BAR STANDARDS BOARD

REGULATING BARRISTERS

Future Bar Training

Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training

Summary of responses

January 2016

Executive Summary

Background to the consultation

In summer 2013, the Bar Standards Board (BSB), the Solicitors Regulation Authority (SRA) and ILEX Professional Standards (IPS; now called CILEX Regulation) published the Legal Education and Training Review (LETR). This was a large, independent review of the system of training legal professionals in England and Wales.

The review recognised many good features in the system for training barristers. It also looked to the future and recommended reform so that training would be better matched for barristers and clients in 2020 and beyond.

In February 2015, we published our vision for the future of training for the Bar. In that paper, we set out our proposal for a Professional Statement that describes the standards that should be expected of all authorised barristers upon entry to the profession. In addition, we explained why we were embarking on a review of how we are involved in setting education and training requirements for barristers.

The Future Bar Training consultation, launched in the summer of 2015, built on that paper, exploring what changes might be made to the current system. It examined possible approaches to reform of the system and regulatory requirements, and considered the current three-stage formulation of training.

Responses to the consultation

There were 58 responses to the consultation. The responses were received from the following:

- six from individual barristers;
- 10 from Law Professors or Lecturers;
- 14 from University Law Schools;
- 11 from legal representative organisations;
- seven from other organisations;
- two from Chambers;
- one from another regulator; and
- seven from individuals who did not specify their occupations.

Summary of key findings

Part 1

Part 1 of the consultation concerned the Academic stage. It considered:

- the way in which the academic stage may or may not contribute to the achievement of the Professional Statement requirements;
- the topic of degree classification and whether to move towards requiring a minimum 2:1;
- a possible move away from the “eight core subjects” requirement;
- how we could make sure that those completing the academic stage have sufficient legal knowledge and understanding to start the next stage of training.

Demonstrating abilities

The majority of respondents were supportive of the BSB permitting alternative means of demonstrating the necessary abilities to become a barrister, other than through the completion of a law degree or GDL. Respondents suggested that to have no other route into the profession would risk undermining the diversity of the Bar and homogenising the pool from which future barristers are drawn. However, some respondents did express a strong attachment to the concept of "graduateness". These respondents were of the view that removing the requirement to have a degree would result in a downgrading in professional standards, and would diminish public confidence in the profession. It was also noted that because other professions of equal standing in the public confidence, such as doctors, architects and veterinarians, require a degree, it would be important for the Bar to continue to do so also.

Degree classification

There was much opposition to the idea of raising the required degree classification from 2:2 to 2:1. This was largely due to concerns about reducing diversity at the Bar, and the perceived inconsistencies between the standards of different universities.
A particular concern for a number of respondents was that the requirement of an upper second class degree may unduly restrict access to the profession and have a disproportionate impact on students from disadvantaged backgrounds. As the Bar has an important role in promoting the interests of, and access to, justice, it was seen as vital that the composition of the Bar should be as representative as possible of the community it serves. Many respondents cautioned the BSB against making any changes to the requirements for degree classification without gathering and assessing evidence to ensure that students from particular universities, or personal circumstances would not be unfairly penalised.

Core subjects

Many respondents supported the continuation of the specification of core subjects. The core subjects were regarded by many as the foundation of the law of the land.
There was concern that if the core subjects to be studied were not prescribed by the BSB, the "equality of content" that a Qualifying Law Degree provides would be lost. This could lead to a lack of consistency and rigour in the scope and level of legal knowledge obtained by future barristers, and therefore a degradation of the high standards of the Bar.

Compatibility

A significant number of respondents expressed a concern that any consideration of what should be required from a law degree would need to be considered in light of the SRA's approach to training of solicitors. Respondents felt that that the two branches of the legal profession appear to be diverging from the Joint Statement approach and that there may no longer be a consistent approach to the academic stage by the two regulators. There was concern that law schools may not be able to provide different routes through an LLB that would satisfy both regulators and that it would be unfair for students starting out to have to decide from the beginning which route they would want to take. There was also concern expressed, particularly by university law schools, that the more complex the BSB approach, and the more it diverges from the statement of legal knowledge in the SRA's competence statement, the more problematic it will be for Law Schools to design programmes which comply with both regulators' demands.

Part 2

Part 2 of the consultation concerned the vocational stage, and sought endorsement of the proposition that such a stage of training should not be abandoned. It considered:

- the strengths of the current vocational stage;
- the perceived and actual issues of the current vocational stage;
- the role of the regulator in the vocational stage of training;
- possible future approaches to how we regulate this stage.

Retaining vocational requirements

All respondents agreed that some form of vocational stage was necessary in the training of future barristers, though not all thought it should remain in its current form. There was suggestion from some respondents that this stage could be more integrated with both the academic and professional stages.

Bar Course Aptitude Test (BCAT)

Many respondents raised issues with the BCAT, which was seen by a significant number of respondents as not being fit for purpose and lacking credibility. Many respondents suggested that if it was to remain, it would need redesigning to ensure it could function as an effective filter for those going on to further study in the vocational stage.

The Bar Professional Training Course (BPTC)

Responses relating to the value of the current BPTC were mixed, with some respondents feeling it operated well and gave students the foundation they needed to proceed to pupillage, and others expressing dissatisfaction with the way the BPTC currently operates and the costs involved for students in undertaking it.

Respondents were generally glad that the issue of cost and affordability of the BPTC was being recognised. It was agreed that the cost of legal education is a serious issue to the extent that it may deter good candidates from less privileged backgrounds from pursuing a career at the Bar.

There was disagreement on whether the BPTC represented value for money. While many respondents thought the BPTC was prohibitively expensive and could be deterring students from considering a career at the Bar, not all respondents thought it did not offer value for money. It was noted that the BPTC is made from intensive ‘people-led’ training, and some respondents thought it would be difficult for this to be made cheaper without compromising on quality or increasing cohort sizes.

A number of respondents commented that the BSB should be focusing on outcomes in relation to the BPTC, and therefore lessening how prescriptive the BSB should be in its requirements. However, concern was also raised that without some level of prescription, there may be a “race to the bottom” and that high standards need to continue to be encouraged. As well as being outcomes-focussed, there was some support for the BSB considering a model that would be innovative, able to respond quickly to change, and offer quality assurance and choice for students.

A number of respondents rejected the idea that the BPTC qualification is not widely recognised, and that the skills learned on the BPTC do not have ‘wider recognition’. This was seen as ignoring the presentational and analytical skills that are learned on the course, and that are highly valued by employers outside of the Bar. There was a question raised of

whether it needed to be an aim of the BPTC to provide "wider value" considering the aim of the course is to prepare students for a career at the Bar. There was also suggestion that widening the BPTC from its current purpose could make it longer and more expensive.

BPTC "Approach 1"

A number of respondents believe that the BPTC as it currently stands is as an educationally sound programme which is fit for purpose and provides good preparation for pupillage. There was therefore some support for maintaining something similar to the status quo, with the continuous improvement approach (Approach 1) outlined in the consultation.

Other respondents expressed strongly that they did not believe Approach 1 went far enough in addressing the problems with the BPTC and was only "tinkering around the edges" of the current position**.** They felt that the BPTC has been the subject of a number of reviews in the past but is still experiencing problems, and a more radical approach is required.

BPTC "Approach 2"

Approach 2, where the BSB would approve programmes in which the provider could demonstrate achievement of our required outcomes, was seen by some as being most in keeping with the requirement that regulators adopt an outcomes-focussed approach.

Approach 2 was also seen as providing the greatest scope for innovation in delivery of vocational training, and some respondents suggested that its flexibility would provide greater agility in meeting the changing demands of the market in legal services.

It was seen by some as an advantage of this approach that providers would need to compete on quality, which would drive up the standards of all providers. If certain "gold standard" providers did emerge, this was seen as forcing those providing lower quality courses to improve to stay in the market. However, concern about Approach 2 centred on the idea that without standardisation of training too many candidates would fail to achieve the required standard.

BPTC "Approach 3"

There was support from a number of respondents for something akin to Approach 3, which many respondents identified with the proposed approach of the Council of the Inns of Court (COIC). This two-stage approach was seen as addressing the issue of too many students undertaking the BPTC, with the proposed test at the end of a preliminary part filtering out students whose written and analytical skills are insufficient, and who are therefore likely to fail or are extremely unlikely to obtain pupillage.

It was suggested that the adoption of Approach 3 could also make at least the preliminary part of the vocational stage significantly cheaper, both in terms of fees and living costs, by allowing students to prepare for it in whatever manner they chose, rather than being required to attend an expensive course.

While a very small majority of respondents preferred Approach 3, almost the same number of respondents specifically stated that Approach 3 should not be adopted, concerned that its potential disadvantages would outweigh its advantages. The potential disadvantages included potential diversity implications, lower expectations of students, the potential emergence of a two-tier pathway and the separation of knowledge and skills training.

Part 3

Part 3 of the consultation concerned pupillage. It considered:

- the strengths of current pupillage requirements;
- the perceived and actual issues of current pupillage requirements;
- possible future approaches to how we regulate pupillage.

Almost all respondents to the consultation agreed that the undertaking of a period of work-based training should be a pre-requisite for authorisation. However, there were mixed opinions about the way pupillage is currently structured and regulated. The majority of respondents agreed that pupillage should be more flexible in its content and that the BSB should take a more permissive approach to content as long as the requirements in the Professional Statement were being met.

A number of respondents discussed the need for requirements to be changed to allow new forms of pupillage to be undertaken. It was particularly emphasised that it should be made easier for more pupillages to be undertaken outside of chambers, in a wider range of organisations. This was seen as one way to address the problem, noted by almost all respondents, that there is currently an extreme shortage in the number of pupillages available. A number of respondents felt there would be value in young barristers spending some or all of a pupillage with a commercial organisation, and that the framework for qualification, recruitment and training should be flexible enough to allow individuals to move between traditional chambers, law firms and commercial organisations. However, some risks of this more permissive approach were identified including the potential for more consumer complaints, diminishing public confidence in the profession and the risk that pupils would be placed in solicitors' firms or other entities to work for free and in ways that are not addressing the learning outcomes in the Professional Statement.

Many respondents discussed equality and diversity issues in the recruitment and selection of pupils and access to pupillage. However, it was clear from responses that there are many complex factors which affect the reduction of opportunity at the Bar for applicants from a diversity of backgrounds, other than just the scarcity of pupillages.

Concerns were expressed by respondents that the quality of pupillage recruitment is variable between chambers and that while some are very aware of social mobility and diversity issues, this is not consistent across the board.

There was also general agreement with the idea that the responsibility for pupillage should be rebalanced between the entity and the individual pupil supervisor, with respondents noting that this was likely to improve the consistency of the experience of pupillage. The majority of respondents also agreed that there should be a more systematic initial validation, and more periodic re-validation, of Pupillage Training Organisations (PTOs) and supervisors. In relation to future approaches to pupillage, responses were mixed. Most respondents preferred either a "continuous improvement" approach, where the current system would be broadly maintained, or expressed no preference as to the options outlined in the consultation. Those who disagreed with the continuous improvement approach saw it as too conservative, lacking in flexibility compared to other approaches and failing to address the present imbalance of pupillages to well-qualified candidates.

Part 4

Part 4 of the consultation concerned data. It considered:

- our approach to the collection, analysis and publication of key data.

