



REGULATING BARRISTERS

**Consultation on Future Bar Training:  
Shaping the education and training requirements  
for prospective barristers**

**October 2017**

## Contents

<b>Foreword.....</b>	<b>3</b>
<b>Executive Summary.....</b>	<b>5</b>
<b>Part I: Introduction.....</b>	<b>10</b>
<b>Part II: Context for implementing the FBT reforms.....</b>	<b>15</b>
<b>Part III: Shaping the vocational and professional requirements</b>	
<b>The role of the Inns of Court in barrister training.....</b>	<b>20</b>
<b>Future arrangements for the work-based component of training.....</b>	<b>38</b>
<b>Development of an Authorisation Framework.....</b>	<b>57</b>
<b>Part IV: Provisions for transferring qualified lawyers.....</b>	<b>60</b>
<b>Part V: Provisions for transitional arrangements.....</b>	<b>62</b>
<b>Part VI: How to respond to this consultation.....</b>	<b>63</b>

## Foreword

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Over the last few years, the Bar Standards Board has been reviewing the way in which barristers in England and Wales train and qualify. This process of research, consultation, review and regulatory change is known as our [Future Bar Training \(FBT\)](#) programme.

The purpose of our review is to ensure that training for the Bar better meets the four key principles that we identified during an earlier stage of our FBT programme.

These principles are:

- **encouraging greater flexibility** – so that the training system enables innovation in how education and training is delivered;
- **improving accessibility** – so that the best candidates can train as barristers and that the Bar as a whole will better reflect the communities it serves;
- **improving affordability** – to bring down the cost of studying for students; and
- **sustaining high standards** – to ensure that any new training pathway maintains current standards.

In March 2017, following an extensive consultation exercise, we published a [policy statement](#) describing our vision for the future of Bar training. We also decided to authorise a limited number of new training routes for prospective barristers. We believe these routes can best reflect the four principles described above.

To enable the development of the new training routes, we will need to develop a new rules framework which will enable organisations currently known as Providers, Pupillage Training Organisations or Approved Training Organisations to develop new and innovative training programmes for aspiring barristers and to be approved as Authorised Education and Training Organisations. With this in mind, we are reviewing all of our current rules, many of which are highly prescriptive and rigid, to ensure they are both fit for purpose and compatible with our new, outcomes focussed approach to education and training. At the end of this process, we may remove, amend, replace or add to the existing rules. This consultation seeks views on matters of policy that will inform our revision of the rules.

As part of this, we are seeking your views on some important aspects of the current and future system of training and qualification for barristers. These include:

- The extent to which we should prescribe the **role of the Inns of Court in the training and qualification of barristers**;
- Future regulatory arrangements and rules for **work-based learning (pupillage)**; and

- A draft of the **Authorisation Framework** which will guide training providers in developing new training routes and against which their proposals will be assessed for approval.

In light of the four principles referred to above, it is important that we include a review of our rules governing pupillage and the role of the Inns in the training and education of barristers within FBT. Our intention is to consider how we might be able to help improve the current system for the benefit of the public, the Bar itself, and of course, for prospective barristers.

We would like to emphasise that throughout this consultation process we will be open-minded about the best way forward. We recognise the historic and supportive role played by the Inns, many Approved Training Organisations (ATOs) and individual pupil supervisors in helping prepare barristers for the real world of practice.

We want to build upon what already works well and to deregulate where we feel that our rules are no longer needed. We want to encourage flexibility and innovation and to respond to positive changes which are already happening, not to disregard practices which have served the public and the profession well and continue to meet our regulatory requirements. For example, although we are discussing the possibility of greater flexibility for the supervision of pupillage, we recognise the central importance of pupillage at the Bar, and expect pupillage to play a central role in the future of Bar training. It should not be assumed that we want to end practices simply because we feel that we need no longer *require* them to be mandatory. What is no longer prescribed should not be proscribed, so far as it is compatible with our regulatory objectives.

We hope you will respond to this consultation – especially if you are a user of legal services, a practising barrister, a current or recent pupil, a student, a pupil supervisor or a training provider. We very much want to hear your views on what might or might not work “on the ground” in the day-to-day delivery of legal services and in ensuring a steady and reliable supply of new, high-quality practitioners.

We look forward to hearing from you.

Sir Andrew Burns KCMG – Chair of the Bar Standards Board (BSB)

Justine Davidge, barrister – Chair of the BSB’s Education and Training Committee

## Executive Summary

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This consultation paper considers a number of aspects of the current system of training and qualification for barristers. These include:

- The extent to which we should prescribe the **role of the Inns of Court in the training and qualification of barristers**;
- Future regulatory arrangements and rules for **work-based learning** (pupillage); and
- A draft of the **Authorisation Framework** which will guide training organisations in developing new training routes and against which their proposals will be assessed for approval.

When considering the issues outlined in this consultation paper, you should also refer to the [Professional Statement for Barristers](#) incorporating the Threshold Standard and Competences of September 2016 (the “Professional Statement”) which describes the knowledge, skills and attributes that all barristers should have on “day one” of practice.

**Part I** of this consultation is an introduction. It explains our role in the education and training process for barristers, and the aims of our Future Bar Training (FBT) programme.

**Part II** explains some of the context for implementing our FBT reforms. It contains an overview of some of the important decisions that we have already made about the future arrangements for Bar training.

In **Part III** of this consultation, we consider aspects of the current vocational and professional stages of training, beginning with the **role of the Inns of Court in barrister training**. We explore in detail the issues associated with the following:

### **The regulatory oversight of students**

Currently, our regulations require students to join one of the Inns when they start the Bar Professional Training Course (BPTC). We ask for your views as to whether or not this is necessary at such an early stage; and whether or not the Inns of Court are the most appropriate body to register students as prospective barristers.

### **Educational qualification and fit and proper person checks**

Under our current rules, student membership of an Inn involves the Inn checking applicants’ educational qualifications and conducting a “fit and proper person” check by requiring the applicant to make a number of declarations. This is the only stage in the current qualification process where checks of this nature are undertaken. We ask for your views as to whether we should continue to delegate responsibility for these checks to the Inns or whether we should conduct some of them ourselves. We also ask whether

more robust assessments of applicants' suitability to become barristers should be undertaken at this stage: for example, by requiring Disclosure and Barring Service (DBS) checks.

### **Student conduct**

If you agree that some form of student registration is required, in this section of the consultation we ask for your views as to who should be responsible for the conduct of students. We ask you to consider whether the Inns should continue to be responsible for this or whether it is something for which the BSB should take responsibility.

### **Qualifying sessions**

Our current rules specify that 12 qualifying sessions must be completed before someone can be called to the Bar. There are a number of different qualifying sessions offered by each Inn, such as guest lecture events, advocacy workshops, dining sessions and debate nights. We outline the pros and cons of mandating attendance at these sessions and then ask you to consider whether or not we should:

- a) remove our requirement for prospective barristers to complete qualifying sessions;
- b) reduce the number of sessions that are mandated, review the nature of the sessions and/or review whether other training providers could deliver qualifying sessions; or
- c) adopt a similar approach to the new Continuing Professional Development (CPD) scheme for established barristers, whereby prospective barristers would plan their learning needs by setting objectives and identifying the types of "qualifying sessions" or activities that would be most beneficial to their needs.

Part III of the consultation paper continues by considering the future arrangements for work-based learning (pupillage). The following issues are explored:

### **The length of pupillage**

At present, our rules require that pupils must complete two six-month parts of pupillage, the non-practising and the practising periods. After successfully completing the non-practising period, a Provisional Practising Certificate (PPC) can be awarded. Whilst these arrangements work well for many chambers and organisations, some require their pupils to complete longer training periods (sometimes also known as "Third Six pupillages"). Chambers or organisations offering pupillage may want to tailor their training plans in other ways to better suit their needs. Our current rules do not permit this, as they require that all regulated pupillages must be for a period of 12 months. To allow the Bar greater flexibility in the way that pupillage is structured, we discuss the advantages and disadvantages of removing the 12-month rule, seek your views on the length of pupillage, and ask whether a minimum or a maximum time should be prescribed by the BSB.

### **The award of a Provisional Practising Certificate**

Closely aligned to the length of pupillage, we also seek views as to when the PPC should be awarded. We outline four possible options on this and seek your views on which one would work best. The options are:

- a) The PPC is granted at the start of pupillage and the pupil may undertake reserved legal activity once their Approved Education and Training Organisation (AETO) determines they are competent;
- b) The PPC may be applied for at any time during pupillage. It would be for the AETO, pupil and supervisor to determine when it is most appropriate for the pupil to apply. The AETO would sign the application to confirm the pupil is competent;
- c) The AETO, on accreditation of their pupillage scheme, determines when they would want the PPC. The AETO could propose to apply the same award date to all pupils taken on, or identify different award dates for different categories of pupils, based on past experience of training pupils with similar levels of knowledge and experience; or
- d) No change. The PPC is awarded after six months.

### **Pupillage funding**

We currently require all pupils to be paid a minimum of £12,000 over the course of their pupillage. This is below the National Living Wage and there is evidence that some prospective barristers from lower socio-economic backgrounds cannot afford, or are put off from entering, pupillage. We also recognise the potential cost increase of a higher minimum payment for chambers and other organisations offering pupillage, particularly those who undertake publicly funded work. We ask whether you think the minimum pupillage award should be raised and, if you do, what benchmark should we use to set the new minimum level. In addition, we seek views on whether or not the existing exemption from pupillage funding requirements for transferring qualified lawyers should cease.

### **Re-authorisation of Approved Training Organisations**

At present, any chambers or organisation that had a pupil on 1 September 2006 is deemed to have been authorised by us as an ATO. All other organisations offering pupillage since this date have had to apply to us for authorisation. This means that many ATOs have never been through a formal authorisation process and this limits our ability to ensure that they are offering adequate training to pupils. All future organisations offering the work-based component of training will be an Authorised Education and Training Organisation (AETO). In this section of the consultation paper, we discuss a “light-touch” system of re-authorisation for all AETOs and then ask you for your views on this. We also ask you to consider how long the defined period of authorisation should last before an ATO is required to be re-authorised.

### **Rules relating to the relationship between pupil supervisor and pupil**

The one-to-one relationship between pupils and their supervisors has been the way that all pupils are trained for many years. However, for a variety of good reasons, some pupils have a number of different pupil supervisors during their pupillage. Under our current rules, the pupil is expected to inform us whenever there is a change in supervisor. This can create an administrative burden for us, pupil supervisors and pupils. We seek your views on whether we should remove the requirement that pupils have a single, named pupil supervisor and instead require the ATO to ensure that all pupils are adequately supervised throughout their pupillage. We also seek your views on whether we should remove our requirement that a pupil supervisor may only supervise one pupil at a time. We are aware of arguments that in some contexts, particularly at the employed bar, this rule can significantly reduce the ability of an ATO to offer pupillage. The discussion of these two possibilities reflects our desire to make our rules more flexible and less onerous on pupils and ATOs and yet continue to ensure pupils receive proper training and supervision during their pupillage.

### **Pupil supervisor training**

All pupil supervisors are required to undertake training prior to being entered onto the register of pupil supervisors. However, we do not currently prescribe what the training outcomes should be for that training nor do we exercise any quality assurance. There is also no standing requirement for supervisors on the register to undertake periodic refresher training. In this section of the consultation, we pose a number of questions relating to pupil supervisor training.

### **Compulsory training courses during pupillage**

Pupils are currently required to undertake two courses during pupillage, one on advocacy and the other on practice management. They are also required to take a course on forensic accountancy either during pupillage or during their first three years of practice. This consultation does *not* ask for views on the appropriateness of the rule requiring these courses to be undertaken, because this is being addressed as part of our wider review of curriculum and assessments. However, assuming that compulsory training courses during pupillage do continue to form part of the training rules, we do ask here for views on opening up the delivery of these courses to a wider pool of training providers. Currently, the advocacy and practice management courses are offered exclusively by the Inns and the forensic accountancy course is currently provided only by BPP Professional Education.

### **Recruitment and advertising of pupillage**

In this consultation paper, we announce our plans to establish a working group to review our rules regarding the recruitment and advertising of pupillage. We briefly discuss the issues here, but do not ask any specific questions on this topic at this stage.



In the final section of **Part III**, we attach as [Annex 1](#), a draft of the **Authorisation Framework**, which is intended to provide training providers of vocational and work-based components with guidance about what we will consider when they seek our approval for their new training proposals and therefore will allow them to develop appropriate training routes. We ask a number of questions about the drafting used in this version of the Authorisation Framework. In particular, we seek views on whether or not our definitions of “flexibility”, “accessibility”, “affordability” and “high-standards” are clear and whether we have identified correctly the mandatory indicators of compliance for each of these principles.

**Part IV** of this consultation paper asks you to consider our proposal to maintain a series of exemptions for **transferring qualified lawyers** under any new set of rules made as a result of our FBT programme. Our proposal to maintain a system of exemptions broadly follows the system of exemptions applied for by transferring lawyers under the current regime.

In **Part V**, we explain the need for, and the likely impact of, transitional arrangements to give certainty to both students and providers of education and training for a defined period.

**The deadline for responding to this consultation is 8 January 2018.** For more information about how to respond please refer to **Part VI** of this consultation paper.

Once this consultation has closed, we will consider the responses in the light of our regulatory objectives and the key policy principles we have set for FBT. We will then develop a new set of rules, on which we will consult in 2018. That consultation will be shorter and will focus simply on whether the rules effectively implement our agreed policy positions. We expect the new rules to come into effect in January 2019.

## Part I: Introduction

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### About the BSB and what we do

1. The Bar Standards Board is the regulator of barristers in England and Wales. We are also responsible for setting the education and training requirements for those who wish to practise as barristers.
2. In exercising our regulatory functions we must act in a way that is compatible with our regulatory objectives and which we consider most appropriate for the purposes of meeting those objectives. These are:
  - protecting and promoting the public interest;
  - supporting the constitutional principle of the rule of law;
  - improving access to justice;
  - protecting and promoting the interests of consumers;
  - promoting competition in the provision of legal services;
  - encouraging an independent, strong, diverse and effective legal profession;
  - increasing public understanding of citizens' legal rights and duties; and
  - promoting and maintaining adherence to the professional principles.
3. In addition to the regulatory objectives, we have adopted two principles of good regulatory practice, which are set out by the Legal Services Board in its regulatory standards framework:
  - outcomes focused regulation; and
  - risk and evidence based regulation.
4. We must also have regard to the principles under which activities should be transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed, in addition to any other principle appearing to us to represent best regulatory practice.
5. The primary source of our regulatory arrangements is the BSB Handbook, which incorporates the Code of Conduct and the Bar Training Rules.

### The BSB's role in education and training

6. The education and training of barristers is obviously very important because barristers play a vital role in the administration of justice. They must demonstrate a high standard of professional practice to justify the trust placed in them by the public and other professionals.
7. Currently, prospective barristers train under a single, BSB-prescribed route involving higher education institutions and providers of professional training. The Inns of Court

Future Bar Training: Shaping the education and training requirements for prospective barristers

also play an important role in a barrister's career; they alone confer the title of barrister and they provide the advocacy training during the professional stage of training. If students have satisfied our requirements, we authorise them to practise as regulated professionals.

8. In addition to the regulatory framework in which we operate, the Legal Services Board (LSB) has published [statutory guidance](#) specific to legal education and training for relevant regulators to which we must adhere.

