the critical means of developing ‘ethical, responsible lawyers’.[[147]](#footnote-147) Even before joining these organisations, and the full process of ‘socialisation’ commences, such influence is exerted through messages to potential entrants about what is, and what is not, important to legal practice. These firms and those tasked with recruitment within them do not act as neutral mediators. The powerful and important role they play, and the processes they employ, send strong signals to the future of the profession. Perhaps the most important implication is the extent to which the firms consider professionalism and ethics to be important to them, and their business, and their conceptions of these. Both conscious identity ‘selection’ and regulation activities, and ‘unconscious’ regulation through exclusion of qualities such as independence, perform important roles in professional identity formation. These experiences for applicants are significant, as they come at critical ‘high stakes’ stages of transition from outsider to member of a highly desirable ‘in group’. The context for future experience, understanding and beliefs, is set by such engagements.

With increasingly distributed and specific *loci* for this, developing understanding of the processes, aims and outcomes from the earliest stages of ‘socialisation’, and of the various forms and sites of this, may be important. That includes the role that recruitment processes play in developing notions of the professional self of, as well as controlling professional access to, future solicitors. To the extent that assumptions of pre-existing ethical disposition are correct, the nurturing influence of firms here is questionable. Instead, it seems that relative neglect, in contrast with the affirmation of more commercial dimensions of professionalism, may be start of a withering of ethical consciousness and identity within future professionals.

1. I am grateful for the extremely helpful comments on an earlier draft by Steven Vaughan and the anonymous reviewer; any errors remain my own. [↑](#footnote-ref-1)
2. David Halpern, *Entry into the Legal Professions: The Law Student Cohort Study Years 1 and 2* (The Law Society 1994) [1]. [↑](#footnote-ref-2)
3. In the form of the Law Society and Solicitors Regulation Authority. [↑](#footnote-ref-3)
4. See, for example, James Arthur *et al*, *Virtuous Character for the Practice of Law* (2014 The Jubilee Centre for Character and Virtues), available at: <http://www.jubileecentre.ac.uk/1553/projects/gratitude-britain/virtuous-character-law>, accessed 10 September 2015. [↑](#footnote-ref-4)
5. The Law Society, *Trends in the solicitors’ profession: Annual Statistics Report 2014* (April 2015). [↑](#footnote-ref-5)
6. See Andrew Francis, ‘Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Work Experience’ (2015) 42 Journal of Law and Society 173. [↑](#footnote-ref-6)
7. For a survey of career intentions and expectations amongst law students in England & Wales, see Melissa Hardee, *Career expectations of students on Qualifying Law Degrees in England and Wales* (The Higher Education Academy, 2014), available at: <https://www.heacademy.ac.uk/resources/detail/disciplines/law/Hardee_InterimReport_2014FINAL>, accessed 14 April 2016. [↑](#footnote-ref-7)
8. Technically a ‘period of recognised training’ since 2014 (but still referred to as a ‘training contract’ by most participants in the graduate recruitment process), this (or an ‘apprenticeship’, or some ‘equivalent means’) must be completed as part of the vocational stage of qualification as a solicitor (see Part 2 of the SRA Training Regulations 2014). [↑](#footnote-ref-8)
9. This empirical work was undertaken with the help of Chris Wilkinson of York Law School. [↑](#footnote-ref-9)