The large majority of respondents stated that they thought the responsibility for publishing relevant statistics on a regular basis, to enable students to make informed decisions, lies with the BSB. A large majority of respondents were also satisfied with the information the BSB currently collects and analyses. However, a number of respondents suggested further categories of information that could be usefully captured, including information that would reflect the Bar's commitment to equality and diversity in the widest sense.

Next Steps

After considering the views contained in the consultation responses (summarised in this report), our statutory obligations and the other aims we want to achieve, we will set out some clear options for future regulation in the spring, for discussion. Later this year, we plan to settle upon one option, on which we will invite consultation in the autumn. We will then make the necessary changes to our rules and regulations early in 2017.

We have already announced some developments in relation to the BPTC, which will start to take effect in 2017, and we expect that the first transitional arrangements following change in our regulations will be introduced for candidates starting their training in September 2018.

Summary of responses to the questions

Part 1: The Academic Stage

Question A1: Does possession of a lower second class degree provide good evidence that an individual possesses the intellectual abilities that are consistent with those described in the draft Professional Statement (paragraph 63 above)?

47 people responded to this question.

Responses to this question were mixed. Respondents including the Committee of Heads of University Law Schools and a number of individual university law schools answered yes to this question. However, many other respondents did not answer yes or no to the question, but rather commented on whether a degree classification could be used in the way the BSB was proposing.

Many respondents felt that degree classifications were not the correct way to determine intellectual ability, and that while it might provide some evidence towards the abilities set out in the Professional Statement, it would not be enough on its own to show that students had reached these levels. Degree classifications were seen by a number of respondents as demonstrating knowledge, rather than proving a level of intellectual ability. A number of respondents also felt that a degree classification was too blunt an instrument, and that a number of factors might mean a student was awarded a lower degree classification than they deserved. It was suggested that there should be some flexibility, rather than ruling people out from progressing further into Bar training because they had not received a specific degree classification. There was general comment that the specifications in the Professional Statement were not of a type that could be evidenced through a degree.

The Legal Services Consumer Panel felt strongly that the standard for entry should remain a 2:2. They stated that there is little or no evidence presented to support the notion that those who achieve 2:2 classifications would deliver poor outcome for consumers, or that those who qualified and are practising with 2:2 degrees offer inferior services. They did not believe that any flaws in the system of degree classification could be used to justify a blanket ban, because such a prohibition may prevent many meritorious students from entering into the profession.

The Government Legal Service Bar Network (GLS) expressed concerns about the proposal to impose a minimum 2.1 degree requirement. They commented that the GLS had recently changed its requirements to allow the recruitment of trainees with a 2.2. They stated that since doing so they have recruited a number of high quality, intellectually able candidates with 2.2 degrees who out-performed in their assessment processes those with higher degree results. They felt there are many reasons why someone might achieve a 2.2 degree which will have no bearing on their ability to perform to the highest level at the Bar. In their view, an entry requirement to the profession which leaves no scope for discretion on degree requirements raises concerns about diversity, inclusion and fairness.

Some respondents did feel that the level of degree classification should be raised, primarily for the reason that currently those with a 2:2 are less likely to get a pupillage. Some respondents felt that this showed that the profession does not regard individuals with a 2:2 as having the intellectual abilities to succeed. It was questioned whether having the required standard as a 2:2 degree would be setting students up to fail further on in their career at the Bar. Two respondents did comment that there are students who have secured pupillages on the strength of a Lower Second Class degree classification and have gone on to pursue successful careers at the Bar. They felt that to require an Upper Second Class degree (even if provision were made for accepting a lower grade under exceptional circumstances) would

potentially place an obstacle on the qualification of a number of potentially successful barristers. It was suggested that students who obtain a 2:2 should be given information about the likelihood of obtaining a pupillage to ensure that they are aware of the risks of proceeding with the BPTC.

Opinion within the Council of the Inns of Court was divided as to whether the degree classification requirement should be raised, however they wanted to ensure that if the BSB did raise the degree classification requirements, there would be provision for a relaxation of that rule in exceptional circumstances. They suggested it should be a condition of a general exclusion of holders of 2:2 degrees that the BSB would have in place a system for dealing with applications for waivers, as a blanket ban would be too blunt an instrument.

One university law school commented that, regardless of the class of degree, possession of a non-law degree would not provide any evidence of ability on its own. They noted that the question asks whether possession of a 2:2 provides "good" evidence. The suggested that if "good" is defined as being regular, consistent evidence which establishes the point without additional support then the answer must be no, but the same is true for all degree classifications. However, they felt if "good" is defined as being evidence which can corroborate other evidence then the answer would be yes.

The London Common Law and Commercial Bar Association (LCLCBA) noted that students who possess a 2:2 and lack the necessary abilities would likely be found out in the course of applications for pupillage and tenancy. Such an applicant is likely to have to overcome a natural concern arising from his or her degree classification, and if they succeed in doing so to the extent of achieving authorisation to practise, that would in itself tend to suggest that they have been able to demonstrate the required intellectual abilities in other ways. The question was also raised how this would operate in relation to those with a GDL. It was questioned whether a conversion applicant who has performed with distinction on the law conversion course should be barred from practising because they had only secured a 2:2 in their first non-law degree. It was thought this could not be what the BSB intended.

Many respondents provided detailed comments on why they felt that the requirement for a student to have achieved a lower second class degree should not be raised. These comments fell broadly into two categories, which are outlined below.

<u>Concerns about restricting access to the profession</u>

A particular concern for a number of respondents was that to require an upper second class degree may unduly restrict access to the profession and may have a disproportionate impact on students from disadvantaged backgrounds. One respondent noted that the BSB discusses in the consultation the attainment gap between white British students and those of black and minority ethnic (BME) descent. The respondent felt that if the BSB were to raise the degree classification level it could have a disproportionate effect on BME students. It was also noted that many of the protected characteristics were not mentioned in this section of the consultation, aside from disability.

It was noted by a number of respondents that because of the method by which a degree classification is calculated, students could miss out on a higher classification due to a weaker performance in one year, or a couple of disappointing marks. It was suggested that such marks could be the result of family circumstances, illness or disability, and that students in these positions are more likely to come from under represented backgrounds. One respondent suggested that students who obtained a 2.2 on a part time course, who may also have been managing work and family life, may be more adept at adjusting to a vocational course than a student with a 2.1. To limit the entry requirements to 2.1 would also

potentially reduce the number of mature students with varied backgrounds from entering the profession.

One respondent noted that a significant number of international students hold a 2.2 qualification and that they generally secure pupillage in their home country. They suggested that to limit the degree entry to 2.1 would have a detrimental impact on the number of International students studying at the vocational stage. They believe that where the international legal job market considers a 2.2 satisfactory, it is difficult to see the merit in raising the standard in the UK, where the British pupillage market is the most effective filter. It was highlighted that, given the role of the Bar in promoting the interests of and access to justice, it is vital that the composition of the Bar should be as representative as possible of the wider community it serves. Any raising of the degree classification could hinder the ability of a broad range of people to make a career for themselves at the Bar. The UK Law Students' Association commented that according to the Higher Education Statistics Agency, around 100,000 law students graduate with a lower second class degree. They thought that a regulatory decision that bars such a significant proportion of students from becoming barristers should not be made without a more serious collection and review of the evidence.

Lack of consistency between universities

Many respondents expressed doubts about relying on degree classification, due to what was perceived as a lack of consistency of classification boundaries between different universities. The SRA's response specifically highlighted evidence from the work of the Higher Education Funding Council for England (HEFCE) and Higher Education Academy of a lack of consistent standards in Higher Education.

It was commented that degrees from different institutions are accepted to have different values in the marketplace and that a 2:2 from one university would not necessarily be the same as a 2:2 from another. It was suggested that if the BSB were to make any changes to the requirements for degree classification that this would need to be fully assessed and evidence gathered to ensure that it did not unfairly penalise students studying at particular universities.

It was noted that there may be other types of information that could be relied upon, rather than degree classifications that are not seen as consistent. One example given was the Higher Education Achievement Report (HEAR) which is designed to encourage a more sophisticated approach of recording student's achievements, detailing a broader range of information. It was suggested that the BSB could recommend that BPTC providers take students HEAR report into account before offering a place on the vocational course. The Association of Law Teachers further suggested that a degree transcript may be a more useful tool than the degree classification in ascertaining whether a student has achieved the appropriate standards required in the Professional Statement.

One respondent noted that the Quality Assurance Agency's (QAA) Quality Code Descriptor of a level 6 qualification, in combination with the Law Subject Benchmark Statement, provides assurance that the possession of a lower second class degree would be good evidence that an individual possesses the intellectual abilities contained in the Professional Statement.

One respondent commented that this question presumes a person will hold a degree of some sort, but that they consider that holding a degree and the use of degree classification is not the only method of demonstrating the necessary intellectual ability to become an effective lawyer. They believe that the creation of minimum access requirements, based on the achievement and classification of a degree, to be restrictive and to introduce a barrier to

qualification as a barrister to those who are unable, owing to their personal circumstances, to either complete this qualification or achieve the required classification.

Question A2a: If an individual does not hold a degree, or the degree that they hold was not passed at the required level, are there alternative means by which these abilities can be demonstrated?

Question A2b: If so, how?

40 people responded to this question.

The majority of respondents were supportive of the BSB permitting alternative means of demonstrating the necessary abilities to become a barrister, other than through the completion of a law degree or GDL. Supporters included the Committee of Heads of University Law Schools. It was suggested that to have no other route into the profession, other than obtaining a law degree, risks undermining the diversity of the Bar and homogenising the pool from which future barristers are drawn. The same respondent noted that the completion of a degree is only *evidence* of intellectual merit. Comparisons were made to other demanding professions which currently have non graduate routes of entry, such as accountancy and leadership roles in the Armed Forces. It was thought that there was no reason in principle why a proven record of intellectually intensive achievement within employment should not be regarded as evidence of intellectual ability.

There were a number of respondents who strongly felt that a law degree or a GDL should be a requirement for prospective barristers, including the Bar Council, the Society of Legal Scholars and the LCLCBA. Those who did not support an alternative route of entry to the Bar aside from a degree, felt that the Bar needed to remain a graduate profession. It was thought that there needs to be an objective and consistent standard of academic achievement that complies with international standards. The profession is seen as one that involves a high degree of intellect and analytical ability both of which are trained and tested at degree level. It was suggested that removing the requirement to have a degree would result in a downgrading in professional standards, and would diminish public confidence in the profession. It was noted that while other professions of equal standing in the public confidence, such as doctors, architects and veterinarians, require a degree, it would be important for the Bar to continue to do so. The Young Legal Aid Lawyers in particular felt that it would not be possible for students to undertake the vocational stage of training without the knowledge that a student gains from a law degree. Other respondents suggested that improvements to the current requirement of having to hold a law degree could be made, such as ensuring widening participation in university law schools and making current law degrees more outcomes-focused.

Other concerns raised about allowing an alternative means of demonstrating ability included:

- the need for an assessment of competency to enter the vocational stage, if applicants are left to study outside the degree framework;
- the extra layer of administration and regulation that would be involved were non-graduates to be considered would not be proportionate to the benefit achieved, due to the small size of the profession and the small numbers of non-graduates who might wish to apply;
- concerns over a potential rise in unregulated, profit-driven courses where the process is not controlled and the outcome remains the focus. Even in the current highly regulated environment there are concerns over parity in degree standards and with less regulation the problem was seen as potentially becoming worse;

- the existence of a tiered approach to entry to the vocational stage could potentially create inequality. For example, those exposed to the law through family connections or who could pay for private tuition would have an advantage. The financial advantages would afford them a greater chance of successfully passing an entrance exam than someone less financially able to pay for tuition.