### The Future Bar Training Programme

9. The FBT programme was launched in 2014 to focus on:
  - how training should be regulated to best meet the needs of professional practice;
  - ensuring that regulatory requirements do not restrict access to the Bar;
  - ensuring that the requirements for education and training are targeted on the desired outcomes and are proportionate; and
  - maintaining the standards which must be met at the point where someone is authorised to practise.

### Our FBT consultations

10. Over the last few years, we have conducted extensive research and public consultation to examine the ways in which students currently train for the Bar and to consider what reforms to the system should be made to ensure that it better meets the four key principles of:
  - **encouraging greater flexibility** – so that the training system enables innovation in how education and training is delivered;
  - **improving accessibility** – so that the best candidates can train as barristers and that the Bar as a whole will better reflect the communities it serves;
  - **improving upon affordability** – to bring down the cost of studying to students; and
  - **sustaining high standards** – to ensure that any new training pathway maintains or enhances current standards.
11. These principles were identified through our earlier (2015) consultation looking at issues across the three stages of education and training in the current system.
12. Last year, we consulted on three very different regulatory approaches as to how training might be delivered in the future. In March 2017, the BSB Board decided that it will authorise a **limited** number of new training routes for prospective students to qualify as barristers. The future system for training for the Bar will retain the three

components of training that have proved successful in the past: academic, vocational and work-based<sup>1</sup>.

13. In addition to the guiding principles set out above, we have settled on the following points of policy, which will be common to any pathway we consider as part of the authorisation process.

- ❖ A general expectation that the Bar will remain a graduate profession and entrants will normally meet the minimum degree classification of 2:2.
- ❖ Students will need to pass an aptitude test and BSB centralised assessments.
- ❖ We should reduce to a minimum our regulatory involvement in academic legal education (ie the current ‘Qualifying Law Degree’ or Graduate Diploma in Law).
- ❖ We should continue to pursue as much of a common agenda with other legal regulators, and the SRA in particular, as can be achieved in pursuit of our principles.
- ❖ During any transitional period between our decision on future pathways in March 2017 and the new rules coming into force in 2019, specific reforms to the current education and training arrangements (as agreed with those involved) will continue.

14. A full list of our closed FBT consultations can be found on our [website](#).

### **About this consultation**

15. To get to the point where we can implement the approach agreed by the Board earlier this year, we need to consider – from first principles – all other requirements which form our regulatory arrangements, including those which are performed by third parties, such as the Inns of Court or Circuits.
16. This consultation seeks views on a number of policy options in order to inform the development of a new set of regulations needed to implement our future approach. Once we have agreed the policy proposals from this consultation, we will consult on a new rules framework in 2018 ahead of our new rules coming into effect in 2019. The consultation on draft rules will be much shorter and more targeted, focusing only on whether the new rules deliver our policy objectives, as decided following this consultation.
17. In Part II of this consultation, we set out the broad policy context for the consultation highlighting the scope of reforms, the impact of decisions already taken on the three stages of training and the need to develop a framework for authorising proposals for

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<sup>1</sup> Our current rules specify a professional stage of training, which is to be carried out in a work-based environment. Most providers of work-based learning are chambers or other legal service providers who offer pupillage to fulfil this requirement. Although pupillage will continue to be the main form of this training, others may be allowed in the future if they can meet the same outcomes.

training. We will also discuss the need to develop a new set of rules (to be approved by the LSB) and any transitional arrangements for implementing the new rules.

18. In Part III, we consider the policy options relating to our proposed new rules. These are:
  - the role of the Inns of Court in barrister training;
  - future arrangements for work-based learning; and
  - the development of an Authorisation Framework.
19. In this Part we present a number of options in pursuit of our regulatory objectives and stated principles. We have not set out firm stances on any particular policy matter and seek views for consideration by the BSB Board following the consultation's closure.
20. Last year, we committed ourselves to working with other legal services regulators and the SRA in particular, to align education and training requirements, where it is appropriate and proportionate to do so. We will continue to work with other regulators, particularly as we develop the Authorisation Framework and set out new rules for transferring qualified lawyers.
21. In Part IV, we present our proposal to maintain a series of exemptions for transferring qualified lawyers under the new set of rules that may arise as a result of the various changes to the training and qualification system.
22. In Part V, we explain the need for, and the likely impact of, transitional arrangements to give certainty to both students and providers of education and training for a defined period.
23. Information on how you can respond to this consultation and our engagement activities can be found in Part VI.

### **How we will use this consultation**

24. In addition to responding to this consultation, we will be arranging a number of other opportunities for you to provide insight and feedback on the issues raised in the consultation – these will be made available on our [website](#). Once we have heard people's views, we will evaluate these in relation to our statutory obligations and the other aims we have identified.
25. We expect the Board to be asked to approve recommendations on policy matters in the spring of 2018. We will then publish a separate consultation on new Handbook rules to bring the reform programme into force.
26. We anticipate that the earliest a new system of education and training for barristers could begin to be implemented would be from 2019 onwards.

### **Who should respond to this consultation?**

27. Anyone who is interested in doing so. However, we are particularly interested in hearing from:

Future Bar Training: Shaping the education and training requirements for prospective barristers

- consumers of legal services and consumer organisations who may represent the interests of users of barristers' services or organisations which have an interest in promoting equality and diversity and access to the profession;
- members of the legal profession: registered and unregistered barristers, solicitors, legal executives or anyone who works with barristers professionally;
- the Bar Council, the Inns of Court, regional Circuits, Specialist Bar Associations and Pupil Supervisors;
- students: current law students, BPTC students, Bar Transfer Test (BTT) candidates, and anyone interested in a career at the Bar; and
- higher education and training institutions: universities, current BPTC providers and legal academics.

### **How has this consultation been developed?**

28. We are extremely grateful to the Board, Education & Training Committee and Future Bar Training Programme Board members for their time, energy and expertise. We have also been assisted to date by the following external experts:

Members of the BSB's Advisory Pool of Experts (APEX)

Jane Chapman: Independent Consultant – Professional Legal Education

Carol Wadsworth Jones: Independent Consultant – Professional Legal Education

Deveral Capps: Dean of Leeds Law School, Leeds Beckett University

Maria Tighe: Professor Emerita and Consultant to the BSB

Helen Tinkler: Assistant Chief Examiner (Civil) for the BSB

## Part II: Context for implementing our reforms

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### The BSB as an outcomes-focused regulator of education and training

29. The BSB is required to be a risk-based, transparent and proportionate regulator, targeting our work at the areas of most need in relation to our regulatory objectives.<sup>2</sup> Our focus in relation to education and training must, therefore, be on setting and maintaining appropriate standards at the point of authorisation (ie the award of a first practising certificate). To do this, we have clearly defined what competences are required and what the minimum standards are to achieve the competences; these are set out in our [Professional Statement](#).
30. The Professional Statement describes the knowledge, skills and attributes, and the minimum standard to which they should be capable of being performed on “day one” of practice. This now underpins our new system of training for those we authorise. It now serves formally to assist us in maintaining standards both of those entering practice and of providers of education and training; and to inform the design and delivery of education and training pathways, including the development of educational materials, learning outcomes and assessments.

### FBT reforms and the impact on the academic, vocational and professional components of training

31. In the FBT Policy Statement, published in March, we set out our vision for a new Bar training framework. This vision clearly identifies the need for the new system to incorporate the four principles of accessibility, flexibility, affordability and high standards; to encourage training providers to innovate and to compete in developing and adapting their courses as new challenges and opportunities arise; and to fulfil our statutory objectives to protect consumers whilst encouraging an independent, strong, diverse and effective legal profession. This is so that newly qualified barristers can meet the needs of consumers in a fast-changing market for legal services and that these barristers promote access to justice and compliance with the rule of law.
32. As discussed in last year’s consultation, we are developing an Authorisation Framework, which will enable us to assess whether training proposals sufficiently reflect the four principles stated above, and better enable prospective barristers to meet the requirements set out in the Professional Statement. More on how the Authorisation Framework will work and our initial thoughts about the requirements that training providers (Authorised Education and Training Organisations) will have to meet are explored in Part III of this consultation.

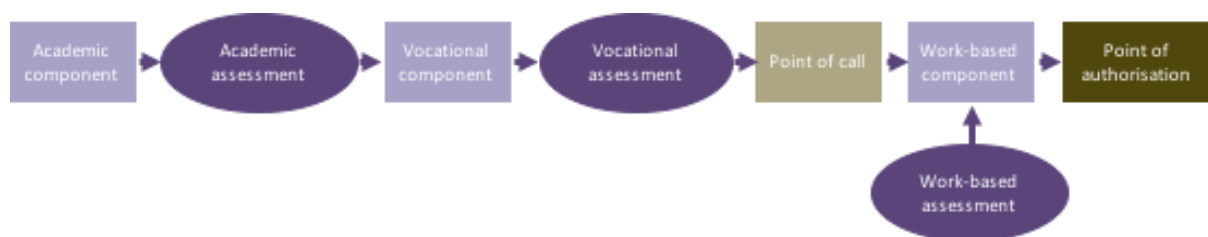
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<sup>2</sup> See Legal Services Act 2007 s1 and s28(3) and BSB Risk [Outlook](#), [Index](#) and [Framework](#).

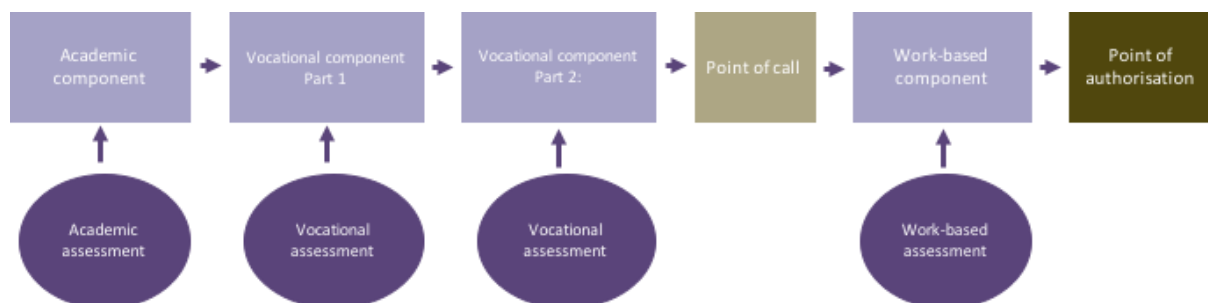
### Future requirements

33. Last year, we consulted on a number of proposals relating to the three components of education and training: academic, vocational and work-based. We decided that these three components must be present in the route to qualification for the Bar, but they need no longer be prescribed as consecutive stages in only one route.
34. The three components may be attained by means of different **pathways**. There are four approved training pathways:

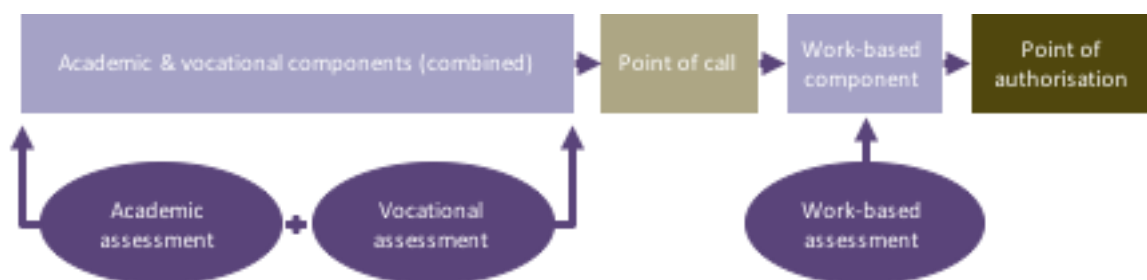
#### Three step pathway - academic, followed by vocational, followed by work-based components



#### Four step pathway - academic component, followed by vocational component in two parts, followed by work-based component



#### Integrated academic and vocational pathway - combined academic and vocational components followed by work-based component





**Apprenticeship** pathway - combined academic, vocational and work-based components: *not illustrated as there are many possible permutations.*

35. Authorised Education and Training Organisations are invited to propose their own structure for an apprenticeship pathway. We may be prepared to approve further training pathways in the future.
36. In relation to the academic component, we intend (along with the SRA) to end our regulatory oversight of Qualifying Law Degrees<sup>3</sup>, undertaken through the [Joint Statement](#) which sets out a number of requirements for a law degree to be certified for the purposes of training to become a barrister or solicitor in England and Wales. In future, we will only require law degrees to be compliant with the [Quality Assurance Agency for Higher Education](#) (QAA) benchmark statement for law. We and the SRA intend to issue a further policy statement or “common protocol” setting out our withdrawal from this arrangement and giving future guidance.
37. We also suggested where we thought providers might specify when students were to be called to the Bar as part of the training pathway they were proposing. In most of the potential pathways listed above, we think that candidates for call to the Bar would need to have completed at least the vocational component of training but there may be others where call may not occur until after successful completion of work-based components (eg the apprenticeship model).
38. The requirements below will be common to any future pathway:

**Academic component**

Graduate education enabling prospective barristers to demonstrate (as a minimum) the Competences set out in of the Professional Statement, as follows -

“1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

Barristers should:

- a) Be able to recall and comprehend and accurately apply to factual situations the principles of law and rules of procedure and practice specified by the Bar Standards Board.
- b) Be able to keep up to date with significant changes to these principles and rules.”

The principles of law and rules of procedure and practice referred to above are still to be specified by us.<sup>4</sup> They will include the seven “foundations of legal

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<sup>3</sup> This includes the Graduate Diploma in Law (GDL) conversion course.

<sup>4</sup> The new statement specifying the principles of law and rules of procedure and practice will replace the ‘Joint Statement 1999 issued by the Law Society and the General Council of the Bar on the Completion of the Initial or Academic Stage of Training by obtaining an undergraduate degree’, which states the current requirements - <https://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>.)

knowledge”: Constitutional and Administrative law; Criminal law; Land law; Contract law; Equity and trusts; Tort; and EU Law<sup>5</sup>.

The academic component will be satisfied by a law degree or a non-law degree at a minimum of a 2.2 classification, plus further graduate/postgraduate study that covers the requirements above.

### **Vocational component**

Education and training preparing prospective barristers to work in the legal profession and demonstrate (as a minimum) the Competences as set out in a document to be developed as part of our parallel work reviewing curriculum and assessments.

### **Work-based component**

Pupillage<sup>6</sup> or other forms of training providing real life legal work experiences under supervision where prospective barristers can build on prior learning and experience in order to demonstrate the Competences set out in a document to be developed as part of our parallel work reviewing curriculum and assessments.

The Advocacy, Practice Management and Forensic Accounting courses currently undertaken during the work based component or within the first three years of practice are being reviewed as part of our parallel work on curriculum and assessments, and we also seek your thoughts on them in Part III.

Successful completion of the above three components will enable a prospective barrister to acquire the knowledge, skills and attributes required by the Professional Statement (September 2016) and, subject to relevant administrative processes, be authorised to practise.

## **Implementing the FBT reforms**

39. There are a number of challenges for preparing to implement such a large-scale reform programme. Equally, this is also a significant opportunity for us to review what the new rules should include: ensuring, for example, that only those requirements that are necessary to meet our stated policy objectives remain mandatory.
40. The current Handbook rules for education and training are mostly contained in Part 4 (Qualifications), with others in Part 3 (scope of practice). The current rules are highly prescriptive and we do not think this works with our more outcomes-focused approach.
41. In order to approve a new rules framework, the Board will need to examine all aspects of the current arrangements, including those delivered by third parties, such as the Inns of Court or Circuits. This means that we must go back to first principles and ensure that any regulations we wish to continue prescribing are necessary,

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<sup>5</sup> EU Law will remain one of the seven foundation subjects for at least as long as the UK is a member of the EU. This, of course, will need to be reviewed to reflect any needs in the future.