10. 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. For some discussion of this ‘composite concept’ see the Legal Education and Training Review, *Setting Standards: The future of legal services education and training regulation in England and Wales* (Final Report), available at: <http://letr.org.uk/the-report/>, accessed 14 April 2016, [para. 2.75]. [↑](#footnote-ref-10)
11. 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). For a detailed consideration of the concept, see Andrew Boon, *Legal Ethics at the Initial Stage: A Model Curriculum* (The Law Society, 2010), available at: <https://www.lawsociety.org.uk/policy-campaigns/articles/report-on-legal-ethics-at-the-initial-stage/>, accessed 14 April 2016. [↑](#footnote-ref-11)
12. See, for example, Andrew Cook, James Faulconbridge, and Daniel 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. [↑](#footnote-ref-12)
13. The research is, therefore, not concerned (directly) with ‘access’ in the sense of social diversity – on which see, for example, Heather Rolfe and Tracey Anderson, ‘A firm choice: law firm’s preferences in the recruitment of trainee solicitors’ [2003] 10 International Journal of the Legal Profession 315; Hilary 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/lsb_diversity_in_the_legal_profession_final_rev.pdf>, accessed 10 September 2015, and Louise 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>, accessed 10 September 2015. [↑](#footnote-ref-13)
14. See, for example, Donald Nicolson and Julian Webb*, Professional Legal Ethics* (OUP 1999) [53]. [↑](#footnote-ref-14)
15. See, for example, Richard Abel, *English Lawyers between Market and State* (OUP 2003) 475 and Andrew Boon, *Lawyers Ethics and Professional Responsibility* (Hart 2015) [43]. [↑](#footnote-ref-15)
16. See, for example, Champ S. Andrews, ‘The Law – A Business or a Profession?’, (1908) 17 *Yale Law Journal*, 602. [↑](#footnote-ref-16)
17. Joan Loughery, *Corporate Lawyers and Corporate Governance* (CUP 2011). [↑](#footnote-ref-17)
18. See: Claire Coe and Steven Vaughan, *Independence, Representation and Risk: An Empirical Exploration of the Management of Client Relationships by Large Law Firms* (SRA 2015) available at: <http://sra.org.uk/sra/how-we-work/reports/independence-report.page>, accessed 4 March 2016. [↑](#footnote-ref-18)
19. Paul Philip, SRA Chief Executive, quoted in John Hyde, ‘SRA chief: let’s treat solicitors like adults in future’, *Law Society Gazette* (14 October 2015) available at: <http://www.lawgazette.co.uk/practice/sra-chief-lets-treat-solicitors-like-adults/5051580.fullarticle>, accessed 4 March 2016. [↑](#footnote-ref-19)
20. Ownership-type interests in organisations providing reserved legal activities being permitted under the Legal Services Act 2007. These ‘alternative business structures’ may be licensed by the Solicitors Regulation Authority or other licensing authority. [↑](#footnote-ref-20)
21. See, for example, Richard Susskind, *Tomorrow’s Lawyers: An Introduction to Your* Future (OUP 2013);Richard Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services* (OUP 2008), Stephen Mayson, *The Legal Services Act: What Might Replace it and When?* available at: <https://stephenmayson.files.wordpress.com/2015/04/mayson-2015-lsa-what-might-replace-it-final.pdf>, accessed 3 March 2016; and Richard Susskind and Daniel Susskind, *The Future of the Professions* (OUP 2015). [↑](#footnote-ref-21)