A number of suggestions were made for demonstrating the necessary abilities for a barrister, if a law degree were not to be required. The suggestions included:

- individuals being assessed on their abilities purely through performance during pupillage, with no degree requirement to obtain a pupillage;
- the Bar considering alternative qualifications which can demonstrate intellectual ability such as the CILEx Level 6 qualification;
- students being allowed to embark upon the GDL without a degree, but only in exceptional circumstances and where they could demonstrate competence in higher level skills;
- the establishment of a free-standing testing regime to assess the ability of an individual to become a barrister, based on a previous professional career or personal study (however, some concern was expressed as to whether the BSB would have the resources and ability to set up such a testing regime);
- that the BSB not be concerned with the academic stage at all, and individuals could be assessed for entry into the profession through an expanded version of the Bar Course Aptitude Test (BCAT);
- an apprenticeship pathway;
- the BSB use discretion to consider individuals on a case by case basis, as they are currently able to do in the situation of mature non-graduates;
- individuals could be required to demonstrate the equivalent of study at level 6 on the QAA Framework for Higher Education Qualifications or higher;
- a system of accreditation of prior experience or the ability to apply for a certificate of academic standing; and
- individuals being required to demonstrate that they meet the standards in the Professional Statement.

One respondent suggested that any equivalency of qualifications would have to meet the BSB's objectives in using the Professional Statement to define the requirements for an academic stage. It may be difficult for someone who has undertaken a non-academic programme to demonstrate 'knowledge and understanding … within an institutional, social, theoretical and transnational context'. However, this respondent thought that to allow alternative means of qualification that do not match that standard presents a danger of creating inconsistent bases of access to the profession and sending out unclear messages about what sorts of qualifications or activities will be acceptable.

The SRA highlighted that they are currently working on developing a common professional assessment for solicitors that would mean those entering the solicitor profession did not necessarily need to have obtained a degree. They felt that it could lead to greater integration of academic, professional and work place learning and that this could provide a richer academic experience as well as the development of more sophisticated practical skills. Some suggestions were also made for individuals who had acquired a degree but not to the required level. The suggestions included:

- that a postgraduate qualification could be considered equivalent to an undergraduate degree at a higher level; and
- that an individual could demonstrate further legal knowledge through essays on legal subjects that would be considered by the BSB.

Question A3: Are there any other issues in relation to intellectual abilities and degree classification, as set out above in paragraphs 65 to 77, which we have failed to identify?

21 people responded to this question.

A number of respondents made suggestions of other issues that the BSB should consider in relation to intellectual abilities and degree classification. These included:

- giving more thought to the market for pupils, the knowledge, skills and behaviour the chambers look for, and how these are assessed by chambers;
- considering to the need for students to be learning about ethics before the vocational stage;
- a greater focus on degree transcripts and the profile of a student this demonstrates, as opposed to the current focus on degree classification;
- the impact the increased International degree market has had on the quality of applicants;
- the popularity of legal education in England and Wales with students from the commonwealth. The BPTC qualification is seen as being regarded throughout the world as a measure of excellence. Any reduction in the requirements for entry onto the Bar course or in the very highly regarded levels of tuition on the course, could damage this world-wide reputation;
- evidence from Chambers regarding their perception of degrees from Russell Group and 'new' Universities when selecting pupils. Specifically how the pupillage market self-regulates and what weight a University's reputation has compared to the degree result when selecting pupils;
- ensuring there is some synergy between the requirements of the BSB and the SRA. Respondents were concerned that any changes the BSB make should ensure it is still possible for students to decide to become either a barrister or a solicitor, after having made their university course choice;
- reflecting on and developing section 2.3 of the Professional Statement which reads to "treat all people with respect and courtesy, regardless of their background or circumstances". One respondent expressed a belief that candidates entering the vocational stage of training are increasingly from a selective social class and background, and that academic calibre is not the correct way of assessing a candidate's ability to deal with clients from diverse backgrounds and circumstances;
- considering that the QAA's Quality Code is neutral on what constitutes a lower second-class or upper second-class degree and autonomy on such decisions resides with degree awarding bodies. However, Part A of the Quality Code sets expectations about the way in which degree-awarding bodies secure the academic standards of their qualifications, including through having comprehensive and transparent academic frameworks and regulations which would include setting out their approach to degree classification (or equivalent, as noted below); and
- that there may be some dispute as to the statement in paragraph 73 that grade inflation is likely to have taken place over the last 30 years. An increase in 2:1 degrees, without further evidence, cannot be taken to mean the standards are being applied less rigorously than in the past. Improvements in teaching standards, assessment methods, increased opportunities for able students from wider backgrounds, and better pre-degree educational experiences may also be factors in this increase.

A number of respondents urged the BSB to note that a number of alternatives to the current system of degree classification are under consideration within the sector, with two specifically mentioned being the Burgess Report and the Higher Education Academy's Grade Point Average (GPA) Pilot Programme. The latter programme has already been adopted by at least one provider, and the QAA noted that GPA may increasingly become a feature of law programmes, potentially even replacing traditional degree classifications.

Question A4: Do you agree that "knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context" provides an essential foundation for the legal knowledge and understanding that our [draft] Professional Statement requires? Please tell us why or why not.

40 people responded to this question.

While a large number of respondents, including many (but not all) Law Schools, felt that the above statement provided an essential foundation for the legal knowledge and understanding the Professional Statement requires, there were a number of respondents who made further comments and expressed some concerns.

The positive comments regarding the above statement mostly focused on the respondents being pleased that the importance of understanding the principles of law within their broader contexts was being recognised. This is something that was seen to have been overlooked previously in the academic stage. It was emphasised that with a statement such as the one above, as opposed to prescribed subjects, the wording of that statement is of profound importance. The language used will have an important signalling function for law schools in designing and implementing their courses. A suggestion was made that the list of contexts included should not be a closed one, as there may be others that it would benefit students to be aware of, such as ethical or historical contexts

Two university law schools suggested that "practical context" should be added to the list, as students completing the academic stage need an appreciation of how their knowledge and understanding relate to concrete and practical legal contexts and problems. It was also suggested that skills such as analysis and legal research should be made explicit within the statement, as they are not captured as it is currently worded. It was recommended that the Professional Statement should also include coverage of ethics and professionalism, and potentially the inclusion of knowledge and understanding of human rights law. It was suggested by CILEx that if the statement is to work for both self-employed and employed barristers, there should be some coverage of business awareness. They noted there is no reference within the statement to considerations of costs, billing and client money, but with barristers now having the ability to gain public access and litigation authorisation, all barristers may in future require an understanding of these issues.

One respondent thought the formulation in the Professional Statement led to the question of precisely what the 'basic concepts and principles of public and private law' are to be taken to be. They believe that the basic concepts and principles are those to be found within the traditional core curriculum of the academic stage. The same respondent was unsure what the phrase "*within an institutional, social, theoretical and transnational context*" would add. They believe all legal subjects are contextual, and the contexts are aspects of the subjects themselves.

The Family Law Bar Association (FLBA) agreed with the proposed formulation, but stipulated that the expected level of understanding of the listed contexts should be basic. They saw the primary purpose of undertaking a law degree as acquiring knowledge and understanding of the law and the legal system. They thought a basic understanding of the social context

would be a natural consequence of studying law, but did not consider it necessary or appropriate to build in any requirement to consider the variety of clients and the provision of legal advice. They saw these as issues for the vocational stage.

One BPTC provider agreed with the statement, but noted that it was written in such broad terms that it was hard to disagree with it. They therefore did not feel that the statement would be particularly helpful for students contemplating a career at the Bar. They believe the virtues of the current system containing "the seven pillars of legal knowledge" are that it is simple, certain, and appropriate for all students. A student is able to tell without any difficulty what he needs to do to pass the academic stage, and is able easily to compare academic programmes that are sufficient for this purpose with those that are not, merely by crosschecking with the seven core modules. They therefore believe that any attempt to flesh out the broad statement of principle should be certain, simple, measurable and uniform. They did not want to see a two-tier academic stage emerge, with one set of content for would-be barristers and another for everyone else. They therefore urged a joined up approach with the SRA.

It was noted by a number of respondents, including the Committee of Heads of University Law Schools that the statement as drafted aligns with the QAA's new Law Subject Benchmark Statement.

The main concerns centred around achieving a balance of knowledge of the law and an understanding of the context of the law, and making sure that a general statement such as the one above was not too vague and could be quality assured.

<u>Balance between knowledge of the law and context</u>

A number of respondents made comments related to the inclusion of "context" in the statement and how this would be balanced against the need to teach a thorough understanding of the law itself. These included:

- that "contexts" could be taught in an introductory, short, and non-examined course. This respondent could not see any further role for it beyond this;
- that the BSB should note that there are widely differing views within legal academia as to the correct balance that should be struck between, on the one hand, doctrinal knowledge and understanding and, on the other hand, an understanding of context;
- that the BSB must be conscious of the distinction between learning law (i.e. comprehending and applying substantive legal rules and reasoning) and learning *about* law (i.e. appreciating its social implications, etc). The respondent was concerned that the proposed statement's emphasis on context might induce some Law Faculties to concentrate on teaching *about* law, to the detriment of learning substantive law.

<u>Lack of specificity</u>

Many respondents felt that the statement as drafted was too vague and were concerned about whether there would be a sufficiently developed and coherent understanding of what is covered by these basic concepts and principles. It was thought that the BSB should be able to find a formulation that doesn't require reference to a table and a series of examples. One respondent suggested that the more broad and all-encompassing the formulation of the statement is, the greater the need will be for specification of the type and manner of delivery.

A number of respondents felt that greater articulation was needed. It was thought that paragraphs 82 and 83 which set out the proposed requirements were subject to various degrees of interpretation and did not make clear whether the BSB would engage in any form of quality assurance during the academic stage. Another respondent highlighted that there

could be significant disagreements as to what the basic concepts and principles of public and private law actually are, or what theoretical contexts might be relevant, with no mention being made of, for example, critical or feminist theoretical approaches to the law. It was questioned whether the BSB would be satisfied with the variability within programmes that would result from a general statement, without further specification as to content. The BSB was invited to redraft the Professional Statement in language that would be clear and accessible to all.

One university law school questioned whether the focus on knowledge and understanding of basic concepts would result in a dumbing down of standards. They felt that, while the statement may provide some foundation for a potential barrister's training, it does not go far enough in relation to analysis and conceptual understanding. They asserted that "knowledge and understanding of basic concepts" is an educational standard akin to a much lower level of study than level 6. They expressed concern that any lowering of standards through the Professional Statement would lead directly to a lowering of standards for entry onto the vocational stage.

One chambers who responded to the consultation expressed the view that both law students and GDL students should continue to be required to study a specified list of core foundation subjects in order to: (a) ensure consistency and rigour in the scope and level of legal knowledge obtained by the barristers of the future during the Academic Stage; (b) enable chambers to have confidence that applicants for pupillage will have sufficient knowledge and understanding of the basic legal principles which are required to practice in that chambers; and (c) maintain the high standards of the Bar.