<sup>6</sup> BSB Policy Statement on Bar Training 23/03/17 paragraph 34 states that FBT “would not require substantive changes to the current arrangements for pupillage”.

appropriate and proportionate. In other words, any new set of rules would need to be fit for purpose in meeting our regulatory objectives, the four principles outlined for the FBT programme and the LSB's statutory guidance on education and training.

42. In the next section, we will explore which of the remaining arrangements need to be reviewed, including the detail of policy matters relating to the role of the Inns of Court and how we regulate the work-based component. We also explore how the Authorisation Framework will work.

### Part III – Shaping the vocational and professional requirements

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43. This section of the consultation explores some highly prescribed requirements in the current vocational and professional components of training. We also ask for your opinion as to which of certain options meet our objectives best and the reasons behind your views.
44. Some of these requirements relate to registration and our role in ensuring students who study for the Bar are both qualified and of the right character to do so. Other requirements relate specifically to training requirements that are set by us, regardless of whether they are delivered by a BPTC provider, one of the four Inns of Court, regional Circuits, or by an employer or chambers as part of a formal arrangement for work-based learning, such as pupillage.
45. Many of the *possible* scenarios explored in this paper may appear to be a significant departure from the status quo. Where we consider the removal of prescription, it should not be taken that the activity cannot be done in the future, just that we may not *require* that it be done as it is now. We must, therefore, consider whether alternatives might better meet our regulatory objectives in a more proportionate and transparent way, in addition to having a robust evidence base for retaining those elements that add value.

#### THE ROLE OF THE INNS OF COURT IN BAR TRAINING

46. The Inns of Court have both an historical and continuing role in the training of barristers and, indeed, in the lives and careers of many barristers once qualified to practise. The Inns provide a number of benefits to students by introducing them to life at the Bar and opportunities to network with other aspiring (and practising) barristers. This can be a particular benefit to those who come from a background that means they lack the confidence or social capital to enter the profession without significant support and mentoring. Once practising, the Inns can help to foster a “community of practice” that may promote professional values and ethical behaviour, as well as supporting wellbeing at the Bar.
47. However, it is important to note that many of the current rules relating to the involvement of the Inns have been in place for some time. As a matter of good regulatory practice it is important to go back to first principles in relation to the roles that the Inns play in our regulatory arrangements. This means asking whether the roles they play remain appropriate as a compulsory requirement in the light of our new approach to Bar training, the Professional Statement and our regulatory objectives. In any event, the Inns will continue to have a valuable role to play in supporting the Bar.
48. The Legal Services Act 2007 (LSA) clearly enshrines the role of the Inns of Court as the bodies responsible for call to the Bar. Being called to the Bar confers the “Degree of the Utter Bar”, which is a “recognised award”: a degree unique to the Inns of

Court, who do not otherwise have any degree awarding powers under UK legislation.<sup>7</sup> We have no desire to change the Inns' statutory role in call to the Bar; but they also perform a number of additional roles within our regulatory arrangements at present which we need to review:

- i. regulatory oversight of students;
  - ii. requirement for student membership of an Inn;
  - iii. student discipline, including the Inns Conduct Committee;
  - iv. approval of pupil supervisors, and providing pupil supervisor training;
  - v. provision of mandatory training courses during pupillage; and
  - vi. provision of "qualifying sessions" and waiving/modifying the requirements of these.
49. The purpose of this part of the consultation is to examine these arrangements with the aim of establishing whether they remain appropriate in light of the Professional Statement and the new approach to training. Where they remain appropriate, we aim to have clear governance arrangements in place to ensure sufficient regulatory oversight. The analysis and options that follow are intended to inform respondents of the regulatory framework that must guide our decision-making and to seek views on the extent to which input from the Inns needs to be a compulsory part of our training arrangements.

### **Regulatory oversight of students**

50. We need to consider whether there should be regulatory oversight of students prior to call to the Bar. This currently begins when an individual decides to join an Inn of Court as they must demonstrate they are a 'fit and proper person' and meet the academic requirements. If the Inn is satisfied that the applicant meets these criteria, the individual can apply for the vocational stage of training. Once they begin this course, they are subject to the 'Conduct of Students' rules within the BSB Handbook<sup>8</sup>. Regulatory oversight of students is therefore comprised of two elements; eligibility to enrol on the vocational stage and ongoing monitoring until call to the Bar.
51. There are a number of reasons for having regulatory oversight of students. Firstly, given the approval of the managed pathways approach to training<sup>9</sup>, there is now an increased likelihood that training will be delivered in 'real world' settings (e.g. through law clinics), which could result in students having direct contact with the public during their training. Requiring registration of students who engage with the public occurs in other professions given the potential for contact with and risk of harm to the public<sup>10</sup>.
52. Having oversight in advance of call could also help us to monitor the equality and diversity of those undertaking training for the Bar, particularly as there may well be different training pathways existing concurrently in the future.

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<sup>7</sup> See <https://www.gov.uk/guidance/recognised-uk-degrees#recognised-awards>.

<sup>8</sup> Part 4 B8.

<sup>9</sup> <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/future-ways-to-qualify-as-a-barrister/>.

<sup>10</sup> The General Optical Council operates such a student registration process.

53. Regulatory oversight could also determine at an early stage whether a student may be of unsuitable character, saving them the expense of investing in training.
54. As a regulator, it is also necessary to ensure that only those who are 'fit and proper persons' are (a) called to the Bar and (b) given a practising certificate. There is, therefore, regulatory value in being able to make an authorisation decision informed by how a person has behaved over the course of their training.
55. However, we need to consider whether it is appropriate to have regulatory oversight of students, and to make an assessment of someone's suitability in advance of call to the Bar, as this may be seen as premature or disproportionate.

**Question 1: Should the BSB have regulatory oversight of students?  
Please explain why or why not.**

56. If the answer to this question is no, regulatory oversight of an individual would only commence at the time of call to the Bar.
57. If, however, there is a need for some regulatory oversight before a student is called, we need to consider the most appropriate body to undertake this. It could be that this is done by us directly, although it might not be the most efficient use of our resources. It may therefore be that some elements of the regulatory oversight are more suitably undertaken by other bodies.
58. We must be mindful that any requirements of regulatory oversight of students will impose a regulatory burden. We therefore need to be able to justify this in line with our approach to reform of education and training for the Bar, as set out in our Policy Statement<sup>11</sup>.
59. The factors which have been outlined above should be kept in mind when considering the other regulatory arrangements discussed below.

### **Membership of an Inn**

60. Currently, a student who intends to study the BPTC must join an Inn and pay the relevant fee for admission to that Inn (approx. £105) and for being called to the Bar (approx. £125). Whilst studying on the BPTC, students must also undertake 12 qualifying sessions at their Inn.
61. Each of the four Inns offer some combination of educational activities, networking opportunities, dining sessions and student wellbeing support. As above, the Inns also undertake education and character (fit and proper person) checks to ensure students are eligible to become a barrister. Hand in hand with this role, the Inns also oversee matters relating to student conduct.

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<sup>11</sup> [https://www.barstandardsboard.org.uk/media/1825162/032317\\_fbt\\_-\\_policy\\_statement\\_version\\_for\\_publication.pdf](https://www.barstandardsboard.org.uk/media/1825162/032317_fbt_-_policy_statement_version_for_publication.pdf).

### Why does this matter?

62. As the only statutory requirement regarding the Inns is for them to call students to the Bar, we need to consider whether student and/or post-qualification membership of an Inn needs to remain mandatory and prescribed by us.

### What are the regulatory issues/associated risks?

63. Any requirement to be a member of an Inn (and in particular any cost associated with that) is a regulatory burden on students that we have to be able to justify – from first principles – as a necessary contribution to satisfying the Professional Statement and/or our regulatory objectives.
64. As above, we are considering whether it is necessary to have regulatory oversight of students and if so, which bodies are the most appropriate to undertake each regulatory requirement. If this is the Inns, we would need to consider whether membership would be a necessary requirement for them to fulfil their regulatory obligations.
65. Also, we are aware of a potential conflict of interest that may arise if the Inns of Court College of Advocacy (ICCA) enters the market for Bar vocational training. If the Inns of Court, through the ICCA, decide to offer vocational training, and there is a continuing requirement for student membership of an Inn, ICCA may be seen as a more favoured provider of training, disrupting competition for students in an open market. As this matter remains hypothetical at this stage, this paper does not seek to analyse the potential conflicts that may arise, but the Inns would be expected to explain how they would manage such potential or actual conflict of interest, should they apply to become an Authorised Education and Training Organisation.

### Benefits of the current process

66. A key function of the current membership requirement is that the Inns undertake our 'fit and proper person' checks, both at admission to the Inn and call to the Bar, and oversee the conduct of students through the Inns Conduct Committee.
67. By administering this in accordance with our rules (as discussed in the Conduct section below), they introduce students to the professional concepts of ethical behaviour and the disciplinary processes which may flow from a failure to adhere to such standards. By overseeing the conduct of students, the Inns also undertake a considerable amount of activity that would otherwise fall to us, should we decide that such oversight of students is necessary.
68. The Inns also provide a dedicated education and training support service to their students. This would not be something that we could realistically provide.
69. Membership of an Inn provides potential barristers without the social capital of those who are "well connected" with the opportunity to mix with practising professionals and acclimatise themselves to the type of environment that they will encounter when practising. After call to the Bar, the Inns provide barristers with access to



professional resources, and a network that can promote good practice and ethical behaviours.

70. It is possible that some of these benefits could be realised without us *requiring* that students join an Inn (for example students may choose to join an Inn anyway). There is, however, a risk that without us mandating membership, many students will not join an Inn and will miss out on such opportunities, many of whom may be those most in need of the pastoral and collegiate 'community of practice' that the Inns are able to provide.
71. We are also interested to hear about what the alternatives could be. Do potential training providers believe that they could replicate some or all of what the Inns do at present? For example, providers of vocational training – as a matter of course – oversee student conduct, provide student wellbeing support and provide opportunities to network with students and alumni. Likewise, other organisations (such as the Circuits or Specialist Bar Associations) provide support and networking opportunities to trainee barristers. Could this be expanded upon? Or is there something unique to the offer and environment of the Inns of Court which it may not be possible to replicate in another setting or by another type of provider? We are seeking views on these questions.

#### Options for future arrangements

##### Option A: Remove the requirement for membership of an Inn

72. Although it will remain mandatory for barristers to be called by one of the Inns, we are considering the extent to which membership of that Inn must be mandatory. For example, a student could be called to the Bar by one of the Inns without having to be a student or barrister member of that Inn. This may also mean that we would no longer require individuals to be *student members* of an Inn in order to undertake the vocational stage or qualifying sessions.
73. This would reduce prescription and focus the Inns' mandatory involvement only on the legal requirement that the Inns call students to the Bar. It would not mean that the Inns were prevented from offering membership to students or barristers, but it would mean that membership was optional unless anyone proposing a training pathway for approval by us proposed that the Inns had a mandatory role to play in their training pathway (which we would consider under the Authorisation Framework).
74. If this option is taken forward, there would need to be a process for allocating students to an Inn for call, where they were not already *student members*. In this scenario there would be no regulatory requirement for a barrister to join an Inn, either before or after call. We anticipate that, following call, many barristers might still choose to join an Inn but will have an option at this point as to which one to join.
75. Removing the requirement to be a student member could also mitigate the risk of a conflict of interest if the Inns were to enter the training market for the vocational component. This is pertinent as there may be a perception that mandating



membership of an Inn could imply that we consider them to be of a higher status and this could have a detrimental impact on other training organisations.

76. This option has potential benefits, but it also comes with risks. We are aware that the Inns provide a valuable contribution to the funding of Bar training through the provision of scholarships and the extra support provided to students by members of the profession who provide expertise and support through this environment. What valuable aspects of the current system, if any, might be at risk if the requirement for student membership of an Inn was removed? We are seeking views on this.

Option B: Require *barrister (not student) membership* of an Inn at the point of call

77. Alternatively, the BSB might not require students to join an Inn in advance of undertaking the BPTC (or undertaking any qualifying session should they remain mandatory) but require a student to be a member of a particular Inn prior to call.
78. In this scenario, students would not be prevented from joining an Inn at an earlier point (as they do now) but would only place a requirement for them to do so prior to being called. This would allow students more flexibility as to when they join.
79. It should be noted that transferring lawyers are not required to join an Inn prior to entering to sit any assessments of the Bar Transfer Test (BTT) that they are required to take. However, BTT candidates are required to become a member of an Inn prior to call, and prior to undertaking Qualifying Sessions, which may usually be completed up to three years after call.

Option C: Retain the requirement of *student membership* of an Inn

80. This scenario would have the effect of maintaining the status quo, whereby all students intending to undertake vocational training would be required to join an Inn prior to doing so.
81. If it is considered necessary to retain the requirement of *student membership*, then we should go on to consider whether it is appropriate for the Inns to take on further roles, such as the fit and proper person checks, both at admission and call, student conduct and qualifying sessions.
82. In any of the options described above, we would need to consider the appropriate governance arrangements that we would need to have in place to ensure we have appropriate oversight of those gaining access to the register/profession.

**Question 2: Do you think the BSB should continue to require membership of an Inn as a mandatory part of Bar training? Please explain why or why not.**

**Question 3: If you answered 'yes' to question 2, do you think the BSB should continue to require "student membership" of an Inn or set the requirement at the point of (or just before) being called to the Bar? Please explain why or why not.**

### **Educational qualification and fit and proper person checks**

83. Under our current qualification rules, student membership of an Inn requires two checks to complete our “fit and proper person” test: that the student has the necessary educational qualifications (or is in the process of obtaining them); and has the necessary character references.
84. With regards to the educational checks, the Inns ask students to provide the original or certified copy of their degree certificate or written confirmation from their university confirming their grade, or written confirmation from the academic institution that they are currently undertaking a qualifying law degree or conversion course<sup>12</sup>.
85. When applying for admission to an Inn, students make a number of declarations, including whether they have been convicted of a criminal, disciplinary or academic offence, are subject to a bankruptcy order, if they have been refused admission previously or suffer from a “serious incapacity due to a mental disorder”. They are also required to provide two certificates of good character and declare there are no other matters which question their fitness to practise as a barrister. The Inns also require students to provide a copy of their passport or UK driving licence so that they can verify their identity. No independent criminal records (DBS) check is required.
86. When a student applies to the vocational course provider, they are required to upload documents to certify that they have completed the academic requirements. The provider checks that the documents have been uploaded, but does not verify their authenticity<sup>13</sup>.
87. Upon call to the Bar, students must complete the call declaration, which asks whether there have been any changes since their admission declaration. Students are asked to verify this during an interview with their Inn. Finally, the Inns confirm that the student has passed the BPTC with the provider.

Why does this matter?

88. The fundamental question here is whether, in principle, the BSB should continue to delegate responsibility for this function to the Inns of Court. As set out below, there may be practical reasons for this arrangement to continue but we must be satisfied that this course of action is both appropriate and proportionate as a modern, risk-based regulator.

What are the regulatory issues/risks associated?