22. Public statements include a publicity campaign by the Law Society - ‘*Use a Professional. Use a Solicitor*’, explicitly distinguishing professionals from unregulated providers: <http://www.lawsociety.org.uk/news/press-releases/law-society-launches-use-a-professional-campaign/>, accessed 3 March 2016, and statements such as pro bono work ‘being at the heart of the legal profession’ see: <http://www.lawsociety.org.uk/news/press-releases/12th-national-pro-bono-week-begins/>, accessed 3 March 2016.. [↑](#footnote-ref-22)
23. See <http://www.sra.org.uk/sra/news/press/professional-standards-launch.page>, accessed 3 March 2016. [↑](#footnote-ref-23)
24. See The Law Society, *Report into the global competitiveness of the England and Wales solicitor qualification* (2015), available at: <http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/global-competitiveness-of-the-england-and-wales-solicitor-qualification/>, accessed 1 March 2016, 2. [↑](#footnote-ref-24)
25. Loughery (n 17) [61]. [↑](#footnote-ref-25)
26. Richard Moorhead, ‘Precarious Professionalism: Some Empirical and Behavioural Perspectives on Lawyers’ (2014) 67 Current Legal Problems447, [460]. [↑](#footnote-ref-26)
27. Tony King, ‘The Future of Legal Education from the Profession’s Viewpoint: A Brave New World?’, Chapter 9 of Hilary Sommerlad *et al, The Futures of Legal Education and the Legal Profession* (Hart 2015), [195]. [↑](#footnote-ref-27)
28. See *LETR* (n 10) [para. 2.70]. [↑](#footnote-ref-28)
29. The Solicitors Regulation Authority’s consultation paper ‘*Training for Tomorrow: A Competence Statement for Solicitors*’, available at (though consultation closed): <http://www.sra.org.uk/sra/consultations/competence-statement.page>, accessed 1 March 2016, has ‘Ethics, professionalism and judgement’ as the first element ‘because of the importance […] attach[ed] to it.’ [↑](#footnote-ref-29)
30. See, for example, Arthur *et al* (n 4), and Philip Blond, *et al, In Professions We Trust: Fostering virtuous practitioners in teaching, law and medicine* (ResPublica 2015), available at: <http://www.respublica.org.uk/wp-content/uploads/2015/02/In-Professions-We-Trust.pdf>, accessed 3 March 2016. [↑](#footnote-ref-30)
31. This has included the separation of regulatory and representative functions of the solicitors’ profession through the creation of the Legal Services Board and approval of the Solicitors’ Regulation Authority under the Legal Services Act 2007. [↑](#footnote-ref-31)
32. in large part been taken by the (largely independent) Solicitors Regulation Authority. [↑](#footnote-ref-32)
33. Hilary Sommerlad *et al,* ‘The Futures of Legal Education and the Legal Profession’, Chapter 1 of Hilary Sommerlad *et al, The Futures of Legal Education and the Legal Profession* (Hart 2015) [9]. [↑](#footnote-ref-33)
34. Andrew Boon, *The Ethics and Conduct of Lawyers in England and Wales* (3rd ed, Hart 2014),[576]. [↑](#footnote-ref-34)
35. LETR Literature Review, Chapter 3 *Legal education and conduct of business requirements*, p.11, available at: <http://letr.org.uk/literature-review/index.html>, accessed 1 March 2016. Flood identifies how global firms have been ‘undermining, modifying, escaping and ultimately reconstructing professional regulation regimes.’ (John Flood, ‘The re-landscaping of the legal profession: Large law firms and professional re-regulation’ (2011) 59 Current Sociology 507, [508]). [↑](#footnote-ref-35)
36. Robert Lee, *Firm Views: Work of and Work in the Largest Law Firms* (1999 Law Society Research and Policy Planning Unit, Research Study No. 35), [25]. [↑](#footnote-ref-36)
37. Andrew Francis, ‘Legal ethics, the marketplace and the fragmentation of legal professionalism’ (2005) International Journal of the Legal Profession 173, [173]. [↑](#footnote-ref-37)
38. Lee (n 36) [26]. [↑](#footnote-ref-38)