The Council of the Inns of Court agreed that the requirement to study the "core" subjects should remain. They strongly challenged the idea that the core subjects should be dropped or changed. They noted that the present syllabus had been agreed between the Law Society and the Bar Council following the recommendation of the Ormrod Committee 40 years ago, and had been considered the foundation for legal learning long before this. They expressed the view that they constitute what many would still regard as the foundation of the law of the land. They questioned the BSB's assertion that currently students are required to study subjects that many barristers may never use. They believe it is wrong to say that a barrister could have a conceptual understanding of the whole of the legal system without having studied all of the core subjects. They also questioned where core subjects would be taught, if they were dropped from the academic stage. They noted that the present structure of the BPTC and pupillage, and the proposals for reform of those stages, proceed on the assumption that students and pupils will have previously learnt the relevant substantive law. The focus at the two later stages is on understanding how the law is applied in action, and on developing practical, professional skills such as advocacy. They questioned whether there is space or time, within the latter two stages of qualification, for learning academic law. They also suggested that the BSB might have lost sight of the intrinsic academic value of the QLD, and appeared to regard it simply as a training-ground for barristers, who constitute only 10% of the practising profession in England and Wales.

One respondent expressed concern that if the core subjects to be studied were not prescribed by the BSB, the "equality of content" that a Qualifying Law Degree provides would be lost. The result would be differences in standards between different law schools. Chambers and employers would be unlikely to have the resource to research the standards of different law schools and what they were teaching and therefore fall back on selecting Oxbridge students for pupillages and employment. This would have an impact on the diversity of the profession.

It was also noted that a shift to a more general statement of the legal knowledge and understanding that is required would require a more intensive and subjective process for deciding whether a proposed degree programme would satisfy the BSB's requirements. Respondents wanted to know how standards would be quality assured across different law schools and how the level of knowledge and understanding required would be decided and assessed.

The Association of Law Teachers noted that the SRA seems to be moving towards decoupling qualification as a solicitor from the law degree, and even from graduateness. The SRA has made some specifications regarding legal knowledge, and it was seen as a danger that, if the BSB does not more precisely articulate what falls within the scope of the basic concepts and principles of public and private law, the SRA's specifications may dominate the structure and orientation of law degrees.

One BPTC provider noted that, as the duration of the BPTC is one academic year (or less), it will be difficult for students to learn subjects that are completely new to them. If they are not learning certain subjects as part of their law degree, as none are prescribed, this could disadvantage them when they enter the vocational stage.

The Young Legal Aid Lawyers, while supporting the Professional Statement as a good starting point, stated that it does not currently mention any learning about the law in practice, which would be of use to undergraduate students. They noted that teaching at an undergraduate level was focused upon the theoretical aspects of the law, rather than the practical application of the law, and this has an impact on vocational training. They felt that new skills on factual analysis and advice in specific cases were especially underdeveloped within academic studies.

One university law school expressed agreement with QA4 as it is literally worded as they agree that knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context provide an essential foundation for the legal knowledge and understanding that the Bar Standards Board's Professional Statement requires. However, they believe the question is really asking not whether these provide an essential foundation, but whether they are sufficient to meet the requirements in the Professional Statement. With this they expressed strong disagreement as they do not think it is sufficient that a person intending to practise at the bar should have knowledge and understanding only of the "basic" concepts of public and private law. They disagreed with this for a number of reasons, including:

- that the BSB has not produced evidence that proves that requiring certain subjects to be studied "tend[s] to give prominence to the *acquisition* of knowledge, rather than understanding of principle and concepts";
- that if the BSB believes students in some institutions are taught information in ways that do not yield genuine understanding, then a proper response would be directed to those institutions and their methods. They do not think it is rational instead to change what is required for practise as a barrister;
- that the BSB appears to believe that teaching of legal education will improve if prescribed subjects are abolished. They have serious doubts in relation to this thinking;
- that the fact that some law graduates may not "use" a subject that they have studied is not relevant to what people should have to study in order to qualify for the bar;
- that practising barristers without a fundamental knowledge of all the key areas of law would be unable to adapt to major change; and
- that to reduce what a person must know in order to qualify for legal practice in England and Wales would give rise to unfavourable perceptions of our legal system. It was

suggested that internationally, England and Wales are already an anomaly in not requiring an undergraduate law degree in order to go on to practise law.

Question A5: Assuming you agree with the formulation in paragraph 83, which of the above ways (a to e) do you think we should use to make sure that those seeking to be barristers and completing the academic stage have sufficient legal knowledge and understanding to progress towards full qualification as a barrister? Please explain the reason why you have chosen these.

Options a to e are as follows:

- ***a) set out a list of certain legal subjects that all students wanting to become barristers must study, with prescribed detail of what must be covered in each;***
- ***b) set out certain prescribed subjects, with minimum study-time for each;***
- ***c) not prescribe any subjects, but set a minimum study-time to be spent on the basic concepts and principles of public and private law as a whole;***
- ***d) not prescribe detail or study-time, but give guidance as to what would be considered appropriate for one or both of those;***
- ***e) prescribe nothing and give no guidance: if the degree has been awarded by a University that is operating in accordance with the with the requirements of the quality assurance systems in UK Universities, and the Office of the Independent Adjudicator for Higher Education, that will suffice for us.***

Question A6: Would your answer be different if a student had taken a non-law degree plus a GDL?

40 people responded to these questions.

There was no overwhelming preference for any of the five options.

It was noted that none of the options captured the situation as it is currently, and two respondents felt that this should not be changed. They felt that all of the options were vague and they would not support any change to the current situation. They were concerned that a broad and rigorous grounding in the substantive law is essential for any barrister, and that to change the current syllabus could have “ruinous implications” for the profession. One of these respondents suggested that more detail for the academic stage should be prescribed, in order to ensure consistent standards of learning. One respondent that did not offer a preference noted that the emphasis on having a degree creates barriers to qualification as a barrister and that alternative routes to qualification should also be considered when determining what the knowledge and understanding requirements of the academic stage should be.

Two respondents, including the LCLCBA, expressed general opposition to removing the requirement that applicants must have studied the core legal subjects as part of either a law degree or the conversion course. They believe that a knowledge of these core areas of law is likely to be required, whatever an applicant’s ultimate practice area; that these subjects amount to what could be called a basic legal vocabulary, and that judges assume such knowledge on the part of those appearing before them. The LCLCBA also suggested that if the requirement to pass certain basic or core subjects were removed, some institutions might be tempted to teach ‘softer’ subjects which do not place the same intellectual demands on students, instead of difficult subjects such as contract, tort and crime. This would mean that pupils could enter pupillage without familiarity with basic legal principles, and certain students who had attended institutions where traditional legal subjects are taught would be at an advantage.

One respondent suggested a compromise could be a blend of options A and E. They believe the core modules provide certainty, simplicity and measurability from the point of view of students, whilst giving an all-round knowledge as required by the professional statement. Beyond this, they thought the BSB should not prescribe study time or content, and should instead rely on the providers, who must meet the QAA requirements.

The reasons respondents gave for and against each of the preferred options are outlined below.

Option A

A large number of respondents preferred Option A. These respondents were of the opinion that Option A was the only one which could ensure quality and consistency. They also thought the current academic curriculum did not require significant change. One respondent felt that if the BSB is concerned with the outcome of the academic stage being that students are able to demonstrate their suitability to become barristers, this concern cannot be addressed simply through non-binding guidance which universities can ignore. The Family Law Bar Association felt that if Option A were not adopted, there would be an unacceptable risk that students would emerge from university without having acquired the requisite knowledge and skills. They thought allowing universities to have a very flexible system of learning with little structure and/or group discussion would not serve the public interest in having clear criteria to be achieved by students at each stage of learning.

It was suggested that not specifying the core subjects that should be studied, could narrow the academic stage and would be an error, both for every individual who suffered from a less broad education and for the development of law in England and Wales generally. It was noted that the current subjects that are required have been regarded for many years as the foundation of an understanding of the law throughout the developed world. While it was agreed that the list of required subjects should be kept under review, it was felt there was no reason to discard important subjects that play a prominent role in legal understanding, to add others that might be more relevant to a barrister's practice. It was noted that not all those who undertake a law degree are planning to practise as a barrister and so a law degree should not be aimed solely towards creating students who are suitable for the Bar.

One university law school was happy to see greater prescription of detail that should be covered as the QAA does not investigate what substantive knowledge is delivered through law degrees and the intellectual rigour that is required to pass. This respondent noted that they would likely be out of step with other law schools in favouring more prescription, but they felt that the ability to cite external requirements and minimum standards would assist them in the internal battle for resource and positioning within universities. They saw this as a significant way to ensure the quality of the student experience and the long term wellbeing of Law as a university discipline.

While Option A was seen as giving certainty as to content, this certainty would not extend to assessment or the approach that different institutions would take. One respondent felt that if the BSB was not going to be engaged with the quality assurance of law degrees themselves, then Option A would be inappropriate. It was also expressed that while some definition of the concepts and principles of public and private law would be useful, micro managing what content should be included could be overly restrictive. It was noted that in paragraph 61 of the consultation, the assertion had been made that it is hard to find evidence that most of the currently required subjects are any more essential than many other subjects for the purposes of practice. One respondent questioned how the BSB would then decide what should be included on the prescribed list of subjects if Option A were to be adopted.

The Association of Law Teachers, who thought Option A should not be taken up, noted that only a small number of law students go on to join the Bar. This means for the majority of legal education providers, it will be a peripheral potential career path for their students. They felt this meant there may be a danger that if the BSB was over prescriptive in its requirements, many law schools may not see complying with these requirements as a priority and would comply with them only if it is convenient. It was also noted by one respondent that in a professional environment where barristers and solicitors will be working closely together, it is important to ensure that there is a shared core of knowledge to which they can refer. Setting out core subjects that must be studied was seen as ensuring this was the case.

One respondent strongly felt that Option A would be detrimental to law as an academic subject, as it would severely confine debate and discussion, and push Law Schools to educate students on the basis that law is solely about knowledge and not critical engagement with the subject. This could lead to a degrading of the profession.

One law school commented that they believed Option A would restrict law schools such as them, which have chosen to allow greater choice to students. Their approach is based on the premise that the student, with appropriate advice, is best equipped to decide what selection of modules will enable him or her to develop a skill-set that will impress in the job market. This allows students to tailor their degree towards their interests and their perceived future benefit. This kind of approach may not be feasible if the BSB were to adopt Option A. It was also suggested that the greater oversight of Option A would undermine the important goal of fostering enhanced student engagement with their learning. The law school also emphasised that legal employers value the ability of students to think rather than merely to learn substantive content. Option A was seen as risking an over-emphasis on the acquisition of knowledge, rather than understanding of principles and concepts, and prioritising breadth of substantive knowledge over depth of understanding. This was seen as being inconsistent with the Professional Statement.

A number of respondents made the point that even if a prescribed list was considered appropriate at this point in time, there is a risk it would become inflexible and outdated in the future.

One university law school advocated the BSB adopting elements of both Options A and B. They thought it was necessary to have the consistency of coverage in terms of subjects and content that Option A offers, and that within each subject area, key topics to be covered should be specified. They also thought that there should be a universal standardisation of minimum study times, such as suggested in Option B, to ensure that degrees are assessed by employers on the same terms and to prevent comparisons based upon perceptions about the nature of a degree offered by an institution.