89. As a regulator, we need to know whether someone has met the requirements to be called to the Bar by having completed their training. As an individual can gain

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<sup>12</sup><http://www.middletemple.org.uk/sites/default/files/documents/Admission%20Application%20Form%202017.pdf>, [https://www.innertemple.org.uk/downloads/prospective-members/full\\_application\\_march\\_2016.pdf](https://www.innertemple.org.uk/downloads/prospective-members/full_application_march_2016.pdf), <http://www.lincolnsinn.org.uk/images/word/admission/Admission%20Forms%20Jan%202017.pdf>, [https://www.graysinn.org.uk/joining/how-join#Four\\_Inns](https://www.graysinn.org.uk/joining/how-join#Four_Inns).

<sup>13</sup> See rQ28.1 for admission requirements for the BPTC.

admission to an Inn from the second year of their law degree<sup>14</sup>, the educational requirements for call have not been verified at the point of admission. Therefore, to specify educational requirements at the point of admission to an Inn could be seen as premature for our regulatory purposes.

90. As we do not prescribe or oversee how vocational training providers verify the authenticity of the documents confirming the academic stage has been completed, there is a risk that individuals are admitted to the Bar without the necessary qualifications. This is rare, but there were two cases brought to our attention in the last two years in which the education certificates were forged, bringing into question the key character traits of honesty and integrity. It is also possible that if individuals are called without having satisfied the requirements then this could adversely impact the public's perception of legal services, particularly if a poor client service is received.
91. There is also a risk that relying on the Inns to conduct the fit and proper person checks, which rely to a large extent on the honesty of students to make the relevant disclosures, lacks robustness. Those who are dishonest have the opportunity to be called to the Bar when they may not otherwise be permitted. This is evidenced in two disciplinary cases brought by us, one where false references were provided and another in which the individual failed to declare a number of convictions, both upon admission and call.
92. These risks are also present if an individual seeks re-admission, having previously been disbarred. Our Professional Conduct Department has identified a few cases where the Inns have not made us aware of individuals applying for re-admission, meaning that we have been unable to make representations in these cases as to their fitness to practise as a barrister.

#### The current process

93. One of the benefits of the Inns undertaking this function is that it enables the Inns to verify that students possess the requisite educational qualifications to study on the next stage of training, join the Inn and, ultimately, become a barrister. This provides a level of continuity in oversight.
94. Another benefit of the two-tiered gateway process of admission and call checks taking place is that students will have a greater understanding (and at an earlier stage) as to their ongoing professional responsibilities and their likelihood of entry. If a student understands that certain actions from their past may prohibit their potential career as a barrister, this may save a student time and expense of undertaking further studies.
95. Another benefit, to us, is that this function is carried out on our behalf at no direct financial cost to the BSB. If this were not the case it would be an additional expense

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<sup>14</sup> A student can join an Inn from the second year of law degree or with the acceptance of a place on the GDL conversion course.

that would fall to us, to be met either through practising certificate fees or fees charged to the prospective barristers themselves.

### Options for future arrangements

Option A: the BSB to take over responsibility for educational and fit and proper person checks

96. As it is central to our role as the regulator of barristers, a key question arises: should we assert greater control of the process by which people are admitted to the register? If so, we might consider whether we ought to be performing this function ourselves.
97. This option would see the BSB taking control of both educational and fit and proper person checks. Checking educational qualifications might not necessarily be undertaken by us directly but could be performed by training providers with our supervision functions assuring compliance. As for the fit and proper person checks, these could be administered by us.
98. The benefit of this approach is one of clear and direct regulatory responsibility for the register of barristers. As a risk-based regulator, this approach may well be seen as an appropriate and proportionate way of ensuring regulatory control.

Option B: Inns of Court continue to perform these functions but with improved checks and greater oversight from the BSB

99. If we decide that it is disproportionate for the BSB to take over these functions, or that there are other benefits of retaining the arrangement for the Inns to perform this function, it is arguable that we should exert more control over the process and have clearer sight of any matters which question an individual's suitability to be called to the Bar, to enable us to ensure the proper standards are being applied. We describe below what this greater level of oversight might look like.

**Question 4: Do you think the BSB should continue to delegate responsibility for educational and fit and proper person checks to the Inns of Court? Please explain why or why not.**

100. Regardless of which body is responsible for overseeing the checks, we think that the following issues ought also to be considered to improve the robustness of the checks being carried out.

Requirement to complete a DBS check prior to call

101. Given the issues highlighted above and the significant contact barristers have with the public, we think that there is a strong case for all students to be required to undertake a Disclosure and Barring Service (DBS) check. We believe this would increase the robustness of the fit and proper person checks as we would no longer rely on a self-declaration.

102. The DBS requirement is currently adopted by a number of other regulators, including the SRA<sup>15</sup>. As there is a high possibility that barristers will come into contact with vulnerable people and clients during their practice, we consider it appropriate, in line with our regulatory objective to protect the public interest, for such a check to be undertaken on all barristers at the point of call. This would also be an appropriate time to request the disclosure of spent convictions and is the only time we can do that, in line with the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023). It is also likely that there will soon be a statutory requirement to effect DBS checks on barristers in relation to Anti-Money Laundering regulations.<sup>16</sup>
103. We would have to determine whether the cost of DBS checks ought to fall to students or to the profession as whole. If the cost is passed on to the student and depending on the level of check we would require, the cost ranges from £25-44, plus any additional administration fees. This could potentially have an adverse impact on those students from lower socio-economic backgrounds but this could be justified as a proportionate requirement given the contact which barristers could have with vulnerable individuals. This cost, along with any others for qualifying, should be made clear to students before they commit themselves to the vocational component, enabling students to make an informed choice about whether to pursue a career at the Bar.
104. If we were to decide in favour of DBS checks prior to call to the Bar, this function could be performed either by us directly or the Inns of Court. Neither the Inns nor the BSB currently have processes in place to undertake these checks and consideration would need to be given to the operational processes needed and any financial implications this may have.

**Question 5: Do you think the BSB should require DBS checks as part of the fit and proper person checks? If you do, who do you think should perform this function and why?**

#### Verification of academic qualifications

105. As part of the new framework, we propose to increase regulatory oversight of the organisations providing the vocational component of training to ensure that robust processes are in place to check the authenticity of the academic awards. In light of this, we will consider how best to further improve the robustness of our checks.
106. We could, for example, place a duty on organisations to verify the authenticity of such awards, eg by selecting a sample and contacting the academic institution directly. Taking a more proactive approach would ensure sufficient systems are in place to mitigate the risk of dishonest individuals being called to the Bar.

<sup>15</sup> <https://www.sra.org.uk/trainees/admission/dbs-check.page>.

<sup>16</sup> See [http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi\\_20170692\\_en.pdf](http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi_20170692_en.pdf)

The BSB is made aware of matters (prior to call to the Bar) which could question a student's suitability to be called to the Bar

107. When an individual is called (or applies for readmission) we are not now informed of each student's case, even if there are issues which have been raised about a student's fitness to practise. However, if a student is not called on grounds related to fitness, students have the right to appeal to our Independent Review Panel.
108. We propose that in such circumstances, we should be made aware of any matters which call into question the suitability of that individual. This would allow us to make representations and have greater oversight as to who is joining the register. This would be particularly pertinent in relation to the prospective re-admission of a person who had previously been disbarred as a consequence of disciplinary action by the BSB.
109. Whoever administers the fit and proper person checks, we would need to be notified of any matters before call (or application for readmission). The arrangements would continue to specify the possibility of appeal for candidates, independent of any representations that we may have made.

Reduce the level of prescription within the call declaration

110. It is proposed that within the call declaration, we would look to remove the specific declaration of serious incapacity due to mental disorder and addiction to alcohol or drugs, as this would be sufficiently covered by the declaration that there are no other matters to disclose which could reasonably be thought to call into question the individual's fitness to become a practising barrister. This would avoid uncertainty as to what would need to be disclosed for this section and reduce unnecessary levels of prescription. For clarity, addiction to alcohol or drugs could be provided as an example of what should be disclosed.

**Question 6: Do you agree with our proposals to improve the current checks as described? Please explain why or why not.**

### **Student Conduct**

111. This topic is linked to the discussion of whether student registration is required and similar principles apply. One of the benefits of student registration is that it enables oversight of student conduct. This section assumes that student registration continues and seeks views on which body ought to oversee student conduct.

The current process

112. The Inns are responsible for overseeing the conduct of students from the point of admission to an Inn until they are called to the Bar. The student is required to notify their Inn if they become, among other things, the subject of criminal or disciplinary proceedings or a bankruptcy order.



113. The Inns are permitted to deal with minor matters under their internal disciplinary procedures and have options when reaching a decision on minor matters, including advising as to future conduct and reprimanding the student.
114. If a student appeals the decision of the Inn following an internal review, or if the Inns decide the matter is serious, then the matter is referred to the Inns Conduct Committee (ICC). The table below shows the number of student referrals to the ICC annually over the past three years<sup>17</sup>.

2013-14	2014-15	2015-16
17	11	9

115. For those student cases in 2015-16, the breakdown is as follows<sup>18</sup>:

Criminal offences	3
Bankruptcy/CCJ	0
Academic misconduct	8
Professional/disciplinary misconduct	0
Other	4

116. There is a right to a review of ICC decisions by the BSB (exercised by an Independent Review Panel, previously the Qualifications Committee).
117. There have been 20 cases in the last five years in which we have reviewed the decision. In 17 of the 20 cases, the Independent Review Panel/Qualifications Committee upheld the ICC decision; and in 3 cases the Independent Review Panel/Qualifications Committee amended the decision of the ICC. On five occasions, a student has appealed to the Visitors/High Court<sup>19</sup> against the Qualifications Committee review decision, but the appeal was dismissed in each case (apart from one where the appeal was withdrawn before the hearing took place).
118. We can currently only consider matters when the Inns have been too strict (ie where a student seeks to challenge a decision). We have no general quality assurance processes in place, for example, to assure ourselves that the Inns have not been too lenient in the decisions taken.

What are the regulatory issues/risks associated?

119. A key risk in the current arrangement is that we are not currently aware of the decisions that are being made by the Inns on minor matters, which are dealt with under each of the four Inns' internal disciplinary policies. This links to the risks

<sup>17</sup> The Bar Tribunals and Adjudication Service Annual Report 2016. Note that the figures presented only include cases referred to the ICC regarding student members of an Inn. In total, there were 47 cases referred to the ICC in the 2015/16 reporting period, which included cases from applicants for membership in addition to student members of an Inn.

<sup>18</sup> Ibid, paragraph 39. Note that these figures include more cases than the above table as they include students who have been referred in previous years but whose cases were heard in 2015.

<sup>19</sup> Decisions being appealed prior to January 2014 were made to the Visitors of the Inns of Court. Since 2014, all appeals under this process are heard in the High Court.

outlined within the fit and proper person checks above, as we are not aware of all matters which may question an individual's suitability to be called to the Bar and we are therefore unable to make regulatory representations in these cases.

120. There is also a lack of clarity as to whether the Inns consider matters consistently, particularly when determining whether a matter is minor or serious, and as to the outcome of their internal disciplinary procedures for minor matters. This issue is linked to others discussed above.
121. Depending on our decision in relation to student registration, we might nevertheless need to consider issues of student conduct at the point of call to the Bar. In such circumstances, we would need to consider whether the student conduct function is better carried out by the regulator or another body. In practice, the 'other body' would have to be either the training organisations or the Inns (if the latter, that would also necessitate maintaining student membership of the Inns). Our preliminary view is that there would be limited benefit in setting up an alternative student conduct framework (unless we were to take responsibility directly) so we are consulting on two options, but we welcome views on whether there might be alternative ways of dealing with student conduct issues.
122. As with the other functions carried out by the Inns, there are some benefits of the Inns carrying out this function. We need to consider whether that remains appropriate from a regulatory perspective.

#### Options for future arrangements

##### Option A: We take responsibility for conduct of students

123. Assuming that we decide in favour of student registration, we could take on the responsibility for student conduct as it is uncommon for third parties to carry out such an essential function on behalf of a regulator. There is no statutory necessity for the Inns to continue performing this function. The Legal Services Act 2007 only requires that the Inns call students to the Bar.
124. This regulatory oversight during the vocational component could overcome the risk that we have insufficient oversight of the conduct of students, are not aware of minor matters and do not have the opportunity to make representations in certain situations. This would also present an opportunity to ensure we have a framework for considering all conduct matters, minor or otherwise, consistently.
125. This option could enable us to better protect the public interest as we would have better control over our register at the point of call to the Bar in addition to at authorisation. It is now uncommon for a modern regulator of a profession not to have ultimate control over its register of practitioners.
126. This scenario would have significant resource implications for us, given that there were 47 cases referred to the ICC last year alone and this does not include those students that were dealt with under the internal disciplinary procedures of their Inn. This would represent an additional cost of regulation that would need to be recovered from students or the profession as a whole.



Option B: The Inns continue to be responsible for student conduct

127. Alternatively, the Inns (including the ICC) could continue to be responsible for dealing with matters of student conduct.
128. We would need to develop an agreement to ensure there are clearer governance arrangements in place. This would also help to improve our oversight of the disciplinary activities of the Inns and the ICC, so that we were made aware at the point of call of any matters (including what is currently considered a minor matter) which could question an individual's suitability to be called (or readmitted).
129. There may be additional resource implications for us in greater oversight of the cases brought before the ICC, but these could be significantly less than under option A.

**Question 7: Do you think that the Inns or the BSB should oversee student conduct? Please explain why.**

### Qualifying sessions

130. The BSB's current rules set the requirement that 12 qualifying sessions need to be completed before someone can be called to the Bar. These qualifying sessions are mostly undertaken during the current vocational stage of training but delivered solely by the Inns of Court (and/or Bar Circuits outside London). There are a number of different qualifying sessions offered by each Inn, such as guest lecture events, advocacy workshops, dining sessions and debate nights. There is some variation in the sessions which are offered by each Inn and in the cost to students.
131. Although the qualifying sessions are part of our training rules, the Inns are responsible for deciding their content and for waiving or modifying the requirement for individuals.

Why does this matter?

132. In light of the Professional Statement and our new approach to training, we must consider whether it is necessary for qualifying sessions to remain a mandatory element of training for the Bar. If they continue, we need to be clear about the governance arrangements in place to ensure their contribution to students being able to meet the requirements of the Professional Statement.

What are the regulatory issues/associated risks?

133. If qualifying sessions are to remain a mandatory part of training, we would set out the requirements the sessions would need to satisfy in the Authorisation Framework. Any compulsion for these sessions to be provided only by the Inns would also need to be supported by evidence that only the Inns are able to meet the objectives specified.
134. If there is value that can only be derived from qualifying sessions to fulfil requirements in the Professional Statement, then we should also consider whether,

on competition grounds, we should extend the provision of qualifying sessions to different providers (ie not only the Inns) or permit students to choose sessions from more than one Inn.

#### Benefits of qualifying sessions

135. By attending the qualifying sessions, students have opportunities for professional development, including enhancing their advocacy skills, building a professional network and gaining an insight into the profession, as well as developing their interpersonal and communication skills, all of which can contribute to a student's knowledge and understanding of the profession.
136. Our research into barriers for training for the Bar<sup>20</sup> highlights that a key benefit of the qualifying sessions being provided by the Inns is the possibility to build professional networks, particularly with practising barristers and judges, which could be advantageous when applying for pupillage with chambers. This is particularly important for those who do not currently have a professional network and background in the legal profession.
137. Some participants involved in the above research, as well as students during supervision visits, highlighted that, in "some instances, the qualifying sessions were thought to be more beneficial than the work done on the BPTC due to interaction and proximity with practising barristers".
138. Students have also found some qualifying sessions to be accessible for those outside London as a number are offered in the regions.
139. Similarly, the Inns have confirmed that many sessions are free, or offered at a low cost, as they heavily subsidise them. The below table shows the number of qualifying sessions which were offered free of charge each year.