39. Coe and Vaughan have shown how commercial clients are exercising increasing control over their retained lawyers, reflecting a change in the balance of power relationships, and how this may influence ethical decision-making (as well as impacting on the firms’ ability to regulate in their own interests) (Coe and Vaughan (n 18). [↑](#footnote-ref-39)
40. Chris Perrin (Executive Partner & General Counsel, Clifford Chance), *The importance of ethics for the profession* (paper presented at ‘*Ethics in the Qualifying Law Degree’,* organised by the Law Society (4 November 2010), available at: <https://www.lawsociety.org.uk/policy-campaigns/campaigns/education-training/documents/chris-perrin-speech/>, accessed 3 March 2016. [↑](#footnote-ref-40)
41. Coe and Vaughan (n 18). [↑](#footnote-ref-41)
42. Francis ‘Legal ethics’ (n 37) [181]. [↑](#footnote-ref-42)
43. Hilary Sommerlad, ‘Researching and theorizing the processes of professional identity formation’ (2007) 34 Journal of Law and Society 190, [204]. Self regulation and institutional autonomy, as elements of a ‘profession’, includes regulating the production of producers, i.e. controlling who can practise as a professional and how one qualifies into a profession (see Flood, ‘re-landscaping’ (n 35) [509]). [↑](#footnote-ref-43)
44. The SRA has proposed the introduction of a standardised means of central assessment of competence prior to qualification, in the form of a two stage ‘Solicitors Qualifying Examination’. Though not finalised, the SRA’s view is that a pre-qualification workplace requirement should continue (see SRA ‘*Training for Tomorrow*’ (n 29) [5]). [↑](#footnote-ref-44)
45. See, for example, Michael Shiner and Tim Newburn, *Entry into the Legal Professions: The Law Student Cohort Study- Year 3* (The Law Society 1996), Halpern (n 2) [76] and Abel ‘*English Lawyers’* (n 15) [107]. [↑](#footnote-ref-45)
46. Rosaline 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>, accessed 10 September 2015, and LETR Literature Review, Chapter 7 *Current Equality, Diversity & Social Mobility Issues,* [29], available at: <http://letr.org.uk/literature-review/index.html>, accessed 1 March 2016. [↑](#footnote-ref-46)
47. SRA ‘*Training for Tomorrow*’ (n 29) [4]. [↑](#footnote-ref-47)
48. Such as the Government Legal Service. [↑](#footnote-ref-48)
49. Law Society, *Trends* *2014* (n 5). [↑](#footnote-ref-49)
50. Francis, ‘Legal ethics’ (n 37) [186]. [↑](#footnote-ref-50)
51. Andrew Francis and Hilary Sommerlad, ‘Access to legal work experience and its role in the (re)production of legal professional identity’ (2009) 16 International Journal of the Legal Profession 63, [64]. [↑](#footnote-ref-51)
52. Francis and Sommerlad (n 51) [64]. [↑](#footnote-ref-52)
53. Investment that firms may seek to recover, in part, from trainees not providing a subsequent return (see *DWF’s bid to clawback LPC fees from ex-trainee could be unenforceable restraint of trade*, available at: <http://www.legalcheek.com/2016/04/dwfs-bid-to-claw-back-lpc-fees-from-ex-trainee-could-be-unenforceable-restraint-of-trade/>, accessed 28 April 2016). [↑](#footnote-ref-53)
54. In Germany and Italy, for example, recruitment is at a later stage of a longer education process. In those jurisdictions, applicants have strong views about their role as lawyers and professionals, and what this entails. (see James Faulconbridge, Andy Cook and Daniel Muzio, *Professional Education, Global Professional Service Firms and Professional Work in Europe: The case of Law* (2010 Final Report), available at: <http://www.lancs.ac.uk/professions/professional_ed/>, accessed 1 March 2016, [16]). [↑](#footnote-ref-54)