<u>Option B</u>

Option B was seen as a positive in that it allowed for a “common core” of prescribed subjects while also allowing some flexibility. Some respondents felt that there did need to be some specification of the topics that would make up a professionally relevant law degree, and it was noted that this may need to be done by the BSB if the SRA moves away from this path and the QAA has not specified topics that need to be included. They did note that the BSB should specify topics in a way that is inclusive and not focused only on those aspects of the law relevant solely to the Bar. As only a minority of law students go on to a career at the Bar, there was seen as limited incentive for universities to ensure that their courses meet the requirements laid down by the BSB, and that this should be considered when deciding how onerous the BSB’s requirements should be.

One respondent acknowledged that there would need to be further debate as to what the content prescribed under Option B should be, but they believe that a relatively broad range of knowledge remains desirable. This respondent thought the other options gave insufficient guidance in various respects. They were conscious that Option B seems to be suggesting a relatively high level of prescription, but they noted that in practice, under the existing arrangements, there has been considerable flexibility, and a wide variety of law degrees has emerged.

One respondent who argued against Option B noted that this option assumes that 'time spent' equals learning achieved. There is no guarantee that students spending a certain amount of time on a subject will therefore have gained a good knowledge of it. Giving minimum study-time was also seen as potentially resulting in universities adopting widely differing approaches to their teaching, making it difficult for the BSB to decide whether the requirements in the professional statement had been met. Many respondents commented specifically on the concept of "minimum study time". It was described as being both unworkable and unenforceable. It was thought that it would not adequately account for students who work at a different pace than their peers, and there were questions as to how it would be defined. There was concern expressed by one respondent that this could lead to "presenteeism", rather than useful learning.

Option C

Option C was preferred by two respondents. One respondent felt that Option C provides for the flexibility to encourage Law Schools to innovate and adapt according to the needs of their students, while at the same time committing law schools to focus a significant proportion of their degree upon core principles of public and private law. They believe that any attempt to prescribe content or weighting to specific subjects is artificial and has little meaning unless assessment is also prescribed. Prescribing content was also seen as encouraging law schools to focus learning and teaching on knowledge as opposed to skills development.

The other respondent thought that an option closest to Option C would be best, in that it does not specify content as such but specifies an amount of time necessary in academic study of concepts and principles as a whole. They thought that this should be enhanced by underpinning the Professional Statement with further clarification of the concepts and principles.

Other respondents were very strongly against Option C being adopted. It was seen as intrusive enough to restrict law schools' ability to innovate freely in the design and implementation of legal education, but also not prescriptive enough to ensure students gain the required depth and breadth of legal knowledge. In terms of gaining a breadth of knowledge it was seen as a risk with Option C that it would be possible for a student to take a narrow pathway through a degree and therefore not gain a wide enough knowledge to become an effective barrister.

There was concern that for a student to be able to pursue vocational and professional levels of training, they need to be equipped with basic knowledge in core areas of law. For this reason, they felt it would be a negative step for the BSB to not prescribe subjects to be studied at the academic stage. It was felt that future barristers would be inadequately prepared for practice. The same concerns were expressed as under Option B above in relation to prescribing minimum study time.

Option D

Some respondents favoured Option D, as they were in favour of there being some level of guidance, while still allowing for more flexibility than the other options. One respondent who favoured Option D thought it would be useful for the BSB to give guidance as to which subjects would assist students with moving onto the vocational stage, but without prescribing that these must be studied. It was noted that there is a risk that the BSB may need to take on faith that law schools are compliant with the guidance it sets. It was questioned how this risk would be managed by the BSB.

One university law school thought Option D was the most attractive, but suggested there would need to be safeguards so that it could not be abused by some in the sector – specifically those whose institutional framework or origins mean they are not subject to the same quality safeguards as other universities.

Even respondents that favoured Option D felt that there needed to be more clarity regarding whether a degree that fails to comply fully with the guidance could still be a qualifying law degree. They were concerned that any lack of clarity around this could be detrimental for students who rely upon their higher education institution to comply with requirements and would be unlikely to be able to assess for themselves whether or not this would be the case.

Other respondents took a more negative view of the use of guidance. It was felt that having guidance which would then turn into a *de facto* requirement would not be helpful for anyone, and that greater clarity could be achieved through a balance of prescription and flexibility. This being said, it was still felt that some guidance was better than none at all.

There was concern expressed that under Option D it would be possible for students to meet the required standard within the Professional Statement without having studied certain key subjects to a required practice standard.

Option E

A number of respondents noted that Option E is the most consistent with an outcomes-focused approach to regulation. The respondents who supported Option E, including the Committee of Heads Of University Law Schools, the Association of Law Teachers and the Socio-Legal Studies Association, were satisfied with the fact that universities are also already subject to the regulatory requirements of the QAA. Option E was also seen as being preferable for universities, as it gives them more scope for innovation within their curriculum. One law school noted that an approach similar to the SRA's proposal of a common professional assessment could be workable; however, they felt there were a range of problems with that approach, including accessibility and the quality and robustness of the assessment processes.

One respondent felt strongly that it is not for regulators, and particularly not for a single regulator, to suggest what should be taught in an academic law degree. They believe the academic community has a sufficiently coherent and mature understanding to ensure that the content is appropriate for the profession.

One respondent felt that Option E would be appropriate if the requirement for moving on to the vocational stage was simply the holding of a degree, but not appropriate if the requirement was to have knowledge and understanding of the basic concepts and principles of public and private law. Although the fact that Option E was most consistent with an outcomes focused approach to regulation was seen as a positive by some respondents, others were opposed to this direction of travel. They suggested that the aim of any changes should be to ensure the continued confidence of the public in the profession and to do this

there needs to be an improving standard of service that barristers supply to the public. This respondent felt that the best way to achieve this was through a tougher stance on regulation, and consistency of standards and requirements. Option E was also seen as insufficiently specific to ensure any form of quality control.

There was concern that under Option E, a law degree could in theory satisfy the QAA Law Benchmark statement while containing, for example, no contract law. It was suspected that a majority of the profession would be unhappy with this situation and that consumer organisations could argue that the BSB would be failing in its duty to protect and promote the interests of consumers. It was suggested that Option E would make it impossible for the BSB to ensure that students were meeting the requirements in the Professional Statement, and that students would be entering the vocational stage with a range of different knowledge, which would make the job of providers of the BPTC much more difficult.

One respondent felt that Option E presented the risk that, over time, the requirements and expectations of a law degree might align less well with the requirements of the Bar. If there is not a clearer statement of what is necessary in an academic legal qualification, it was considered possible that programmes could inadvertently diverge from what the Bar currently expects or fail to respond to developing needs of the Bar.

Application to the GDL

In reference to Question A6, all respondents save four said their answer would be the same if a student had taken a non-law degree plus a GDL. Respondents emphasised that there should be consistency of knowledge and skills for entry into the profession, and that to maintain parity and transparency, the standards should be the same whatever route a student takes into the profession. It was highlighted that the GDL is a much more intensive programme and it may be difficult to cover the full scope of the Professional Statement within it. This was seen as meaning it would be more important to specify outcomes for the GDL, as the large amount that needs to be covered could lead to a superficial approach to the subject matter and insufficient development of the important skills specified in the professional statement. Another respondent commented similarly that the pace at which legal knowledge was required on the GDL course meant that there needed to be strict adherence to the core legal studies required. They felt that any variation away from the academic requirements set out by the BSB would leave GDL students particularly ill-equipped to undertake further vocational and professional training in order to practice at the Bar.

Respondents who had preferred Option E for the qualifying law degree stated that their answer would be different for a GDL. It was noted by these respondents that GDL programmes are not bound by the QAA Law Benchmark Statement, and therefore there was a need to be more prescriptive as to content. For this reason they would prefer Option D for GDLs.

One respondent commented that the GDL had its own set of unique problems that had not been addressed in the consultation.

Question A7: Are there any other ways of doing this that we have not identified?

28 people responded to this question.

The large majority of respondents felt that the BSB had identified all the viable options. Five respondents did offer suggestions for other ways the BSB could ensure that those seeking to be barristers and completing the academic stage have sufficient legal knowledge and

understanding to progress towards full qualification as a barrister. These suggestions included:

- that the BSB not be concerned with the academic stage at all, and instead require an expanded form of the Bar Course Aptitude Test;
- that the BSB consider a degree apprenticeship as a possible means of increasing access to the profession;
- that the professional requirements be mapped to the QAA Benchmark for Law;
- that consideration could be given to the introduction of a Graduate Management Admission Test-style aptitude test which is currently used to predict how test takers will perform academically in a MBA;
- that the status quo be maintained; and
- that the current Handbook requirements be retained.

Question A8: Are there any other issues associated with the academic stage of training that we have not identified and to which, given our role as a regulator of barristers, we should be turning our minds?

31 people responded to this question.

The majority of respondents made suggestions for other issues associated with the academic stage that the BSB should consider. These suggestions included:

- the need for the BSB to address whether the requirements in the Professional Statement are regulatory or merely aspirational;
- that there is nothing wrong with the current academic stage, and if the Professional Statement conflicts with this, consideration should be given to changing the Professional Statement rather than the academic stage;
- that the BSB consider the dual role of the undergraduate law degree. It is seen as both a valuable general degree – with a substantial number of graduates not pursuing regulated legal employment – and a partial means of entry to the legal profession. Respondents noted that only a small number of students undertaking a law degree will go on the vocational stage of training for the Bar and the purpose of the academic stage is to enable students to gain an understanding of the law, not to prepare barristers for practice;
- that any changes to the academic stage may have a significantly damaging effect on the knowledge required to complete subsequent stages successfully;
- that the BSB consider the costs charged by institutions for the Graduate Diploma in Law. There was a suggestion that the GDL has become a “cash cow” for law faculties and that the BSB should consider whether it remains a suitable qualification for admission to the profession;
- that the BSB consider the need for a common approach to the academic stage of training required for those wishing to become either a solicitor or a barrister. Any other approach was seen as likely to further increase the overall cost of training for students and further fragment and so complicate routes into the legal professions, which could impact adversely upon diversity;
- that the BSB look at ways of reducing the financial risk for law students, particularly in areas of the Bar such as crime and family;
- that the BSB consider access and diversity issues in the academic stage more closely. It was suggesting that without further consideration of these issues and the barriers currently keeping people out of the profession, the current proposals will not have their desired impact in encouraging diversity within the profession;
- that the BSB to consider whether any such change(s) would render a law degree from an English or Welsh university no longer relevant in a jurisdiction where it is currently

regarded as the first step to qualification. It was suggested that there are links between the Inns and many Commonwealth countries which the BSB would not want inadvertently to extinguish;

- that the consultation refers to qualifications in relation to English and Welsh legal practice but makes reference to an 'approved UK law degree' as satisfying the academic stage. Given that law degrees from other parts of the UK and Scotland in require distinct legal knowledge in some areas, the BSB will need to decide whether a Scottish or Northern Irish law degree is adequate or whether there might be additional requirements for students completing degrees from those jurisdictions;
- that the BSB consider the cumulative effect of barriers to entry to the profession, rather than looking at each of the stages (academic, vocational and professional) in isolation; and
- that the BSB encourage university law schools to engage more with the professions, irrespective of whether their own graduates seek entry.