	2014-15	2015-16	2016-17
Lincoln's Inn	22	20	11
Inner Temple	30	45	30
Middle Temple	69	63	66
Gray's Inn	18	27	22

#### What are some of the problems with Qualifying Sessions?

140. Whilst there are a number of benefits of the qualifying sessions, there are some problems. Some students with less knowledge of the profession, particularly for those from BME and lower socio-economic backgrounds, may be more likely to feel intimidated by the environment as they may perceive the majority of the barristers attending are white, male and educated at elite institutions<sup>21</sup>.

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<sup>20</sup> This research was undertaken in spring this year with recent BPTC students as well as several successful and unsuccessful pupils. The bulk of the research focused on 50 qualitative interviews to understand barriers to gaining access to the Bar. The research is currently being reviewed and will be published shortly.

<sup>21</sup> Ibid.

141. Interviews with students during our supervision visits with providers also highlighted that some of the qualifying sessions were limited in their usefulness and should have more educational substance.
142. Furthermore, the cost of the qualifying sessions can be seen as prohibitive by some students. Whilst it has been acknowledged that many sessions are considered good value for money and a number are free, some respondents to the research on barriers to training felt they needed to have sufficient financial resources to be socially accepted at the Bar: "... it's sending that message that in order to fit in you have to raise your financial capital. Even if it's a dinner that costs 15 more pounds, that's the message that's being sent".
143. Whilst some sessions are provided in the regions, accessibility can still be an issue for students as they also have the cost of their travel, and potentially an overnight stay if the session finishes late and is based in London. There is also a belief that regional sessions do not have the same level of funding as the London sessions and may be seen as more amateurish if they are organised by the students, with fewer practising barristers attending. This can lead to a perception of lower quality.
144. Interviews with students during supervision visits have suggested that the scope of qualifying sessions is too narrow and that they are not offered frequently enough for students to be able to fit them in around studying and other extra-curricular activities. This was highlighted at one provider where students have needed to be absent from classes in order to attend a qualifying session.

#### Options for future arrangements

145. In conversation with the Council of the Inns of Court (COIC) and the Inns, we have been made aware of work to develop a framework for reviewing how objectives and learning outcomes of qualifying sessions can be linked to the Professional Statement. This is welcome and should contribute to ongoing improvements prior to any changes which may be decided for the future.
146. If qualifying sessions are to remain mandatory, we would need to outline their purpose and what we would expect them to consist of within the Authorisation Framework. The Authorisation Framework would also require providers of the qualifying sessions to tell us how the learning outcomes of the sessions will be assessed (if at all). In addition to this, the provider of the session will need to demonstrate how the sessions relate to the Professional Statement.

#### Option A: remove the requirement to complete qualifying sessions

147. In this scenario, we would remove the requirement for qualifying sessions as a mandatory element of training. If a student were a member of an Inn (whether this is compulsory or not), that student would then be able to decide whether they would attend events, activities and dining sessions, if indeed the Inns wished to continue to provide them. At this stage, we do not have evidence to suggest that they would discontinue their provision of such sessions, but the lack of compulsion would obviously affect demand, unless training providers sought to work with the Inns to

incorporate qualifying sessions into any proposal for our approval (it would be open to training providers to make the sessions a compulsory part of any proposed training pathway and to specify the Inns as providers, subject to approval by the BSB).

148. This approach would acknowledge that the academic, vocational and work-based components of training are sufficient to prepare an individual for day one of practice, with the knowledge, skills and attributes outlined in the Professional Statement, thereby not setting mandatory requirements beyond what is required at the point of authorisation.
149. Additionally, removing the requirement to attend qualifying sessions could reduce the barriers of cost and accessibility which are faced by some students, as well as the potentially intimidating nature of the dining sessions.
150. There is a risk however, that if the sessions are no longer mandatory, then students will be deprived of the benefits outlined above. In particular they will no longer necessarily be presented with the opportunities to develop professional networks through the Inns, and would have to use, for example, university or location based opportunities to continue building social and professional networks. There is a risk that the students who would most benefit from the experience would be less likely to attend if the sessions were voluntary.

Option B: Reduce the number of mandatory qualifying sessions and/or review the nature of attendance

151. This option would see the number of qualifying sessions we mandate reduced and/or focus the nature of the sessions on a particular educational or training objective.
152. Alternatively we could remove the concept of a mandatory number altogether and replace it with a requirement on the Inns that there needs to be sessions of a sufficient number and nature to provide students with certain competences or outcomes within the Professional Statement that we think the sessions can assist in meeting.
153. Reducing the number of sessions, requiring the session to be of a particular nature or replacing the mandatory number of sessions with an outcomes-focused requirement might allow the Inns to provide qualifying sessions more flexibly and could be beneficial for those students who have argued that committing the time for attending each session is challenging, particularly around studying and exams on the current vocational course. This recommendation is likely to have a positive impact on those individuals who work alongside studying and those who have caring responsibilities.

Option C: Adopt a similar approach to the new CPD scheme

154. We could adopt a similar approach to the CPD scheme for established practitioners so that students would plan their learning needs by setting objectives and identifying the types of 'qualifying sessions', or activities, that they feel would help them to achieve their objectives during the vocational component of their training. This has

the benefit of students completing activities which support their attainment of the competences within the Professional Statement.

155. In this scenario, there is a risk that students may find it challenging during the vocational component to identify the areas where they would benefit from particular qualifying sessions, by mapping their current competence against the Professional Statement. To mitigate this risk, students might link their own learning objectives outlined on their course through the relevant syllabuses.
156. There is also an argument that we should not be requiring students to consider their continuing professional development prior to the point of authorisation, as CPD is for those individuals who are established as practitioners at the Bar.
157. Student choice would be limited by the size of the market for qualifying sessions. There is no reason why the Inns could not continue to offer the sessions that they do now, although the absence of compulsion might affect supply.

**Question 8: Do you think that the BSB should continue to prescribe qualifying sessions as part of the mandatory training requirements? Please explain why or why not, including (if appropriate) which elements of the qualifying sessions are particularly useful to be undertaken prior to practice.**

**Question 9: If you answered 'yes' in question 8, should there be any changes to the existing arrangements? If so, do you prefer Option B or Option C to reform our oversight of qualifying sessions? Please explain why.**

**Question 10: If you answered 'yes' in question 8, do you think that other training providers could provide qualifying sessions? Please explain why or why not, including what elements would need to be delivered by or in association with the Inns themselves to ensure their benefits are to be retained.**

**Question 11: Do you have any alternative suggestions for how qualifying sessions might help students meet the requirements of the Professional Statement?**

158. It is important to note that transferring lawyers may currently also be required to undertake qualifying sessions, as determined by the BSB. However these may be completed after being called to the Bar by their Inn, usually within three years of call. Once we have reached a decision in relation to the above questions, we will review the arrangements for transferring lawyers.

## **FUTURE ARRANGEMENTS FOR THE WORK-BASED COMPONENT OF TRAINING**

159. In this section of the consultation, we consider a number of arrangements relating to the work-based component of education and training for the Bar. Here, we also use the term “pupillage” as this is the commonly used term for most schemes set in chambers to fulfil our requirements for professional training. We recognise that, in future, most students will continue to undertake a period of pupillage similar to its current format but we must also be aware that other schemes may be offered and approved. Any discussion of future arrangements must also be inclusive of all future schemes and of all students undertaking this component of training.
160. Currently, the final stage of training for the Bar is the professional stage and it comprises a period of work-based learning under the supervision of a qualified barrister known as the pupil supervisor. This final stage of training, as prescribed by us, lasts 12 months and is completed within an Approved Training Organisation (ATO)<sup>22</sup>, either within chambers or with an employer. The vast majority of pupillages are undertaken within chambers, but with increasing numbers of barristers in employed practice.

Why are we reviewing the arrangements for the work-based component (pupillage)?

161. In light of our decision to adopt a new approach to training for the Bar, with a limited number of new pathways, the current rules on work-based learning need to be reviewed to ensure that training providers (chambers and employers) are able to put forward proposals which they believe will best train students for a career at the Bar. Those who provide these opportunities will become known as Authorised Education and Training Organisations (AETOs). Key to the approach we are taking is to ensure that any new rules set by us enable them to develop training plans which meet the requirements of the Professional Statement, promote accessibility and affordability in line with our wider education reforms, and are flexible enough to respond to new types of training which may emerge (such as those described in our 2016 consultation).
162. This section of the consultation paper seeks views on the following arrangements:
- the mandatory length of pupillage;
  - the award of a Provisional Practising Certificate (PPC);
  - the minimum pupil funding award;
  - exemptions from funding rules for transferring lawyers;
  - the re-authorisation of current Approved Training Organisations (ATOs);
  - the relationship between pupil and pupil supervisor;
  - pupil supervisor training; and

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<sup>22</sup> Here we refer to current Approved Training Organisations (ATOs) as those offering pupillage. All re-authorised organisations will be known as Authorised Education and Training Organisations (AETOs).



- the delivery of compulsory courses during pupillage.
163. This section also sets out our plans to review the rules relating to advertising and recruitment practices for pupillage which will have an impact upon the work-based component.
164. This consultation does not explore how pupillage training plans must align to the Professional Statement. ATOs should be starting to incorporate the Statement into their pupillage plans, although it is not yet part of our formal process for signing off pupillage. Pilots will run from September 2017 to explore this with ATOs. If your organisation or chambers wishes to take part in this pilot scheme, please contact us using the details found in Part VI of this document.

### **The length of pupillage**

165. At present we require that pupils must complete two, six month parts of pupillage: the non-practising (“First Six”) and the practising (“Second Six”) periods. After successfully completing the non-practising period, a pupil is granted a provisional qualification certificate which entitles them to apply for a provisional practising certificate (PPC) once they have registered their practising period of pupillage. Typically, the provisional qualification certificate and the PPC will be awarded at the same time. On completion of the practising period of pupillage, we will grant the pupil a full qualification certificate and they will then be a fully qualified barrister. A full qualification certificate entitles a barrister to take up a full practising certificate.

#### **What are the issues/risks associated?**

166. The rules, as described above, mean that the majority of pupils complete pupillage within 12 months, although there are some waivers which allow a shorter pupillage. This may be the right amount of time for pupils to complete training, but it may not be.
167. Many chambers require longer training periods but are currently unable to change the 12 month pupillage period. This often leads to pupils needing to complete what is commonly known as a ‘Third Six’. ‘Third Six’ pupillages are not a recognised or regulated part of training, nor do any other rules for pupillage apply (although if they contribute to tenancy recruitment then they would be captured by rules relating to fair recruitment practices). Part-time pupillages are permitted under the current rules although are very rarely offered.
168. Our outcomes-focused approach means that we want to enable those training pupils to develop training plans to meet the needs of pupils, rather than to impose arbitrary rules. One option would be to remove the rule that *all* pupillages should be 12 months long.
169. The main advantage would be that we would no longer mandate an arbitrary length of time in which pupillage must take place. This means that Authorised Education and Training Organisations would be empowered to design the best possible training plan for their pupils to meet the requirements of the Professional Statement, incorporating any need for experience in multiple ‘seats’ or extended periods of

supervised experience in advocacy. For those practice areas where very little advocacy experience is offered during pupillage (particularly those in commercial or chancery sets), this would afford chambers an opportunity to ensure that an appropriate level of rounded experience is extended to all pupils and that they meet the competences specified in the Professional Statement.

170. There is, however, a risk that by enabling organisations to determine the length of pupillage, some may reduce the length of pupillages so that pupils can start earning fees earlier. Equally, there is a risk that pupillages may be unnecessarily extended to enable chambers to utilise pupils for extended periods without offering them tenancy.
171. In both cases, careful supervision of training plans would be necessary to ensure this type of risk is mitigated. This would need to be monitored through supervision and might form part of any future ATO re-authorisation process. If an ATO were regularly signing off pupils for a PPC unusually early, this could also be seen as an indicator of risk and we might investigate. If an AETO intended to introduce a significantly longer pupillage than presently permitted, this would need to be justified when authorisation or re-authorisation was sought.
172. It should be noted that we anticipate the majority of chambers would be likely to continue offering pupillages as 12 months long.

**Question 12: Do you think we should allow pupillages to vary in length? Please explain why or why not.**

**Question 13: If you answered 'yes' to Question 12, please tell us whether you think there should be minimum and/or maximum lengths associated with this change and what those minimum or maximum lengths should be. Please explain why.**

### **Provisional Practising Certificate**

173. Closely aligned to the length of pupillage is the point at which a pupil barrister is able to gain practical experience, working under supervision from an experienced practitioner. As described above, this six month period of pupillage takes place following the six month, non-practising period.
174. Here we consider a number of scenarios for pupils to be awarded a provisional practising certificate.

#### Options for future arrangements

Option A: the PPC is granted at the start of pupillage (the work based component) and the pupil may undertake reserved legal activity once the training organisation determines the pupil is competent

175. In this scenario, all pupils would automatically receive a PPC at the beginning of pupillage and would be able to conduct reserved legal activities from the point at



which the ATO determines they are competent. We would no longer require supervisors to sign off pupils to receive the PPC and responsibility for ensuring that pupils are competent would pass to the training organisation (ie chambers or employer, via a nominated person<sup>23</sup>). We would, of course, still expect pupils to be properly supervised and insured when conducting reserved legal activities.

176. This approach would give maximum freedom to the training organisation as they would determine when a pupil is ready to conduct reserved legal activities. They would no longer need to apply to us for a PPC at this point.
177. There is, however, a risk to the public that some organisations might encourage or allow pupils to conduct reserved legal activities before they are competent. Pupils might be used as relatively low cost labour which might not always be reflected in fees charged to consumers.
178. Although pupils might also benefit from gaining experience and earning fees, the primary motivator for the ATO might not then be the benefit to the pupil or the public interest.
179. In practice, therefore, we would expect the training organisation would set out, when applying for authorisation or re-authorisation, how they intend to assess their pupils' competence before allowing them to conduct reserved legal activities and that the process employed would have to be both transparent and robust.

Option B: The PPC may be applied for at any time during the period of the pupillage / work-based component. It would be for the training organisation, pupil and supervisor to determine when it is most appropriate for the pupil to apply and confirm the pupil is competent

180. Under this option, training organisations would determine when pupils can apply for the PPC dependent on their competence and the area of practice in which they are training. We would anticipate that many organisations will continue to encourage pupils to apply for a PPC after six months. However, reducing prescription in our rules would allow greater flexibility for chambers and employers. For example:
  - it would allow transferring foreign qualified lawyers or solicitors to conduct reserved legal activities earlier due to their experience<sup>24</sup>;
  - it would enable organisations in some practice areas to vary the practising or non-practising periods to meet the needs of that particular practice area (particularly if linked to variable lengths of pupillages)<sup>25</sup> ;
  - it would allow the PPC to be awarded when the pupil is ready (not at an arbitrary point) allowing particularly able pupils to enter practice earlier and

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<sup>23</sup> This could be someone responsible for overseeing training with the organisation.

<sup>24</sup> Currently, this is dealt with at the application for transfer stage, where transferees are granted an exemption from/reduction in pupillage. We hope to be limiting waivers going forward as the rules will be more flexible.