55. as the voluntary code inhibiting law firms from earlier recruitment has come under recent strain, including withdrawal by the Solicitors’ Regulation Authority, stating ‘it is not its regulatory role to be involved in deciding the dates and processes by which individual employers and employees make recruitment choices’ (See: <http://l2b.thelawyer.com/trainee-code-sra-to-withdraw-by-end-of-march-as-fellow-signatories-condemn-move/>, accessed 3 March 2016, though with replacement by the Law Society as signatory, see: <http://l2b.thelawyer.com/trainee-recruitment-rules-to-be-upheld-by-recruiters-in-wake-of-sras-withdrawal/>, accessed 3 March 2016). [↑](#footnote-ref-55)
56. Richard Collier, ‘’Be smart, be successful, be yourself…’?: representations of the training contract and trainee solicitor in advertising by large law firms’ (2005) 12 International Journal of the Legal Profession, 51, [68]. [↑](#footnote-ref-56)
57. Collier (n 56) [69]. [↑](#footnote-ref-57)
58. Including factors such as revenue, number of lawyers, Revenue per Lawyer, and PEP are used as measures of success and quality (See, for example, <http://www.thelawyer.com/uk-200-the-top-100-youre-good-but-youre-not-quite-global/>, accessed 27 February 2016). ‘Law firms live and die on their reputations’ so, in a financialised world, being less profitable than competitors risks diminishing reputation (James Faulconbridge and Daniel Muzio, ‘Financialisation by Proxy: The Case of Large City Law Firms’, Chapter 3 of Hilary Sommerlad *et al, The Futures of Legal Education and the Legal Profession* (Hart 2015) [49]). [↑](#footnote-ref-58)
59. See, among the numerous examples: <https://l2b.thelawyer.com/commercial-awareness/>, accessed 4 March 2016. [↑](#footnote-ref-59)
60. ‘Organizational members are not reducible to passive consumers of managerially designed and designated identities’ (Mats Alvesson and Hugh Willmott ‘Identity Regulation as Organizational Control: Producing the Appropriate Individual’ (2002) 39 Journal of Management Studies 619, [621]). [↑](#footnote-ref-60)
61. Alvesson and Willmott ‘Identity Regulation’ (n 60). [↑](#footnote-ref-61)
62. Alvesson and Willmott ‘Identity Regulation’ (n 60) [623]. [↑](#footnote-ref-62)
63. Alvesson and Willmott ‘Identity Regulation’ (n 60) [630]. [↑](#footnote-ref-63)
64. Alvesson and Willmott ‘Identity Regulation’ (n 60) [631]. [↑](#footnote-ref-64)
65. Hilary Sommerlad, ‘The commercialisation of law and the enterprising legal practitioner: continuity and change’ (2011) 18 International Journal of the Legal Profession73, [78]. [↑](#footnote-ref-65)
66. Sommerlad, ‘Researching and theorizing’ (n 43) [210]. [↑](#footnote-ref-66)
67. Sommerlad, ‘commercialisation’ (n 65) [89]. These placements comprise work experience for (mainly) undergraduates, to provide an insight into life working as a solicitor (within particular organisations). They are generally also a step in the recruitment process, with many substituting the need to attend an ‘assessment centre’. [↑](#footnote-ref-67)
68. Dora Scholarios *et al* ‘Anticipatory socialisation: the effect of recruitment and selection experiences on career expectations’, [2003] 3 Career Development International 182. [↑](#footnote-ref-68)
69. Scholarios *et al* (n 68). [↑](#footnote-ref-69)
70. Andrew Cook, James Faulconbridge and Daniel Muzio, ‘A Legal Aristocracy? Recruitment Practices and Elite Reproduction in English Global Law Firms’, <http://www.lancs.ac.uk/professions/professional_ed/docs/a_legal_aristocracy.pdf>, accessed 14 September 2012, [3]. [↑](#footnote-ref-70)
71. Mats Alvesson, Karen Lee Ashcroft and Robyn Thomas, ‘Identity Matters: Reflections on the Construction of Identity Scholarship in Organization Studies’ (2008) 15 Organization 5, [18]. [↑](#footnote-ref-71)
72. Alvesson *et al* ‘Identity Matters’ (n 71) [16]. [↑](#footnote-ref-72)
73. Alvesson *et al* ‘Identity Matters’ (n 71) [15]. [↑](#footnote-ref-73)