<u>Concerns regarding the SRA</u>

A significant number of respondents expressed a concern that any consideration of what should be required from a law degree would need to take in to account the SRA's Training for Tomorrow programme. Respondents could see that the two branches of the legal profession appear to be diverging from the Joint Statement approach and that there may no longer be a consistent approach to the academic stage by the two regulators. There was concern that law schools may not be able to provide different routes through an LLB that would satisfy both regulators and that it would be unfair for students starting out to have to decide from the beginning which route they would want to take. This will mean that law schools will need to design programmes which comply with both regulators requirements. There was concern that the more complex the BSB approach, and the more it diverges from the statement of legal knowledge in the SRA's competence statement, the more problematic it will be for law schools to design programmes which comply with both regulators' demands. The Association of Graduate Careers Advisers Legal Task Group suggested that they would want to ensure that any changes made to the academic stage mean that it is still possible for a student to decide to become either a solicitor *or* a barrister after having made their university course choice.

Respondents felt it would be useful for the BSB to set out why it has taken a different view to the SRA, and to set out how it will ensure that would-be entrants to the Bar have clarity on their qualification pathways. There was concern that the situation may arise where the BSB will exercise some regulatory oversight of the academic stage but the SRA will not, and that if this is going to be the case, then it should be made clear as soon as possible.

One respondent felt strongly that there are a number of problems with the approach the consultation document takes. They took particular issue with three things:

- <u>the view that university law schools are obliged to train their students to become English barristers.</u>
  The respondent saw this as the principal problem with the consultation. They are of the opinion that if there are particular skills which must be acquired by would-be barristers then the vocational stage should provide them, and law schools should not be required to redesign their programmes according to the wishes of the Bar. They noted that the two legal professions are so broadly-based in England and Wales that law schools cannot be expected to cover all of the different professional and workplace skills that are required in all contexts. They suggested that there is a taste in most university law schools to develop their own "personalities" through their degree programmes, which can mean breaking away from the Qualifying Law Degree and teaching other things they see as more relevant (e.g. housing law, succession law and immigration law).

They stated that law schools need to have staff and students with different interests and focuses to thrive so a one size fits all approach would not be workable. They also felt it was important to acknowledge that the Bar is of no interest to many people in law schools. Overseas students (who may constitute a large percentage of students) may have no interest in the English Bar, but they do have an interest in the education that is offered by UK university law schools. The respondent questioned why the concerns of the Bar should dominate the concerns of such international students.

- <u>the approach taken to the distinction between 'knowledge' and 'skills'.</u>
  The respondent felt that the approach taken to this distinction in the consultation is confused. They are of the opinion that the acquisition of knowledge (whether understanding rules, principles, concepts or contexts) goes hand-in-hand with the acquisition of skills in any well-taught course. They strongly disagreed with the assertion in the consultation that there is too much focus on 'knowledge' over 'concepts'. They suggested that when teaching any law course, it is necessary to begin with concepts, and the acquisition of more detailed knowledge is based around those concepts. They also felt that "knowledge" being taught, was often knowledge of a skill, or knowledge which can be crafted into a skill. They also noted that some university law schools already have very large research components built into their degrees, and all law schools include the teaching of research skills in their introductory legal reasoning and legal skills modules. They suggested that university law programmes currently have too much assessment and too little learning, discussion and thought. They disagreed that there should be any sort of push for university law schools to go further down the path of 'teaching skills' and assessing skills, as this means that students will forever be diverted from reading, thinking and reflecting.

- <u>that no thought has been given to the removal of the Qualifying Law Degree concept.</u>
  The respondent questioned why no proper thought had been given to the proposed removal of the Qualifying Law Degree concept. They suggested that university law schools are planning for a world in which there are no pre-requisites at all for their programmes, and that therefore it made no sense for the BSB to propose to dictate the contents of university law degrees. They thought that the consultation ignored the important factor of university politics. They saw the Qualifying Law Degree as a useful shield for law schools from being subsumed within the general Arts, Social Sciences or Humanities programmes in many universities. At present, the QLD structure means that law schools can continue to teach degree programmes which are directed coherently at the skills which lawyers in practice may require, as well as allowing students to choose pathways which will resemble a general social sciences degree with a legal slant if they choose to do so. They suggested that it is only the requirements of the QLD that allows law schools to structure their programmes as they want. Without them, law schools would be required to offer their courses to students across the university. They also noted problems with legal teaching, with a large amount of core teaching currently provided by part-time teachers and by PhD students, many of whom have no law degree nor qualification in this jurisdiction. They suggested this could mean that the professional goals set out in the consultation paper may not be deliverable by many of the people who teach law in universities. They believe that the BSB needs to engage with the deep changes that will come to shape university law schools in coming years, such as the proposed Teaching Excellence Framework, and that the legal professions need to intervene to help university law schools through the difficult transitions which face them currently. The professions were seen as being able to stand as a mouthpiece for the sort of teaching of law which the respondent felt was needed.

Summary of responses to the questions

Part 2: The Vocational Stage

Question V1: Do you agree that some form of vocational training is needed to bridge the gap between an academic stage and a professional stage?

31 people responded to this question.

All respondents to this question agreed that there needed to be some form of vocational stage, though many felt it should not remain in its current form. It was suggested by some, including the Chancery Bar Association, that it did not need to be a separate, consecutive, stage between the academic stage and the professional stage. It was acknowledged that the vocational stage is very important in the development of a young barrister and serves a different purpose to the current academic and professional stages. The undergraduate degree was seen as testing the acquisition of knowledge rather than the application of that knowledge to practice, and that students often struggle with this at the beginning of the vocational stage. The vocational stage was seen as giving potential barristers the time and safety to adjust their mind set and learn new skills without the pressure of pupillage where those skills are developed in the context of selection for tenancy.

It was noted that while the academic stage provides a foundation of legal knowledge, a number of the characteristics in the Professional Statement go beyond the stage that would be reached at the end of the academic stage. Many of the softer skills in the Professional Statement were seen as needing time and practice to develop, and the type of guided practice by experienced tutors that the vocational stage offers. It was suggested that without the vocational stage, the public would not be getting a competent service from potential barristers.

A number of respondents suggested that the vocational stage could be incorporated into either the academic or professional stage. One law school advocated an expanded four year law degree which integrated both the academic and vocational stages. They were of the opinion that too many law degree students currently leave the academic stage with little appreciation of the rules of procedure and the practical aspects of the law.

There was also a suggestion that the professional stage could be modified to incorporate the vocational stage. However, another respondent suggested that pupillage would be much less effective, and more onerous for training providers, if it was not preceded by the vocational stage. The vocational stage was seen as being useful for pupillage providers as it offers a way for them to judge applicants for pupillage equally against each other. The Association of Law Teachers also suggested that it is not generally recognised how far from ready for practice law graduates are when they start the BPTC, and that the BPTC is a "transformative year" for students. It was suggested that the Bar could not be expected to provide this level of foundation work through pupillage. One respondent suggested that if the quality of the vocational course was acceptable, there would be no need for the professional stage.

The UKLSA agreed that a vocational stage was necessary because a law degree does not equip its graduates with skills applicable to law in practice. However, they did not see the need for two practical stages of training for the Bar - the vocational course and pupillage. They believe that if the quality of the vocational course is acceptable, there is no need to have a requirement for a second stage of practical training. They also believe that the vocational stage is particularly efficient and fair, because whether someone passes the stage can be assessed objectively. They suggested this would be even more effective if the BPTC assessment is managed centrally, as is in the USA.

Two respondents highlighted the fact that the BPTC provides the opportunity for chambers to pick from a pool of candidates who have come from a range of backgrounds but have been able to show their skills in a way which has been clearly measured. They believe that without the vocational stage of training it is likely that many graduates from outside of the Russell Group would not be able to show their aptitude for the Bar.

It was noted that other professions, such as the medical profession, separate training into stages so there is a bridge between learning the content and being responsible for providing a service to members of the public.

One respondent thought that the vocational stage should continue in its current form, through the BPTC. They believe the BPTC equips those progressing to a career at the Bar with the necessary skills for practice. Further, they argued that the vocational stage is not just about the outcomes achieved by passing assessments but a process of learning, which equips students with a range of knowledge, skills and experience (whether their own or drawn from the experiences of those who have taught them).One respondent suggested that the vocational stage, if it were to remain in a form similar to the BPTC, could be optional, and only one route for potential barristers to enter practice.

Question V2: Do you think the features of the changing legal services market which we have identified are the ones which have the main impact on vocational training for barristers?

Question V3: Are there any other features of the legal services market now and in the future which you think will have an impact on vocational training for barristers?

25 people responded to these questions.

The majority of respondents thought the BSB had identified correctly the features of the changing legal services market which will have the main impact on vocational training. Respondents agreed that the features identified would need to be considered in designing vocational courses, and that they should be kept under review. One respondent did note that the BSB should make sure not to allow current trends to determine the long-term future of legal education. For example, the respondent noted that while there has certainly been a reduction in court work, particularly publicly funded work, it is not certain that this trend will or can continue.

Two respondents did not think that all of the features identified would have an impact on vocational training. The Family Law Bar Association saw the purpose of vocational training as providing the foundation skills for practising as a barrister, particularly focusing on advocacy; not to deal with market conditions or to provide commercial awareness, business or marketing skills. They did not agree with the suggestion that the vocational course needs to equip students with knowledge of the market or drivers of change in it. Another respondent also agreed that the changing legal services market does not fundamentally impact upon the core attributes required of those progressing to a career at the Bar. While they acknowledged they may necessitate changes to aspects of academic, vocational and practice based training, they did not believe they require a fundamentally different approach to the vocational stage.

Some respondents offered suggestions for other features that the BSB should consider which may have an impact on vocational training. These suggestions included:

- the increasing complexity of cases, both commercial and public;
- the significant cuts to public funding in both criminal and civil law contexts and the chilling effect this may be having on entry to the profession and in particular the publicly funded Bar;
- the increase in litigants in person;
- developments in the courts approach to witness handling and vulnerable witnesses;
- the increase in alternative dispute resolution;
- the broadening of the Bar from being independent, self-employed referral practitioners;
- the independence of the judiciary, as currently most senior judges come from the Bar;
- the provision of global legal services by other countries;
- the impact of developments in technology within the legal sector, including issues around client confidentiality, paperless working and data security; and
- the impact of the ability to practise through different business structures.

One university law school also suggested that the BSB keep in mind that the vocational stage cannot be expected to cover everything. If vocational training is to be redesigned, they submitted that care must be taken to ensure that the teaching of essential practical skills and knowledge is not crowded out by teaching about matters that newly qualified barristers are unlikely to be concerned with in their early years of practice. Another respondent suggested the BSB engage in dialogue with the SRA to explore how students undertaking one particular pathway of vocational training might utilise their qualification in the other.

COIC commented that the role of the regulator in the vocational stage is something that should be considered by the BSB. They believe there is a tension, reflected between the need to ensure that the highest standards of education, training and performance are maintained at every point in the cycle of training and practice, which would point to tough regulation, and the desire for professional autonomy, which would point to "light touch" guidance. They suggested that consideration of the relationship between the regulator and the regulated community is overdue. They acknowledged that the independence of the regulator is of utmost importance, but suggested that a better understanding between the two parties would make work on both sides more effective.

Two respondents did not feel it would be helpful to try to predict what will happen to the legal services market in the future. They saw the unpredictability of the market as underscoring the need for a regulatory system in which agility of course design is possible in order to respond to a changing environment.

One law school felt that one answer to the ever changing legal landscape was to include programmes with an extra-curricular dimension focusing on practical insight and hands-on knowledge and awareness. They are keen to establish a structured approach to engaging students with firms and members of the profession to help them understand the changing market and be prepared for it.

Question V4: Are the above issues in connection with BCAT and admissions to the BPTC correctly identified?