<sup>25</sup> It must be noted that although it would be possible to extend the non-practising period of pupillage in this scenario, it could not be done at the expense of other training requirements, such as advocacy. An appropriate amount of time for the practising period would still be required.

allow other pupils more time to develop the required competences where necessary; and

- for organisations offering flexible pupillages or pupillages of a different length, this approach would allow them greater freedom to determine when the PPC should be awarded.

181. This option would be likely to involve organisations reviewing their pupils' progress at set times (eg at three, six and nine months, etc.). At these reviews pupils would be assessed and a determination made on whether to apply for a PPC. The pupil would then make an application, which would be counter-signed by their supervisor or head of pupillage to confirm their competence.
182. This option would allow greater flexibility for both pupils and training organisations, and would support the freedoms and innovation envisaged within our reformed approach to education and training for the Bar.
183. Again, there is a risk that ATOs might sign off pupils to conduct reserved legal activities before they are fully competent (as discussed above) or extending the non-practising period longer than is appropriate, to a point where the pupil will be unable to obtain those competences within the Professional Statement that can only be met through conducting supervised, reserved legal activities, including advocacy. This would need to be carefully monitored by the BSB. The main advantage of this option is that it offers an additional regulatory "check point", namely the point when the ATO and pupil submits the pupil's application for a PPC. This may reduce the risk of us not being alerted to bad practice until a number of pupils have undergone less than adequate supervision.

Option C: The Authorised Education and Training Organisation, following approval of their scheme, determines when they want the PPC to be awarded

184. Under this option each training organisation would set out, when applying for authorisation or re-authorisation, the length of pupillage, its structure and when the PPC will be awarded to pupils, with the BSB not prescribing a length for pupillage or when a PPC may be applied for. This could potentially include different award dates for different categories of pupil. For example, if a particular employer or chambers were developing their pupillage plan, they would set out how long pupillage will take and at what point their pupils will start practising with a PPC.
185. The difference in this scenario from those above, is that the PPC is determined in advance in a standardised way by the training organisation and approved on the basis that the training plan takes account of the specific needs of pupils, setting out all requirements to be met. This could be particularly beneficial for chambers or employers who regularly have larger groups of pupils coming in with prior experience that the training organisation recognises will allow them to be ready to practise at a certain point.
186. The benefits and risks of this option are similar to those of Option B above. However, one particular advantage of this approach is that it would enable organisations, when

seeking authorisation or re-authorisation, to specify a timing that is most suited to their field of practice and to avoid the additional administrative burden of having to make decisions in respect of each individual pupil.

187. One particular disadvantage of this approach is that a fixed point of awarding the PPC will remain in place for all pupils, determined in advance. Whilst we expect training organisations would not sign off a pupil to practise until competent, having such a rigid scheme might mean that certain students are placed under undue strain if they are not able to practise at the same time as other pupils in their cohort, or that the organisation feels under pressure to sign off pupils who are not ready to practise, because the pre-determined point has been reached and so that the pupil can undertake remunerated work.

#### Option D: No change to the arrangements

188. This option would seek no change to the current arrangements. The PPC would normally be awarded after the first six months of pupillage in all schemes. A waiver would continue to be required to alter this arrangement.

#### Other considerations

189. We considered a proposal to delay awarding any practising certificate until completion of the work-based component, meaning that no PPC would be awarded. This would be a radical change but would bring pupils in line with trainee solicitors who presently are unable to conduct reserved legal activities until they fully qualify. There are, of course limitations to this comparison, not least of which is that most newly qualified solicitors, in their early years of practice, will be supervised whereas junior barristers at the self-employed bar would not expect to be supported in the same way.
190. This approach could reduce the risk to the public, as it would prevent pupils from conducting reserved legal activities before they have fully met the competences set out in the Professional Statement. Ultimately, however, we think this proposal would not be workable in practice as we felt it would undermine the positive learning experience gained from real world advocacy in a supervised setting.

#### *Summary of options: Award of provisional practising certificate (PPC)*

- ❖ Option A: The PPC is granted at the start of pupillage/ work based component and the pupil may undertake reserved legal activities when the organisation or supervisor thinks the pupil is competent.
- ❖ Option B: The PPC may be applied for at any time during the qualifying period of the work-based component. It would be for the organisation, pupil and pupil supervisor to determine when it is most appropriate for the pupil to apply.
- ❖ Option C: The organisation, on authorisation by the BSB of their scheme, determines when they want the PPC to be awarded and applies this to all pupils.
- ❖ Option D: No change. The PPC will normally be awarded after the first six months of pupillage/ the work based component.

**Question 14: Which option, if any, for reforming the award of the Provisional Practising Certificate do you support? Please explain why.**

### **Pupillage funding**

192. We currently require pupils to be paid a minimum of £12,000 over the course of their pupillage (to be paid monthly in £1,000 instalments). ATOs can use the earnings of pupils in their second six months of practice to cover the cost of the second six months (if the pupil earns enough to meet the minimum award). If not, the pupil must be paid in line with the minimum award agreed when the pupillage was registered. If, in the practising period of pupillage, a pupil is able to earn more, the pupil is expected to be able to keep any earnings over this amount.<sup>26</sup>

Why does this matter?

193. The current minimum funding award was set in 2010 and came into effect on 1 January 2011. This was raised from the original minimum of £10,000 which was set by the Bar Council in 2002 and came into effect on 1 January 2003. Prior to 2003, pupils were self-funded. We propose to review the level of the minimum award again.
194. We recognise that there are strong feelings about the minimum pupillage award. On the one hand, there is an argument that a £12,000 minimum award is too low, acts as a barrier to entry to the profession and leaves many pupils, many of whom have significant debts from their previous studies, with very little to live on. This is especially true for those living in London.
195. On the other hand, there is concern that any increase in the minimum award could result in fewer ATOs being able to afford to offer pupillage and fewer pupillages becoming available.
196. We consulted on this issue in 2015 and, at that time, the majority of respondents felt that the current minimum should be maintained and that raising it would have a disproportionate impact on publicly funded chambers. A small number of respondents argued that the minimum award should be removed completely on the grounds that pupils gain a great benefit from their supervisor and, therefore, should not also be remunerated. We do not support the latter position; we think this would be a step backwards in terms of promoting accessibility and the evidence suggests that when there is no requirement for chambers to remunerate pupils the chances of gaining tenancy are diminished.
197. A major concern about the current level of the pupillage award is that students from lower socio-economic backgrounds cannot afford to enter pupillage. There is also

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<sup>26</sup> We will be issuing new guidance on this to clarify how the funding rules are intended to work and ensure that ATOs do not profit from pupils' earnings.

concern that the amount of debt placed on some pupils may make it much more difficult for them in the early years of practice.

What are the issues/risks associated?

*A barrier to entry for applicants from lower socio-economic backgrounds*

198. The minimum award has not been reviewed since 2010, despite a recommendation for annual review by the 2010 working party that looked at this at the time. The table below sets out the award levels if the minimum award were to be increased in line with inflation, the current National Living Wage (minimum wage) and the current Living Wage Foundation suggested rates:

	Current	Inflation adjusted <sup>27</sup>	National Living Wage (NLW) <sup>28</sup>	Living Wage Foundation (National) <sup>29</sup>	Living Wage Foundation (for London) <sup>30</sup>
Monthly	£1,000.00	£1,182.11	£1,137.50	£1,281.58	£1,478.75
Annual	£12,000.00	£14,185.33	£13,650.00	£15,379.00	£17,745.00

199. The table above shows how far behind inflation the current award has fallen. This clearly demonstrates the reduction in the real cost of pupillage to chambers (offering minimum funded pupillages) since 2010.
200. Pupils are currently paid less than the National Living Wage (NLW). It is legal for chambers to do this because pupils are not considered apprentices or employees<sup>31</sup>. The fourth column shows what pupils would receive if the award was equivalent to the NLW (for someone who worked 35 hours per week<sup>32</sup> at the NLW for over 25s of £7.50).
201. If the minimum pupillage award is intended to enable access to the profession for applicants from any financial background, then the wage levels suggested by the Living Wage Foundation (LWF) should be considered.
202. LWF suggested wages are higher than the NLW, but setting the minimum pupillage award at this level would ensure that pupils could afford to undertake pupillage without increasing their debt. The table above sets out the award pupils could expect if this was introduced (the LWF suggested wage is £9.75 per hour in London, and £8.45 outside of London).

<sup>27</sup> Calculated using ONS monthly CPI inflation data between January 2010 and August 2017. Available at <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7oe/mm23>.

<sup>28</sup> These figures do not incorporate tax and National Insurance contributions.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> *Edmunds v Lawson* [2000] QB 501. Although this is the current position for Chambers but pupils undertaking pupillage in an employed setting are employees and subject to employment law. In the future any student undertaking an apprenticeship for Bar training would be considered an apprentice.

<sup>32</sup> 35 hours is most likely a very low estimate of the actual working hours of pupil barristers.

203. Unless a pupil has built up substantial savings, or can rely on financial assistance from their family or spouse, pupillages funded at the current minimum level are not financially viable, especially those offered in London. Given the level of debt that most students build up in order to qualify for pupillage, the requirement to add further to that debt *during* their work-based component may be enough to prevent many from even applying for minimum funded pupillages.

*Financial risk to legal aid funded chambers*

204. Legal aid funded chambers have faced a consistent squeeze on their earnings, and many are already struggling to afford the cost of offering pupillages. The result is that many legal aid funded chambers offer pupillage awards at the minimum level. Therefore any potential increase in the minimum pupillage funding level might reduce the ability of some legal aid funded sets to offer pupillage.
205. Closely tied to this risk is the fact that women and BME barristers are overrepresented in legal aid funded practice areas, and underrepresented in other practice areas. Therefore reducing the number of legal aid funded pupillages available might adversely affect women and BME applicants more than their counterparts.
206. This potential barrier therefore needs to be weighed carefully against the possibility of removing the barrier currently faced by applicants from lower socio-economic backgrounds.

*How many pupillages might be affected by an increase in the award?*

207. Although it does not show exactly how many pupillages may be affected by the changes, the table below summarises the awards for those advertised on the Pupillage Gateway in the last year<sup>33</sup>. This suggests that most pupillages would not be affected by either of the suggested methods of calculating the award, as most awards were above the recommended minimum<sup>34</sup>.

<b>Pupillage award (by band)</b>	<b>% of pupillages (Gateway)</b>
Less than £20,000	35%
£20,000 – £29,999	21%
£30,000 – £39,999	19%
£40,000 – £49,999	6%
£50,000 - £59,999	6%
£60,000 – £100,000	13%

<sup>33</sup> This dataset is from the Pupillage Gateway, and was provided by the Bar Council in conjunction with JobsGoPublic. It includes all 450 pupillages advertised on the Pupillage Gateway between 1 October 2016 and 30 September 2017.

<sup>34</sup> These figures may include where only a “first Six” has been advertised. In such cases the award advertised is for a six month period of pupillage, for which the minimum award is £6,000.



208. The impact on chambers is an important consideration in relation to the questions that follow. We are in the process of collecting the more detailed information required to determine exactly how many pupillages would be affected by an increase in the minimum award, at both the NLW and LWF levels.

*Reducing the number of pupillages*

209. The introduction of a minimum pupillage award in 2003 did result in a reduction in the number of pupillages from around 800 registered First Six pupillages in 2001 to between 500 and 600 in the following years. However, there was no significant change when the minimum award was raised in 2011. Significantly, the introduction of a minimum award in 2003 did result in an increase in the proportion of pupils that gained tenancy after completing pupillage. This might not be surprising given that the number of tenancies has remained relatively stable but might also suggest greater investment in the development of individual pupils.

210. The table below provides the figures in more detail; it does not include those in employed practice, which may affect the data.<sup>35</sup>

Legal Year	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15
Tenancy	283	329	394	414	335	391	384	380	375	368	387	382	378	342	333	270
Pupillages (total)	713	639	790	574	504	541	504	508	522	431	431	443	422	514	399	437
% Pupils gaining Tenancy	40%	51%	50%	72%	66%	72%	76%	75%	72%	85%	90%	86%	90%	67%	83%	62%

211. The NLW would only be an increase of £137.50 per month. This would be an increased cost to ATOs of between £825 and £1650 per pupillage (depending on how much ATOs needed to top up their pupil's income during their Second Six). Indeed when accounting for inflation, an increase in line with the NLW would still mean that the costs of pupillage to chambers would be less than it was in 2011.

212. An increase in line with the LWF suggested wages would mean an increased cost per pupillage per month of £478.75 for ATOs in London, and £281.58 for ATOs outside London. This would be a per pupillage cost increase of £2,872.50 - £5,745 for ATOs in London, and £1,689.48 - £3,378.96 outside London.

213. The increase in line with the NLW would be a very small increase for pupils and would probably not prevent an ATO from offering pupillage. The LWF would represent a larger increase for pupils, particularly for ATOs in London, but would still be an increase of similar magnitude to the one in 2011, which had no significant impact on the overall number of pupillages.

<sup>35</sup> The self-employed to employed or dual capacity ratio is currently 80:20.



*Comparison to employed pupils*

214. Individuals undertaking an employed pupillage are subject to employment legislation, and consequently receive more than their counterparts undertaking a minimum funded pupillage in chambers.
215. It might, therefore, be thought desirable to remove the discrepancy between the prescribed minimum income received by employed pupils and the award received by pupils in chambers. Failure to do so might push pupillage applicants from low socio-economic backgrounds towards employed practice, as employed pupilages would be more financially viable.

*Comparison to trainee solicitors*

216. The Law Society currently recommends that trainee solicitors are paid at least £20,913 in London and £18,547 outside London<sup>36</sup> (these figures are the LWF suggested wages plus £3,168, which is the average yearly Legal Practice Course repayment).
217. If the minimum pupillage award is not kept in line with, or at least near to, the wage that can be earned as a trainee solicitor, then short term financial considerations may force aspiring barristers to choose being a solicitor over a career at the Bar. Such financial pressures would be most acutely experienced by aspiring lawyers from lower socio-economic backgrounds.

Future review

218. The minimum pupillage award will need to be reviewed more regularly in future, to prevent inflation from having as significant an impact as it has in the past.
219. If the new minimum pupillage funding level is set in line with a benchmark figure (eg NLW, LWF) then we would amend the minimum funding level annually to match changes in these benchmarks.

**Question 15: Do you think the minimum pupillage award should be raised? Please explain why or why not.**

**Question 16: If you answered 'yes' to question 15, should we use the National Living Wage or the Living Wage Foundation benchmark for the minimum award? Please explain why.**

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<sup>36</sup> <http://www.lawsociety.org.uk/support-services/advice/articles/recommended-minimum-salary-for-trainee-solicitors/>.

## Pupillage funding exemptions for transferring lawyers

Why does this matter?

220. The current pupillage funding rules do not apply to pupils granted exemption from vocational training by us<sup>37</sup>. In practice, this means that transferring qualified lawyers are often exempt from the funding requirements which apply to other pupils.<sup>38</sup>

What are the issues/risks associated?

221. The exemption rule was introduced at a time when minimum funding requirements for pupils were new so the exemption was introduced in response to concerns about the impact of applying these requirements to transferring lawyers. We believe the position has changed: pupillage funding is now standard practice and continuing with the exemption could be seen to give unfair advantage to transferring lawyers, who can be trained for free and are not subject to the same advertising requirements. This could also encourage recruitment practices which are below the standards expected for normal pupillage recruitment.
222. We, therefore, propose to remove this exemption and bring pupillage funding rules for transferring lawyers in line with those for other pupils. This would create a level playing field and help tackle concerns about unfairness in the system. Consistency of approach would also support our wider commitment to fair and equal recruitment and align with the principle that all pupils should be paid for the contribution they make during the work-based component of training.