74. Nic Beech, Robert MacIntosh and Peter McInnes, ‘Identity Work: Processes and Dynamics of Identity Formations’ (2008) 31 International Journal of Public Administration 957. [↑](#footnote-ref-74)
75. Beech, *et al* ‘Identity Work’ (n 74). [↑](#footnote-ref-75)
76. See Andy Cook, James Faulconbridge and Daniel Muzio, ‘A precursor to identity regulation? Recruitment, Cultural Capital and Symbolic Violence in Global law firms’ (2010, CERIC Working Paper 11), <https://lubswww.leeds.ac.uk/fileadmin/user_upload/Publications/Cook_et_al_WP11.pdf>1, accessed 14 April 2016, and Cook *et al* ‘London’s Legal Elite’ (n 12). [↑](#footnote-ref-76)
77. Dora Scholarios and Cliff Lockyer, ‘Recruiting and Selecting Professionals: Context Qualities and Methods’ (1999) 7 International Journal of Selection and Assessment 142, [143]. [↑](#footnote-ref-77)
78. Faulconbridge, Cook and Muzio, *Professional Education* (n 54) [14]. [↑](#footnote-ref-78)
79. Julia Evetts, ‘Professionalism, Enterprise and the Market: Contradictory or Complementary?’, Chapter 2 of Hilary Sommerlad *et al, The Futures of Legal Education and the Legal Profession* (Hart 2015), [29]. [↑](#footnote-ref-79)
80. Evetts (n 79) [30]. [↑](#footnote-ref-80)
81. This may be ‘cultural capital’, but also ‘social capital’ (or at least the potential to develop this) such as group membership and networks. [↑](#footnote-ref-81)
82. Cook, Faulconbridge, and Muzio, ‘London’s Legal Elite’ (n 12) [1748]. [↑](#footnote-ref-82)
83. Cook, Faulconbridge, and Muzio, ‘London’s Legal Elite’ (n 12) [1749]. [↑](#footnote-ref-83)
84. Sommerlad, ‘commercialisation’ (n 65) [83]. [↑](#footnote-ref-84)
85. Cook, Faulconbridge, and Muzio, ‘London’s Legal Elite’ (n 12) [1752]. [↑](#footnote-ref-85)
86. Sommerlad, ‘commercialisation’ (n 65) [81]. [↑](#footnote-ref-86)
87. Sommerlad, ‘commercialisation’ (n 65) [86]. [↑](#footnote-ref-87)
88. Sommerlad, ‘commercialisation’ (n 65) [87]. [↑](#footnote-ref-88)
89. Sommerlad, ‘commercialisation’ (n 65) [88]. [↑](#footnote-ref-89)
90. Sommerlad, ‘Researching and theorizing’ (n 43) [202]. [↑](#footnote-ref-90)
91. Flood, ‘re-landscaping’ (n 35) [510] (referencing James Faulconbridge *et al ‘*Learning to be a lawyer in transnational law firms: communities of practice, institutions and identity regulation’). [↑](#footnote-ref-91)
92. Cook, Faulconbridge and Muzio, ‘A Legal Aristocracy?’ (n 70) [2-3]. [↑](#footnote-ref-92)
93. As noted above, the empirical work supporting this paper was undertaken with the help of Chris Wilkinson. As well as direct involvement in arranging and undertaking interviews, Chris provided general support across the project, as well as distribution of Survey invitations. [↑](#footnote-ref-93)
94. We are extremely grateful for the help of those assisting with this element of the research. [↑](#footnote-ref-94)
95. 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. [↑](#footnote-ref-95)
96. Graduate Diploma in Law (a conversion programme for non-law graduates), and the Legal Practice Course, respectively. [↑](#footnote-ref-96)
97. Though not in the sense of interviewing recruiters from the same firms as the survey respondents had experienced. [↑](#footnote-ref-97)
98. These interviews were arranged by Chris Wilkinson of York Law School, who also conducted around half of the interviews. Some were conducted jointly with two interviewers. [↑](#footnote-ref-98)
99. 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 (see above). [↑](#footnote-ref-99)
100. Alvesson *et al* ‘Identity Matters’ (n 71) [15]. [↑](#footnote-ref-100)
101. 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.’ [↑](#footnote-ref-101)
102. 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.’ [↑](#footnote-ref-102)