Question V5: Are there any other issues connected to the BCAT and admission to vocational training that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

31 people responded to these questions.

While respondents mostly agreed that the issues the BSB had identified with the BCAT were correct, a number made further comments in relation to the issues the BSB had identified.

One BPTC provider highlighted that the identified issues are derived from discussions with focus groups. They are not convinced that the anecdotal opinions of select numbers of people are a safe basis on which to proceed. They suggested that they would not want to comment on these issues until the full independent and specialist evaluation is published.

Many respondents commented that the BCAT as it currently exists is not fit for purpose. The Bar Council suggested that it needs to be redesigned, and there needs to be an effective centralised examination which must be passed before students can enter the next stage. They believe this new exam would need fairly to filter out applicants who have no prospect of obtaining pupillage or practising as a barrister, in a way that the BCAT currently does not. If the BCAT cannot achieve this, then some respondents suggested it should be abandoned as a waste of time and resources.

Two respondents wanted further clarification of what is meant by a "great range of levels of commitment and enthusiasm" and whether this was comparable to the academic stage. A number of respondents, including BPTC providers, suggested that providers have long-standing expertise at managing different levels of commitment and enthusiasm and this should not be a major issue for the BPTC. There was also comment that the range of levels of commitment and enthusiasm is not necessarily the result of admissions but could be a result of a number of factors before or after admission. It was also suggested that there would need to be a benchmark for comparison in relation to the standards of English amongst candidates, and that the assertion that these vary widely should be backed up by evidence. They are concerned that diversity issues should be considered within this and suggested that potential barristers might benefit from being part of a diverse cohort of students at the vocational stage. It was also noted that if provision is being made for overseas students intending to practise in their home jurisdictions, those students being an increasingly important element of BPTC provision, then there may be pressures to allow for lower levels of language competence.

While the BSB lists the expense of the BCAT as being an issue as it may be putting off good students, five respondents disagreed that it would be likely to put people off. It was noted that compared to the cost of the BPTC, the BCAT is not expensive. One respondent also commented that there appears to have been no published review of the impact or effectiveness of BCAT. They believe there is a risk that the nature of the test favours candidates from particular backgrounds and this can operate as a barrier to diversity. One respondent suggested that, while the BCAT does add expense to the process of qualifying as a barrister, if it is effective in identifying students who are suitable for the BPTC, the BCAT may lead to the reduction of costs overall. To be sure of this, however, it would be necessary to establish the efficacy of BCAT in screening candidates for the Bar. One respondent commented specifically that they did not think the BCAT was fit for purpose and that it was unable to identify those who may struggle on the BPTC. They were unaware of any student having failed the BCAT previously.

Three respondents commented specifically on the standard of previous academic achievement being potentially too wide. They suggested that as the BPTC introduces students to new content areas and exposes students to the use of skills, prior academic grades would not necessarily indicate BPTC success. It may be that students with sound academic skills (including first class degrees) struggle on the course and other students, who did less well in their academic study may have thrived on the practical, problem-solving, experiential and applied nature of BPTC courses. This respondent counselled against making too close an association between academic ability and the development of skills on a vocational course without strong evidence, and another suggested that an alternative method of selection for the BPTC may be more appropriate. One respondent also thought that the BSB should be careful about prescribing any further requirements that may limit access to the profession. They suggested that there is a very careful line to be drawn

between ensuring a consistently strong cohort of credible candidates, and the denial of opportunity to access the profession for those motivated to try.

A number of respondents raised further issues connected to the BCAT and admission to vocational training that the BSB should be seeking to address. These issues included:

- concerns that the BCAT has provided few regulatory benefits in practice and is perceived as operating as a form of taxation by the BSB on potential students at the vocational stage;
- that the BCAT is seen as having no credibility and has become a tokenistic box to be ticked on the road to becoming a barrister;
- the perceived relationship between the ability to pass the BCAT and the likelihood of gaining pupillage. It was thought that students think a positive relationship between the two exists when this is not the case, and this should be made clearer to students undertaking the BCAT;
- that the current pass rate for the BCAT is nearly 100%. If the intention of the BCAT is to keep out less able students, then it may not be fit for purpose or the best way for screening out those who will have little chance of succeeding at the Bar;
- that the BSB consider the kind of recruitment tests that organisations or chambers already have in place, to ensure that the BCAT does not conflict with these;
- that any changes to the BCAT consider issues of diversity and aim to encourage diversity of entrants to the Bar rather than have the opposite effect. The current cost is part of this in that students from certain backgrounds may not be able to afford to take or resit the test;
- that the current vocational training system allows a large group of people to undertake the BCAT and BPTC at considerable expense with very little prospect of attaining pupillage. The BSB should consider ideas on improved selection procedures that are fair to all candidates, whilst protecting applicants from incurring unnecessary expense and disappointment;
- that applicants be made more aware that by the time the BPTC begins, the vast majority of pupillages have already been awarded, and their chances of securing pupillage at a later date may be slim. This may protect such a large number of candidates from being disappointed at the end of the BPTC when they are unable to obtain a pupillage;
- that the BSB consider dividing the BPTC into two parts: (i) an online and inexpensive course in evidence, procedure and ethics, with a high pass mark; and (ii) a classroom-based course in advocacy, drafting and ethics in practice. An inexpensive first part, with high standards, would filter out the less able and be open to the widest possible pool of talent from all parts of society;
- that the requirements of the BCAT should be increased to use it as a more effective selection tool for the BPTC. This would restrict access to the profession on the basis of suitability through skills assessment, in the same way that the minimum degree classification is intended to do for intellectual ability;
- that the BSB should consider giving candidates the result of their test, rather than just notifying them they have passed. The BSB's Aptitude Test Consultation suggested there is a strong correlation between the BCAT score and the final grade, and giving students their grade may result in weaker candidates, who narrowly passed the test, re-considering their decision to take the BPTC;
- that there are many positives from having a significant number of BPTC students from overseas to come to this country to undertake a key part of their legal education and training before returning to practice in their own jurisdictions. Concerns about competency in English should not restrict the ability of these students to undertake the BPTC too much;

- that the BSB should consider whether there should there be an additional barrier for those who wish to join the Bar when no such equivalent barrier exists for those entering the solicitors' profession;
- that those who have offers of pupillage, and/or who have been awarded scholarships from an Inn of Court, not have to take the BCAT, to reduce unnecessary expense for those who have demonstrated already an ability to go on to the vocational stage of training; and
- that the current situation where a law degree is deemed "stale" after a certain number of years be reconsidered. It was thought that law graduates are competent to undertake the BPTC after a number of years away from study without the need to prove that their legal knowledge is fresh. It was suggested many potential candidates for the BPTC may have delayed taking the BPTC because of the high fees and that many of these students may be from BME communities, of mature age or have professional experience from various employment situations some of which is in the legal field.

Question V6: Are the above issues in connection with content, structure and delivery of the BPTC correctly identified?

Question V7: Are there any other issues connected to content, structure and delivery of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

35 people responded to these questions.

While respondents mostly agreed that the issues with the content, structure and delivery of the BPTC the BSB had identified were correct, a number made further comments in relation to the issues the BSB had identified.

- <u>Procedural knowledge acquired on the BPTC can be out of date</u>
  A number of respondents commented that they did not see it as being an issue with the BPTC that knowledge may become out of date. They saw this as a problem that could apply to all learning, not just the BPTC. They asserted that the role of BPTC providers is to equip the student with the ability to respond to changes in best practice by maintaining competence and an awareness of the most up to date learning. One respondent suggested that it may be advantageous for the BSB to liaise with the Bar on a regular basis to ensure the content of the BPTC keeps pace with developments in the legal market.

- <u>The level of prescription of course delivery does not allow for teaching that supports a range of learning styles.</u>
  Some respondents did agree that the current level of prescriptions from the BSB was undesirable, but did not think this necessarily impacted on the providers' ability to teach a range of students. One respondent noted that there is enough flexibility in the BPTC Course Specification and Guidance to permit different delivery techniques to match students' learning styles. One respondent noted it was difficult to comment on the validity of this concern without identification of the particular requirement which is thought to be impeding the ability of providers to teach a mixed cohort of students. They thought it unlikely that any of the delivery requirements prescribed by the BSB in the BPTC Handbook could be responsible for depriving some learners of sufficient support.

- The content mix excludes topics that may be important and requires some that may not be relevant to everyone.
  A number of respondents did not feel it was an issue that students would be required to study areas they would never use in practice. It was seen as an expectation that all barristers would enter the profession with a solid grounding in all of the broad fields of law. It was suggested that consumers cannot be adequately protected by practitioners who exist in a vacuum. It was also noted that the BSB does not qualify barristers to practice only in a specific field, so they should have a broader knowledge. In relation to some important subjects being left out, one respondent suggested that specialised knowledge of areas such as family law can be gained through the optional subjects a student can select. One respondent commented that the content of the BPTC is intended to form a logical link with the study of the 7 core subjects at the Academic stage and that maintaining the correct link between the first two stages of training is extremely important. They suggested that the content of the BPTC must always be susceptible to adaptation and change and reflect changes in the law and practice, however they believe that currently the link between the content of the academic and vocational stages is being successfully made.

- The skills training elements are rigidly framed and do not always reflect application of those skills in practice.
  Providers of the BPTC who responded disagreed with the assertion that skills training elements are rigidly framed. They felt that skills training on the BPTC is aimed at encouraging students to develop their own style, and that assessment criteria are articulated in a way that allows for flexibility of approach and style, to encourage properly transportable skills. They are also amended, when necessary, to meet changes in practice. One respondent felt that the real problem was not that the skills elements are too rigidly framed, but that many practitioners have unrealistic expectations as to the level that should be expected of pupils when they begin pupillage. It was also felt that the fact the different chambers may use different styles that a pupil would need to learn, does not put the teaching at fault, it rather just highlights that there are many styles available and students should be made aware of this. One respondent questioned how these criticisms of the BPTC had been raised, and whether these had come through the quality assurance mechanisms which are in place for the course. If so, they would expect that steps have been taken to rectify those deficiencies through the normal quality assurance channels. One respondent did think that too much BPTC education is based on replicating behaviours rather than developing skills of learning from experience. They saw those learning skills as what will enable pupil barristers to succeed. They advocated assessing reflective learning from activities and using a portfolio-based approach to assessment, which some law schools are already doing.

- The course requires students to follow two options.
  Respondents noted that the options are intended to develop students' skills in the core areas of two areas of specialist practice and are not intended to be full-year modules on the substantive law. Respondents did not think that this made them of no “real use”. They were seen as providing an opportunity to demonstrate to chambers or other pupillage providers that they have a real interest in a topic and have studied it in more depth and with a practice focus. They were also seen as being of particular value to students whose circumstances make it difficult for them to undertake mini-pupillages or other focussed work experience, and therefore assisting with diversity of entry to the Bar. Some respondents saw there being a drive towards specialisation as the Bar, and felt that if the options were removed and attempts were made to turn all BPTC graduates into generalists, this would make it more difficult for them to compete in a market which is increasingly valuing specialisation. The options can also be useful for those who do not go on to pursue a career at the Bar, with the

example given of students who have used the Fraud and Financial Crime Option as evidence to support applications to become compliance officers. It was commented that if the options were removed, this would allow for greater time to be devoted to the knowledge areas and development of enhanced skills. The LCLCBA noted that if changes are made to the vocational stage with the aim of reducing the cost and the time it takes, then retention of the options would seem to be inconsistent with this. They suggested that an introduction to more specialised areas of practice can appropriately be deferred until the pupillage stage, when it can then be combined with an introduction to real-life practice in those areas. One respondent did agree that the options are an unnecessary part of the course, and believes they add nothing to the development of the skills set out in the Professional Statement, save for those students who have identified a specialist area which they wish to and are able to enter.