**Question 17: Do you think the current exemption from the funding rules for transferring lawyers should be removed? Please explain why or why not.**

## Re-authorisation of Approved Training Organisations

Why does this matter?

224. At present, any chambers or organisation that had a pupil on 1 September 2006 is deemed to have been accredited as an Approved Training Organisation (ATO). All other organisations, since this date, have had to apply to the BSB for approval. Once accreditation has been granted, the organisation remains as an ATO indefinitely unless accreditation is withdrawn. There are approximately 345 ATOs registered with us.
225. During the period 1997 to 2013, ATOs were subject to pupillage monitoring under the Pupillage Sub-Committee of the Education & Training Committee. Since 2014, this has been incorporated within our approach to the supervision of chambers.

What are the issues/risks associated?

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<sup>37</sup> Rule rC117.1 of the BSB Handbook.

<sup>38</sup> Transferring qualified lawyers are also exempt from the advertising requirements, although this is not stated explicitly in the rules.

226. Investigation into concerns raised about ATOs and any resulting withdrawal of accreditation was previously undertaken by the Pupillage Sub-Committee. No set procedure has yet been put in place for withdrawal of accreditation since the dissolution of this Sub-Committee in 2015.
227. There are a number of problems and risks associated with the current system. Many ATOs have never been through a formal accreditation or authorisation process and this limits the information we hold on them and our ability to ensure that they are offering adequate training to pupils. We do not have a comprehensive historical list of ATOs who might offer pupillage (as opposed to those currently or recently offering them). This makes the supervision and oversight of ATOs more difficult and makes it difficult to give any member of the public complete information.
228. It is proposed to introduce a light-touch system of re-authorisation for all existing ATOs, regardless of their current status. Under this system we would contact all known ATOs to ascertain whether they wished to remain authorised. If so, they would be asked to self-certify that they still satisfied the criteria to be an Authorised Education and Training Organisation (AETO). If they did this they would be re-authorised and this would last for a defined period. Any organisation who failed to comply with this request would have their accreditation removed, as would any previously accreditation ATOs with whom we were not in contact.
229. Following this defined period, the re-authorisation of existing training organisations would mirror the process that all new prospective training providers (ie vocational and work-based) will be required to complete, aligning with the new Authorisation Framework. The purpose of this change would be to ensure we have an up-to-date and accurate register of all organisations offering schemes for the work-based component of training and to improve confidence in standards in the future.

#### Removal of ATOs/AETOs from the register

230. We also propose to amend the rules relating to the removal of ATO/AETO status. Under the current rules accreditation/authorisation can only be removed from an organisation if the pupillage provided by the ATO is or has been seriously deficient or if the organisation has not made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct<sup>39</sup>.
231. We propose to change the rules to include the possibility that accreditation (in due course authorisation) can be removed if an ATO/AETO does not comply with a reasonable request from us. This would include failure to comply with the re-authorisation processes.
232. These issues were consulted on during 2015. The majority of respondents felt that there should be a more systematic initial validation of organisations which provide pupillages and supervisors<sup>40</sup>. The majority of those who responded to the consultation also agreed that periodic re-accreditation of ATOs should be

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<sup>39</sup> Rule rQ40, BSB Handbook.

<sup>40</sup> Consultation 2015 analysis – paragraph 53.1-53.2.

introduced<sup>41</sup>. Concerns were raised by the Family Law Bar Association and the Chancery Bar Association that a re-accreditation process could increase the time and cost associated with pupillage schemes and it was argued that if this were to be adopted, a long period between each re-accreditation point should be introduced. We are committed to ensuring that the re-authorisation process will be proportionate and as far as possible will not cause an unfair burden on training organisations, whilst improving regulatory oversight, where it is appropriate to do so<sup>42</sup>.

**Question 18: Do you agree that we should introduce re-authorisation of Approved Training Organisations (ATOs)? Please explain why or why not.**

**Question 19: If re-authorisation were to be introduced, how many years do you think the defined authorisation period should last (eg 3 or 5 years)?**

### Rules relating to the relationship between pupil supervisor and pupil

233. The BSB Handbook sets out a number of requirements in respect of the pupil/pupil supervisor relationship.

Why does this matter?

234. The one-to-one relationship between pupils and their supervisors has historically been the way all pupils are taught.<sup>43</sup> We give waivers in some situations, however, to allow supervisors to have more than one pupil for a short period of time. In 2016, four applications for waivers were approved. All of these were to allow an overlap of two pupils for a short period of time (1-2 months).

235. Some pupils have a number of pupil supervisors during their pupillage, particularly if they are in a chambers where barristers work in several different practice areas. We regard this as good practice, particularly because it gives pupils a broad range of experience upon which to draw for their own practice.

236. Under our rules, the pupil is expected to inform us of any change in supervisor. If a pupil supervisor has to take leave or can no longer supervise a pupil then the change of pupil supervisor should also be registered with us.

What are the issues/risks associated?

237. One concern with the current system is that it places an unnecessary administrative burden on pupil supervisors and pupils every time they change supervisors and on the BSB. Some pupils may have between two and four supervisors during their

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<sup>41</sup> Consultation 2015 analysis – paragraph 54.1.

<sup>42</sup> In particular the new rules will ensure that the frequency of re-accreditation / re-authorisation is both proportionate to the assessed risk of an organisation and not onerous.

<sup>43</sup> It was introduced by the Bar Council in 1992 to replace the position of supervisors having multiple pupils.

pupillage. There is also some evidence that pupils are not informing us when they change pupil supervisor.

238. We would like to consider, therefore, removing the requirement that pupils have a named pupil supervisor and instead require the training organisation to ensure that all pupils are adequately supervised. As part of the authorisation process and its periodic renewal, it would be for organisations to demonstrate that they have appropriate arrangements in place to ensure adequate supervision for pupils, although they will have the flexibility to determine the arrangements (subject to the Authorisation Framework) most suited to their organisation. Each training organisation would be expected to have a named person who would be responsible for overseeing pupillage and provide continuity during training. This individual would not necessarily be the supervisor of each pupil, but would be responsible for ensuring pupils reached the required competences under the Professional Statement and were suitable to be awarded a PPC.
239. We would also consider removing the requirement that a pupil supervisor may only supervise one pupil. We envisage a more flexible situation where the training organisation must ensure that supervision of a pupil is adequate but this could mean in some cases that a supervisor has more than one pupil. In those cases the training organisation must ensure that the supervisor is able to give enough time to each pupil and that the pupillage will still meet the requirements of the work-based component. We would expect those supervising the work-based component to have completed appropriate pupil supervisor training. This could benefit some training organisations which employ pupils as they can sometimes struggle to offer each pupil an individual supervisor due to the smaller number of barristers in their organisation, which can reduce the number of pupillages they can offer.
240. Each pupil would still need a named person, either a pupil supervisor or another suitable person. The practical importance of this would be to ensure that they are covered by insurance in self-employed practice. However, it is also regularly noted by pupils that the relationship with their supervisor is very important and offers them someone to turn to who will be able to assist them as well as offering them continuity throughout their pupillage. The supervisor also plays a vital role in ensuring that a balanced assessment is made at the end of their pupillage. This assessment often feeds into decisions about tenancy.
241. The principle of moving the emphasis for the supervision of pupillage from the supervisor to the training organisation was consulted on during 2015. The majority of respondents agreed that this would improve the consistency of the experience of pupillage. The Bar Association for Commerce, Finance and Industry (BACFI) also noted that this would be easily adopted by companies as well as chambers. It was also noted by the UK Law Students Association that the current system places a significant burden on supervisors and can put the pupil in a vulnerable situation.<sup>44</sup>

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<sup>44</sup> Consultation 2015 analysis – paragraph 52.1-52.4

242. Although we think these changes could create greater flexibility for training organisations, we also accept that many chambers will wish to continue assigning a single supervisor for each pupil for the whole period of pupillage – and they would be able to continue doing so under these options proposals.

**Question 20: Do you think the BSB should allow pupil supervisors to supervise more than one pupil? Please explain why or why not.**

### **Pupil supervisor training**

244. All pupil supervisors are required to undertake training prior to being entered onto the register of pupil supervisors.<sup>45</sup> Training is offered by each of the four Inns of Court and Circuits; it is a short course, typically offered in an evening over 2-3 hours.
245. We do not set requirements for, or monitor, the training of pupil supervisors but we know there is a lack of consistency between the courses offered by the Inns and Circuits. We recognise that some may have similar topics but the Inns offer courses of different lengths and the content varies. Given this, there is a risk that some supervisors are not receiving adequate training and may not sufficiently understand their duties and responsibilities.
246. We do not want to prescribe in detail the content of pupil supervisor training. We may, however, wish to specify the necessary outcomes that such training must deliver and then seek regular assurance that these outcomes are being achieved.

**Question 21: Should the BSB prescribe pupil supervisor training outcomes? Please explain why or why not.**

If we were to specify training outcomes, this might enable providers other than the Inns to deliver pupil supervisor training in the future. We are keen to hear views on whether this training could be provided by alternative providers and/or in other ways. It could be the responsibility of training organisations to source their own training and give assurances to us that they had done so. Or we could go out to tender for a single provider (or a limited number of providers).

**Question 22: How should the BSB seek assurance that outcomes in pupil supervisor training are being delivered?**

**Question 23: Should organisations be required to provide this assurance during the authorisation process? Please explain why or why not.**

**Question 24: Should the provision of pupil supervisor training be opened up to other providers (other than the Inns)? Please explain why or why not.**

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<sup>45</sup> Rule rQ51, BSB Handbook.

249. At present we recommend that pupil supervisors undertake refresher training to ensure their skills are current. The pupillage handbook recommends that this should be completed as part of the new CPD scheme. However, this is not mandatory and we have little information on how regularly supervisors are undertaking refresher training or when/how it is provided. We are therefore considering whether refresher training should become mandatory, to ensure that all supervisors are competent and up to date with our guidance.

**Question 25: Should regular refresher training be mandatory for all pupil supervisors? Please explain why or why not.**

**Question 26: If you answered 'yes' in Question 25, how often should it be undertaken (eg every 2, 3 or 5 years)?**

### **Compulsory training courses during pupillage**

Why does this matter?

251. Pupils are currently required to undertake two courses during pupillage: advocacy and practice management. They are also required to take one course during pupillage or in the first three years of practice: forensic accountancy. These compulsory elements of our education and training requirements for the Bar are being considered as part of our wider review of curriculum and assessment to review the need for continued prescription. This will feed into the Authorisation Framework and it will be for Authorised Education and Training Organisations to ensure the outcomes are met for pupils through internal or external training.
252. Advocacy and practice management training are currently provided by the Inns in London or by the Circuits elsewhere. The forensic accounting course is currently provided by BPP Professional Education.
253. Once the review of curriculum and assessment has been completed, all mandatory training requirements will be specified as part of the Authorisation Framework. If the three (or any combination of the three) courses are still required as separate courses, the training outcomes would need to be aligned to the Professional Statement to ensure the objectives were being met and that there was consistency of standards.
254. As set out in the Pupil Supervisor Training section above, we may no longer wish to require that training be provided only by the Inns or the Circuits. If that were to happen, the current advocacy and practice management courses could be delivered by other providers, although the Inns and Circuits would still be able to continue to offer such training if they wished. Alternatively, if we did wish to continue to specify that particular forms of training should be received during this time, we may consider adding to existing modules or replacing them in whole, or in part.



255. ATOs are currently also able to offer training or mandate their own training for their pupils over and above any requirements set by us. We would strongly encourage ATOs to review, as part of their pupillage training plans, what type of training is required to ensure pupils are achieving the requirements of the Professional Statement and then decide accordingly whether top-up training (internal or external to their organisation) may be required. We would also suggest that Specialist Bar Associations and Circuits have an important role to play here and may be able to advise on future training plans.

**Question 27: Should delivery of mandatory courses for pupils be opened up to other training providers? Please explain why or why not, specifically considering the risks and benefits.**

### Recruitment and advertising for the work based component

257. The recruitment of pupils is directly managed by the recruiting organisation. There are, however, some mandatory requirements currently, such as that all ATOs must advertise on the Pupillage Gateway (run by the Bar Council) and must comply with the Equality Act 2010<sup>46</sup>. The BSB Handbook also currently places a number of requirements on ATOs in respect of the recruitment of pupils.

What are the issues/risks associated?

258. Recruitment practices were last formally reviewed in 2010 by our Pupillage Working Party. The review concluded that standards were sufficient to ensure fair recruitment processes. More recently, in our report on High Impact Supervision Returns, it was noted that:

- there is a real desire in a number of chambers to support the diversity agenda and encourage more equality and diversity at the Bar;
- some chambers need more guidance about how to comply with the rules;
- chambers often have to choose between a number of high calibre candidates when recruiting pupils so do not always see any need to “widen the net”. They may not understand the many benefits that a more diverse pool of talent can bring; and
- some chambers found the cost of pupillage was too high despite their wanting to deliver pupillage in different ways.

259. During the 2015 and 2016 consultations on education and training reform, concerns were raised that access to pupillage is the single biggest barrier to increasing diversity. In particular, recruitment is felt by some to be unfairly biased towards those who have attended Oxford and Cambridge Universities. This perpetuates the perception that the Bar is not accessible to those from other backgrounds<sup>47</sup>. Concerns have also been raised by BACFI and by the Nursing and Midwifery

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<sup>46</sup> Pupillage Handbook – 6.1.

<sup>47</sup> BSB forthcoming research report into barriers to legal education.

Council, among others, that current advertising requirements are inflexible and prohibitive.

260. Given these concerns, we will establish a Task Completion Group (TCG) to review recruitment and advertising practices. This will include a review of the Bar Council's role in relation to the Pupillage Gateway. The TCG will explore whether any recommendations or guidance should be issued to address current practices and whether current guidance needs to be amended or changed.
261. At present, ATOs do not need to issue pupils with contracts although the pupillage handbook states that this is good practice. As part of the separate review of recruitment and advertising, we will review whether contracts for pupils should be mandatory and what, if any, provisions should be required of all training organisations offering the work based component of education and training.
262. The TCG will also look at "Third Six" arrangements (see below) in order to better understand the extent to which chambers utilise Third Six pupillages for the purposes of extending the current, 12 month pupillage before offering tenancy to a pupil.

What is a Third Six Pupillage?

263. Individuals who have completed their pupillage but who have been unable to secure tenancy may undertake a further period at a chambers commonly called the "Third six pupillage". Many hope to secure tenancy after this period.
264. This is a largely unregulated area of early practice and, as such, we do not specify how "Third Six pupillages" are conducted, advertised or recruited to<sup>48</sup>. These 'pupils' are in fact fully qualified barristers, authorised to provide reserved legal services.
265. The Bar Council has recently published guidelines for best practice in this area and is encouraging ATOs to sign up to these<sup>49</sup> but we are aware that there remains a degree of confusion about the Third Six process. We are also aware that individuals can have very different experiences depending on the chambers where the Third Six is completed.
266. We plan to review this area within our wider review of recruitment and advertising practices for pupillage. In cases where the Third Six is being used to determine whether a barrister should be taken on as a tenant, this would be captured by our fair recruitment rules and we will look to update our guidance to reflect this.

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<sup>48</sup> For the purposes of regulation the individual is a qualified barrister (authorised person) and not a pupil.

<sup>49</sup> [http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/pupillages-\(third-six\)-best-practice-guidelines/](http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/pupillages-(third-six)-best-practice-guidelines/).