103. 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). [↑](#footnote-ref-103)
104. This included one respondent who did not have experience beyond the written application/online testing stage. [↑](#footnote-ref-104)
105. On the CSR policies of large law firms, see Steven Vaughan, Linden Thomas and Alastair Young, ‘Symbolism over substance? Large law firms and corporate responsibility’ (2015) 18 Legal Ethics 138. [↑](#footnote-ref-105)
106. Despite this not being a requirement of Qualifying Law Degrees. [↑](#footnote-ref-106)
107. The LETR Report notes evidence of an equivalent need for ‘social awareness’ within the High Street and Legal Aid context, though that this may be a cipher for communication skills and empathy (see See *LETR* (n 10) [paras. 4.68-4.69]. [↑](#footnote-ref-107)
108. These responses were from firms outside London. [↑](#footnote-ref-108)
109. Sommerlad, ‘commercialisation’ (n 65) [81]. [↑](#footnote-ref-109)
110. Such as those for professionals in Global Law Firms in Cook *et al* ‘A precursor’ (n 76) [13]. [↑](#footnote-ref-110)
111. Sommerlad, ‘commercialisation’ (n 65) [86]. [↑](#footnote-ref-111)
112. Beech, *et al* ‘Identity Work’ (n 74). [↑](#footnote-ref-112)
113. Elements of the concept of ‘Neutral Partisanship’(see, for example, Tim Dare, *A Counsel of Rogues: A Defence of the Standard Conception of the Lawyer's Role* (Ashgate, 2009), and Stephen Pepper, ‘The lawyer’s amoral ethical role: A defense, a problem and some possibilities’ (1986) 11 American Bar Foundation Research Journal 613). [↑](#footnote-ref-113)
114. So that the ‘independence’ of legal professionals is diminished (see Coe and Vaughan (n 18)). [↑](#footnote-ref-114)
115. Moorhead, ‘Precarious Professionalism’ (n 26) [464]. [↑](#footnote-ref-115)
116. Vivien Holmes, ‘’Giving Voice to Values’: enhancing students’ capacity to cope with ethical challenges in legal practice’ (2015) 18 Legal Ethics 115, [121]. [↑](#footnote-ref-116)
117. Richard Moorhead, ‘Corporate Lawyers: Values, Institutional Logics and Ethics’ (July 4, 2015), available at: SSRN: [http://ssrn.com/abstract=2626684](http://ssrn.com/abstract%3D2626684); or <http://dx.doi.org/10.2139/ssrn.2626684>, accessed 3 March 2016, [8]. [↑](#footnote-ref-117)
118. Holmes (n 116) [121]. [↑](#footnote-ref-118)
119. Alvesson *et al* ‘Identity Matters’ (n 71) [18]. [↑](#footnote-ref-119)
120. Kim Economides and Justine Rogers, *Preparatory ethics training for future solicitors* (2009 Law Society), [39]. [↑](#footnote-ref-120)
121. See Steven Vaughan and Emma Oakley, ‘The Gorilla Exceptions and the Ethically Apathetic Corporate Lawyer’ (2016) Legal Ethics (in this issue). Vaughan and Oakley’s data shows only 2 out of 30 interviewees identifying ethical assessment in their graduate recruitment practices. [↑](#footnote-ref-121)
122. Lee (n 36) [32]. [↑](#footnote-ref-122)
123. Moorhead, ‘Precarious Professionalism’ (n 26) [469] and Boon, *The Ethics and Conduct* (n 34)[582]. [↑](#footnote-ref-123)
124. Moorhead, ‘Corporate Lawyers’ (n 117) [19]. [↑](#footnote-ref-124)
125. Coe and Vaughan (n 18) [62]. [↑](#footnote-ref-125)
126. See Vaughan and Oakley (n 121) and Richard Moorhead and Victoria Hinchly, ‘Professional Minimalism? The Ethical Consciousness of Commercial Lawyers’ (2015) 42 Journal of Law and Society 387. [↑](#footnote-ref-126)
127. Vaughan and Oakley (n 121). [↑](#footnote-ref-127)
128. Cook *et al* ‘A precursor’ (n 76) [16]. Certain types of institutionalised cultural capital are treated as proxy for trust, character, presentability to clients, and appropriate cultural dispositions: elite Universities being seen as places where graduates are more likely to acquire such capital (Cook *et al* ‘London’s Legal Elite’ (n 12) [1755]). That may, of course, include development of social, as well as cultural, capital. [↑](#footnote-ref-128)
129. Alvesson and Willmott ‘Identity Regulation’ (n 60). [↑](#footnote-ref-129)
130. Alvesson *et al* ‘Identity Matters’ (n 71). [↑](#footnote-ref-130)
131. 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. [↑](#footnote-ref-131)
132. On the limited effectiveness of Rules/Codes without development of ‘professional moral character’ see, for example, Donald Nicolson, ‘Making lawyers moral? Ethical codes and moral character’ (2005) 25 Legal Studies 601. [↑](#footnote-ref-132)
133. Paul Philip, (SRA Chief Executive), ‘Power, Practice and Professional Values – a Regulatory Perspective’, paper presented at the June 2015 Symposium on ‘Corporate Lawyers and Corporate Clients’ in Birmingham. [↑](#footnote-ref-133)
134. Lee (n 36) [viii]. [↑](#footnote-ref-134)
135. Lee (n 36) [30]. [↑](#footnote-ref-135)
136. Social Desirability being the tendency of individuals to deny socially undesirable traits and behaviours and to admit to socially desirable ones. Due to the sensitive nature of ethics research, the presence of a social desirability response bias may pose an even greater threat to the validity of findings in ethics research than in more traditional organisational behaviour research topics. See, for example, Donna Randall and Maria Fernandes, ‘The social desirability response bias in ethics research’ (1991) 10 Journal of Business Ethics 805, [805]. [↑](#footnote-ref-136)
137. This factor may have also have been a feature in interview responses, of course. [↑](#footnote-ref-137)
138. Alvesson *et al* ‘Identity Matters’ (n 71). [↑](#footnote-ref-138)
139. Cook *et al* ‘A precursor’ (n 76) [6]. [↑](#footnote-ref-139)
140. Julian Webb, ‘The LETRs (still) in the Post: The Legal education and Training Review and the Reform of Legal Services Education and Training – A Personal (Re)view’, Chapter 6 of Hilary Sommerlad *et al, The Futures of Legal Education and the Legal Profession* (Hart 2015),[113]. [↑](#footnote-ref-140)
141. Loughery (n 17) [81]. [↑](#footnote-ref-141)
142. Abel identifies the limits of formal education, pointing to the scepticism regarding the value of formal legal education, often expressed by employers and judges (in the US), and resentment by law students of the compulsory course on professional responsibility (Richard Abel, ‘An Agenda for Research on the Legal Profession and Legal Education: One American’s Perspective’, Chapter 10 of Hilary Sommerlad *et al, The Futures of Legal Education and the Legal Profession* (Hart 2015)). Sommerlad suggests that the implicit answer to concerns as to market forces driving out even the possibility of lawyers acting ethically in the public interest (rather than a narrowly conceived client interest) is a requirement for legal ethics, values and professionalism to be central throughout the continuum of education and training (Hilary Sommerlad *et al,* Chapter 1 (n 33)). [↑](#footnote-ref-142)
143. Moorhead, ‘Corporate Lawyers’ (n 117) [19] (emphasis added). [↑](#footnote-ref-143)
144. Leslie Levin and Lynn Mather, *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press 2012), [16]. [↑](#footnote-ref-144)
145. See Economides and Rogers (n 120) [34-36], and Kimberly Kirkland, ‘Ethics in Large Law Firms: The Principle of Pragmatism’ (2005) 35 University of Memphis Law Review 631. [↑](#footnote-ref-145)
146. Arthur *et al* (n 4) [Section 6]. [↑](#footnote-ref-146)
147. ‘*The main concern would be ethics and professionalism and where and how you learn that.’* (Law Society, *Report into the global competitiveness’* (n 24) [14]). [↑](#footnote-ref-147)