## DEVELOPMENT OF AN AUTHORISATION FRAMEWORK

### Purpose of the Authorisation Framework

267. In our October 2016 Consultation on the *Future of Training for the Bar: Future Routes to Authorisation*, we set out the four core principles that would apply to any future training system: flexibility, accessibility, affordability, and high standards. These principles are settled and underpin every aspect of our approach.
268. We are developing an Authorisation Framework which prescribes the standards that organisations must meet in order to provide education and training for the Bar – that is to become an Authorised Education and Training Organisation (this term includes organisations currently known as Providers, Pupillage Training Organisations and Approved Training Organisations). These standards embody the four principles that are the foundation of training for the Bar. Compliance with the indicators set out under each of the four principles will demonstrate meeting the required standards. We will use the Authorisation Framework to assess whether proposals for education and training enable prospective barristers to acquire the necessary knowledge, skills and attributes as set out in the Professional Statement.
269. The Authorisation Framework will need to be developed further to reflect responses to the present consultation: for example, there could be new or different mandatory aspects added to the Authorisation Framework following decisions on issues we are now consulting on. However, we have included the current iteration at [Annex 1](#).
270. The Authorisation Framework is effectively a manual for the approval of education and training proposals. As a tool, it will therefore be of use to those wishing to become Authorised Education and Training Organisations. These may be existing vocational and pupillage providers, or those intending to enter the market for the first time to offer any or all of the three components of education and training for the Bar.
271. Existing providers will need to develop fresh proposals and comply with the Authorisation Framework to become Authorised Education and Training Organisations; there will be no automatic carrying over of existing arrangements (see however also above, paragraphs 224-232 on arrangements for current ATOs offering pupillages).
272. We wish to use clear and transparent language and terminology in the Authorisation Framework so that all stakeholders including prospective barristers and other consumers will find it helpful in understanding more about what is expected of those who deliver training for the Bar.

**Question 28: Do you find the language and terminology used in the Authorisation Framework sufficiently clear and accessible? If not, please provide examples of how and where this could be improved.**

273. The structure of the Authorisation Framework sets out a detailed explanation of each of the four core principles and what they mean in the context of training for the Bar, before going on to set out the indicators that will need to be complied with.

### **The four principles – what they mean**

274. The principle of “flexibility” is about “Encouraging greater flexibility - so that the training system enables innovation in how education and training is delivered”<sup>50</sup>. (Page 10, [Annex 1](#))
275. The principle of “accessibility” is about: “Improving accessibility – so that the best candidates are able to train as barristers and that the Bar as a whole better reflects the communities it serves”.<sup>51</sup> (Page 11, [Annex 1](#))
276. The principle of “affordability” is about “Improving affordability – to bring down the cost of studying to prospective barristers”.<sup>52</sup> (Page 12, [Annex 1](#))
277. The principle of “high standards” is about “Sustaining high standards – to ensure that any new training pathway maintains current standards”.<sup>53</sup> (Page 13, [Annex 1](#))

**Question 29: Referring to the relevant sections of the draft Authorisation Framework, are the definitions of flexibility, accessibility, affordability and high standards sufficiently clear? If not, how could they be improved?**

### **The four principles – what we want to see**

278. The Authorisation Framework sets out which requirements Authorised Education and Training Organisations must comply with, and which requirements we recommend that they comply with. These are set out in Annex 1 under each of the four core principles. (Pages 14-24, [Annex 1](#))
279. We have thought carefully about where we propose that a requirement should be mandatory. In devising the Authorisation Framework, we have sought to reduce close prescription to a minimum so that Authorised Education and Training Organisations have the freedom to develop varied proposals that give prospective barristers greater choice.
280. If a requirement is not mandatory or recommended, this does not imply that we proscribe it. For instance, an Authorised Education and Training Organisation may wish to include something which is not mandatory or recommended by us because it provides increased value for money for students, or makes the most of something which that organisation is uniquely placed to offer. Where the rationale for inclusion is underpinned by one of the four principles, this will be material to our assessment of the education and training proposal.

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<sup>50</sup> BSB Policy Statement on Bar Training, 23/03/17.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

**Question 30: Do you think we have identified the correct mandatory indicators for flexibility, accessibility, affordability and high standards? If not, what do you think should be added or removed and why?**

281. Authorised Education and Training Organisations who propose to deliver the vocational component and work based components will need to comply with an additional set of requirements relating to the curriculum that is delivered in these components, and the way that it is assessed. We have undertaken a review of the current curriculum and assessments and propose some changes that are underpinned by the four core principles. These are being consulted on in a different and targeted way, in parallel with the present consultation. If you have a specific interest in this and you have not already been informed about this separate consultation process, please get in touch with us straight away at [BSBContactus@barstandardsboard.org.uk](mailto:BSBContactus@barstandardsboard.org.uk) so that we can let you know about our proposals and take your views on them.

## Part IV: Provisions for transferring qualified lawyers

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282. We currently accept applications for exemption from any or all of the standard training requirements. We grant exemptions from a requirement whenever applicants can demonstrate that their knowledge and experience make it unnecessary for them to comply with it.
283. Most applicants for exemption are individuals who are already qualified as lawyers, whether in England and Wales (eg solicitors) or in another jurisdiction. We usually exempt such applicants from the current Academic and Vocational stages of training, although this exemption will often be made conditional on passing some or all of the Bar Transfer Test. The Bar Transfer Test is a set of examinations covering the main elements of the current Academic and Vocational stages of training<sup>54</sup>. We usually require transferring qualified lawyers to pass those sections of the Test that they have not already covered as part of their training. For example, transferring solicitors are never required to be assessed on those sections relating to the Academic Stage of training or civil or criminal litigation but may be required to pass those sections relating to advocacy and barristers' professional ethics. Applicants may also be granted a reduction in or exemption from the standard pupillage requirements.
284. We propose to retain a similar approach under our new arrangements. Any individual who is able to demonstrate that they have achieved the competences set out in the Professional Statement, whether through qualification as a lawyer or otherwise, may apply to be recognised as having satisfied all of the requirements for qualification as a barrister.
285. It may be that prospective Authorised Education and Training Organisations will submit to us, for approval under our Authorisation Framework, proposals for training courses specifically designed to prepare lawyers qualified in other jurisdictions for practice at the Bar of England and Wales and to demonstrate the competences required to do so.
286. We are working with the SRA to map their proposed Solicitors Qualifying Examination ("SQE") against our Professional Statement. This will allow a standard approach to be taken with respect to any applicants who have passed either or both of the two parts of the SQE. It is likely that such applicants will be able to demonstrate those vocational component competences not deemed to have been demonstrated through the SQE through our centralised assessments.
287. As now, it is proposed that most transferring qualified lawyers will be required to undertake a period of pupillage or other work-based training, but that this requirement may be modified to the extent that individual applicants can

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<sup>54</sup> This would also include exemptions from completing "Qualifying Sessions" organised by the applicant's Inn or circuit. This exemption will be reviewed once we have made a decision in relation to the qualifying sessions as a requirement of training.

demonstrate the competences normally demonstrated through the work-based component, eg through previous training and/or work experience.

288. Special provisions currently apply to applicants who are qualified as lawyers in and are nationals of other member states of the European Union. Such applicants can currently only be required to pass the Bar Transfer Test to the extent that their education and training differs substantially from that required of barristers, and cannot be required to undertake pupillage. We will retain these provisions for so long as we remain subject to the obligations of membership of the European Union and will develop arrangements subsequent to that consistent with any transitional and final agreements between the UK and EU as relevant.

**Question 31: Do you agree with our proposals for recognising transferring qualified lawyers? Please explain why or why not.**



## Part V: Provisions for transitional arrangements

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289. We wish to facilitate a smooth transition to new arrangements and to make new opportunities available as quickly as possible. However, we recognise that the development and approval of proposals from existing or new providers may take some time. We therefore seek to devise transitional arrangements which take this into account, and which ensure that there is no hiatus in the availability of training during this period. Transitional arrangements will also be needed to enable those who have commenced training under the present system to complete their training under that system within a reasonable timeframe.
290. Current providers of the vocational training may continue to recruit under existing arrangements in the academic year 2018-19. When the Authorisation Framework comes into effect, they, and any new prospective Authorised Education and Training Organisations who wish to enter the market, will be able to put forward proposals for delivery from the academic year 2019-20. Depending on the timescale for institutional internal approval mechanisms for current BPTC providers, a further round of recruitment under existing arrangements for that course may be necessary in the academic year 2019-20 but we will be seeking to avoid this as far as practically possible.
291. We recognise that future plans and circumstances are individual to each institution that currently offers vocational stage training, and for that reason there will be some element of bespoke specification for transitional arrangements. We will engage in discussions with each provider who wishes to continue in the market by February 2018 at the latest, and conclude discussions by May 2018. During those discussions, we will wish to assure ourselves that suitable arrangements will be made for students who commenced under the old arrangements to complete their training, or for allowing them to transition across to new arrangements where this is feasible.
292. We encourage organisations not to inhibit innovation or incremental change that will benefit prospective barristers during the transitional period. Providers may wish to take the opportunity to pilot aspects of training that will feature in their proposals for new arrangements and we will encourage this where it is feasible during the transitional phase.
293. There will continue to be a Bar Transfer Test available for qualified foreign lawyers and solicitors during the transitional phase.

**Question 32: Do you think there is anything which we have omitted and that we should take into account when considering transitional arrangements?**

## Part VI: How to respond to this consultation

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294. The deadline for this consultation is **8 January 2018**. You do not need to wait until the deadline to respond.
295. Please follow the [Survey Monkey link](#) to respond to the consultation; this is the best way to submit a response as it will be easier for us to compile and analyse responses to the specific questions posed. If you are unable to respond in this way, please use the [response form](#) if sending responses by email.
296. Your response can be short form answers to the specific questions we have posed. It is far more useful to us (and we are better able to take your views into account) if you are able to address the specific questions we have posed.
297. If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know. Please let us know if there is anything else we can do to facilitate feedback other than via written responses.
298. Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation, and publish a list of respondents. **If you do not want to be named as a respondent to this consultation please set this out clearly in your response.**
299. If you are unable to submit your response online, please send your response to: [futurebartraining@barstandardsboard.org.uk](mailto:futurebartraining@barstandardsboard.org.uk)

### Engagement activities

300. We will conduct a range of engagement activities from October to December 2017. Similar to last year's programme of activities, events will be held in multiple locations throughout England and Wales with a range of key stakeholder groups and across the regional Circuits. These events will be held to facilitate discussions to explore the proposals being considered.
301. For more information about these events please see the Future Bar Training page on our [website](#). If you would like to attend any of these events or if your organisation wishes to take part in the pupillage pilot project, please email [futurebartraining@barstandardsboard.org.uk](mailto:futurebartraining@barstandardsboard.org.uk).

### Next steps following the end of the consultation

302. The consultation will close on 8 January 2018. We will consider the responses in the light of our regulatory objectives and the key policy principles we have set for FBT. We will then develop a new set of rules for the BSB Handbook, on which we will consult in 2018. That consultation will be shorter and will focus simply on whether the rules effectively implement our agreed policy.

303. These rule changes will then be reviewed by the LSB and, if approved, will be implemented from 2019. We are likely to be able to receive formal applications for approval of Authorised Education and Training Organisations in the three months prior to the new rules coming into force, but no formal approval will be given prior to the date of coming into force of the new rules.
304. For further information about the Future Bar Training programme please see our [website](#).

## List of questions

**Question 1: Should the BSB have regulatory oversight of students? Please explain why or why not.**

**Question 2: Do you think the BSB should continue to require membership of an Inn as a mandatory part of Bar training? Please explain why or why not.**

**Question 3: If you answered ‘yes’ to question 2, do you think the BSB should continue to require “student membership” of an Inn or set the requirement at the point of (or just before) being called to the Bar? Please explain why or why not.**

**Question 4: Do you think the BSB should continue to delegate responsibility for educational and fit and proper person checks to the Inns of Court? Please explain why or why not.**

**Question 5: Do you think the BSB should require DBS checks as part of the fit and proper person checks? If you do, who do you think should perform this function and why?**

**Question 6: Do you agree with our proposals to improve the current checks as described? Please explain why or why not.**

**Question 7: Do you think that the Inns or the BSB should oversee student conduct? Please explain why.**

**Question 8: Do you think that the BSB should continue to prescribe qualifying sessions as part of the mandatory training requirements? Please explain why or why not, including (if appropriate) which elements of the qualifying sessions are particularly useful to be undertaken prior to practice.**

**Question 9: If you answered ‘yes’ in question 8, should there be any changes to the existing arrangements? If so, do you prefer Option B or Option C to reform our oversight of qualifying sessions? Please explain why.**

**Question 10: If you answered ‘yes’ in question 8, do you think that other training providers could provide qualifying sessions? Please explain why or why not, including what elements would need to be delivered by or in association with the Inns themselves to ensure their benefits are to be retained.**

**Question 11: Do you have any alternative suggestions for how qualifying sessions might help students meet the requirements of the Professional Statement?**

**Question 12: Do you think we should allow pupillages to vary in length? Please explain why or why not.**

**Question 13: If you answered ‘yes’ to Question 12, please tell us whether you think there should be minimum and/or maximum length associated with this**

**change and what those minimum or maximum lengths should be. Please explain why.**

**Question 14: Which option, if any, for reforming the award of the Provisional Practising Certificate do you support? Please explain why.**

**Question 15: Do you think the minimum pupillage award should be raised? Please explain why or why not.**

**Question 16: If you answered 'yes' to question 15, should we use the National Living Wage or the Living Wage Foundation benchmark for the minimum award? Please explain why.**

**Question 17: Do you think the current exemption from the funding rules for transferring lawyers should be removed? Please explain why or why not.**

**Question 18: Do you agree that we should introduce re-authorisation of Approved Training Organisations (ATOs)? Please explain why or why not.**

**Question 19: If re-authorisation were to be introduced, how many years do you think the defined authorisation period should last (eg 3 or 5 years)?**

**Question 20: Do you think the BSB should allow pupil supervisors to supervise more than one pupil? Please explain why or why not.**

**Question 21: Should the BSB prescribe pupil supervisor training outcomes? Please explain why or why not.**

**Question 22: How should the BSB seek assurance that outcomes in pupil supervisor training are being delivered?**

**Question 23: Should organisations be required to provide this assurance during the authorisation process? Please explain why or why not.**

**Question 24: Should the provision of pupil supervisor training be opened up to other providers (other than the Inns)? Please explain why or why not.**

**Question 25: Should regular refresher training be mandatory for all pupil supervisors? Please explain why or why not.**

**Question 26: If you answered 'yes' in Question 25, how often should it be undertaken (eg every 2, 3 or 5 years)?**

**Question 27: Should delivery of mandatory courses for pupils be opened up to other training providers? Please explain why or why not, specifically considering the risks and benefits.**

**Question 28: Do you find the language and terminology used in the Authorisation Framework sufficiently clear and accessible? If not, please provide examples of how and where this could be improved.**

**Question 29: Referring to the relevant sections of the draft Authorisation Framework, are the definitions of flexibility, accessibility, affordability and high standards sufficiently clear? If not, how could they be improved?**

**Question 30: Do you think we have identified the correct mandatory indicators for flexibility, accessibility, affordability and high standards? If not, what do you think should be added or removed and why?**

**Question 31: Do you agree with our proposals for recognising transferring qualified lawyers? Please explain why or why not.**

**Question 32: Do you think there is anything which we have omitted and that we should take into account when considering transitional arrangements?**