- <u>The course focuses on the requirements for professional practice as a barrister, yet many who pass are never able to achieve authorisation to practise.</u>
  Many respondents saw training students in the requirements for professional practice as being the purpose of the BPTC and so did not feel that this was a problem. The fact that the vocational stage of training focuses squarely on the vocation was seen as what separates it from the academic stage. It was also felt that widening the BPTC from its current purpose would make it longer and more expensive. Many also saw the skills the BPTC teaches, such as critical thinking and evaluation, the ability to present yourself articulately both in writing and orally, and the ability to work under pressure and scrutiny, as being transferable and highly regarded by other professions. Further, it was felt by one respondent that the content, structure and delivery of the BPTC should not be diluted to benefit those who do not achieve authorised practitioner status at the expense of those who do. The Bar Council did suggest that a number of the current structural and delivery requirements prescribed by the BSB could be reconsidered with a view to increasing the use of the course for those who do not progress to a career at the Bar. Examples given included a relaxation of the current 12 month structure of the course enabling implementation of a two part BPTC. This would mean that in “Part 1” of the vocational stage, students could achieve a qualification in knowledge-based subjects that may be of some use in obtaining qualification in other branches of the legal profession. They would receive this before embarking on the “Part 2” skills-based course particularly tailored to practice at the Bar.

One law school responded that they believed that may of the issues identified above with the BPTC could be improved if academic providers were to include these areas of substantive law within their programmes. This would leave more time for vocational skills training on the BPTC.

There were a number of suggestions made as to other issues with the content, structure and delivery of the BPTC that the BSB should consider. A number of respondents commented that the BSB should be focusing on outcomes in relation to the BPTC, and therefore how prescriptive the BSB should be in its requirements. However, concern was also raised that without some level of prescription, there may be a “race to the bottom” and that high standards need to continue to be encouraged. It was commented that exit standards are important, and should be set at levels consistent with the regulatory objectives, and to ensure students have achieved a good understanding rather than surface learning. As well as being outcomes-focussed, it was felt the BSB needed to consider a model that would be innovative, able to respond quickly to change, and offer quality assurance and choice for students.

In terms of content, the Legal Services Consumer Panel suggested that the BSB should consider the wider role and duties of a barrister when developing the vocational stage. They felt it was important to note that some barristers would serve consumers who purchase legal services at times of stress. Therefore, no matter how experienced a consumer may be, their individual characteristics can make them vulnerable. A range of individual factors, including physical and mental ability, language skills, financial constraints, or other personal situations, can directly contribute to a consumer being at risk of disadvantage. They believe it is important that regulators, and consequently legal service providers, understand and respond appropriately to the needs of consumers. The Panel has developed a toolkit which trainers can adapt, develop further and use to address vulnerability, and recommended that the BSB explore how such a toolkit can be embedded in the vocational training of barristers.

The current approach to 'knowledge' subjects on the BPTC (Civil and Criminal Litigation and Evidence) was noted as an issue by a number of respondents. This approach requires students to commit to memory information that most practitioners would simply look up when needed. It was suggested that this approach needs to be revisited. One respondent suggested that the current approach to knowledge subjects leads to an argument in favour of greater integration with the skills subjects. They argue that core principles will be more memorable for students if they are also required to apply that knowledge. Two respondents noted that BPTC course delivery has been limited in incorporating skills and knowledge training in a more effective way by insistence on multiple choice questions as an assessment method. As the BPTC is assessed in this way, it has been necessary for providers to teach knowledge areas in ways that prepare students for exactly that sort of assessment. This has potentially led to a failure to develop the more useful skills of practical legal research that will enable barristers to operate in a dynamic legal context.

One respondent suggested that the existing two-year completion rule for the BPTC sets a particularly tight timeframe. While they recognised the importance of students maintaining currency in knowledge and experience, they suggested that greater flexibility could be allowed to benefit those who work while undertaking the training. This would help those students who face financial barriers in their progression towards qualification. They also encouraged dialogue between the BSB and SRA to address perceived concerns that the BPTC equips students with a narrow set of skills, which cannot be utilised in another – particularly legal – context.

Concerns were also raised as to the number of centres teaching the BPTC, which was described by one respondent as “unsustainable”. It was suggested the BSB give serious consideration to reviewing the number of centres authorised to deliver the BPTC, given the relatively small numbers that are called to the Bar each year and the even smaller number that successfully obtained pupillage. Further, one respondent suggested that the BSB requirements concerning class sizes are unnecessarily prescriptive. While they agreed that small group sizes for advocacy and conferencing makes sense, they thought limiting class sizes to no more than 12 for the teaching of knowledge areas is unnecessary.

One respondent suggested that students should be able to acquire the knowledge they need about procedure and evidence from manuals prepared for that purpose, without any need for extensive tuition or lectures. They also suggested that to the extent that tuition is required, much of it could be provided by video or audio podcasts, with only limited need for direct contact with tutors. This could help to bring down the costs of the course. They also commented that a compulsory attendance requirement is inappropriate for adult learners and should be removed.

One BPTC provider raised concern about the current system of running Inns’ advocacy classes in parallel to the BPTC. They noted that advocacy courses are often delivered by experienced practitioners who do not know what is being delivered on the BPTC and how it

is to be assessed. Students often report being told by practitioners that "what you are being taught on the course is wrong", which is often not correct and demoralising for students.

COIC gave a detailed description of how they believe the vocational stage should be restructured. They proposed that it be divided into two parts. Part 1 would consist of the knowledge-based components of the course, which would be centrally examined. Students could prepare for Part 1 in any manner and with whatever support they might choose. However, it would be a condition of entry on to Part 2 that they have passed Part 1. They proposed that students should be allowed one re-sit, within a yet to be defined period. They believe that limiting the number of opportunities to resit will ensure the integrity of the assessments and the quality of those ultimately passing the assessments. They stated that the assessments taken at Part 1 are not proposed as an entry test, nor as a replacement for BCAT. However, they did think that this approach would exclude, at an earlier stage, many of the students who, under the present system, attend the whole course at great personal expense and do not pass. They also saw this new structure as addressing the concern that the present course, because of its expense, actively deters able students who would be capable of successful practice at the Bar. The Bar Council suggested that such an approach would assist in resolving any concern that teaching of the knowledge elements of the curriculum detracts from skills-teaching. They also believe the suggested COIC model would provide the opportunity to add a variety of extra procedural subjects, at a stage where candidates could take as long as they wished to acquire their grounding in the areas of law in which they wish to practice.

Question V8: Are the above issues in connection with quality assurance and assessment of the BPTC correctly identified?

Question V9: Are there any other issues connected to quality assurance and assessment of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

27 people responded to these questions.

While respondents mostly agreed that the issues with quality assurance and assessment of the BPTC the BSB had identified were correct, more than half of respondents to this question made further comments in relation to the identified issues. Most respondents agreed that the issues in relation to central assessments were correctly identified. A number of respondents involved in providing the BPTC expressed concern that undue weight should not be placed on the assertions of "some students" as to what the problems are with the BPTC, and that there should be evidence to back up these claims. Respondents also expressed surprise that there are such general quality assurance issues and that they had not previously been dealt with, as the monitoring system put in place by the BSB is seen as being very thorough, especially when compared to that of other similar regulators. Respondents expressed concern that if the issues outlined in the consultation are backed up by evidence, this could point to some serious regulatory failings that need to be urgently addressed.

One BPTC provider commented that in relation to the statement that the current system is costly in human and financial terms for the BSB, that it is the role of the regulator to ensure standards are maintained and that this is crucial. They believe the specialist nature of the BPTC requires a degree of oversight that institutions' own mechanisms cannot replicate. The Bar Council also noted that there is no body other than the BSB that can sensibly perform the necessary quality assurance functions. Respondents suggested that the BSB bear this in mind when considering whether its regulatory role should be maintained or reduced. They emphasised however that the role of the regulator should be to focus on exit standards and matters relating to diversity, rather than problems of student satisfaction which internal

mechanisms can deal with more quickly. Another respondent commented that the major cost in the system of quality assurance is likely to be in relation to external examiners. They are of the view that there is value in having externals appointed by the BSB but that the current system urgently needs to be reformed as they believe there is considerable duplication and an unnecessarily high number of visits.

Two respondents commented that there should not be an expectation that skills assessments should exactly replicate real life practice scenarios, as simulations are not capable of doing so perfectly. They saw it as enough that they provide a useful context within which students can identify how they need to develop skills or to provide material with which to assess the students skills.

In response to the concerns that there are too few current practitioners involved in delivering training on the BPTC, respondents noted that this was likely to be impractical and had previously proved extremely difficult given the demands of practice on time and availability outside court commitments. It was suggested the solution to this issue could be more 'guest tutor' slots. It was also noted that teaching and legal practice are very different professional disciplines and that it is important for students that any current or former practitioners receive proper training in teaching. One BPTC provider noted that sessions delivered by practitioners have received poor student feedback in the past for reasons such as the timing of sessions being dependent on the availability of the practitioner and subject to change at short notice, practitioners being unaware of different learning styles and practitioners being unaware of the level at which the teaching should be pitched. It was also noted that where practitioners contribute to the course on a voluntary basis, they are not subject to the same quality assurance mechanisms as tutors who are employed by an institution.

In relation to concerns about the standards of teaching expressed by students, COIC noted that anecdotal evidence of students is not the only information available. They commented that there is evidence of teaching to a high standard, and that research commissioned by them supports this. They did however acknowledge that there were concerns that the standard of teaching is not consistently good. They noted that the Inns have special expertise when it comes to advocacy training, and the quality of this training, compared with the training delivered on the course, generates "widespread satisfaction". They suggested that the BSB should open discussions with BPTC Providers and the Advocacy Training Council to consider how advocacy trainers should be trained, re-accredited and, where necessary, re-trained to achieve a uniformly high standard of teaching. They suggested this would reassure students and allow for more parity between the standard of training on the BPTC and the standard of the Inn's training.

Four respondents commented specifically on the attendance requirement, noting that, although it is administratively burdensome, it helps students to understand the workload they must shoulder as barristers. This includes effective time management, the need for thorough preparation and the importance of taking responsibility for colleagues. It was seen as helping to shift them from being law graduates to becoming real professionals. One BPTC provider noted that there is a correlation between student attendance and success on the BPTC, and that the attendance requirements was also critical to the running of skills-based activities, such as negotiation and advocacy. There was a suggestion that an "expected attendance rate" could perhaps be set, as opposed to an attendance requirement. Two respondents suggested that an attendance requirement was perhaps inappropriate for adult learners, as students should be responsible for ensuring they are getting the most out of the course.

Three respondents, including BPTC providers, commented on the current requirement to pass all the elements of the BPTC. While they acknowledged that this plays an important role in reassuring the public a future barrister has the knowledge they will need, they believe it is hard to understand the educational justification for the current requirement. They cited

numerous instances of students achieving an overall aggregate mark of Very Competent, but who fail the assessment because they miss the pass mark of 60 by one or two marks. These students fail, while a student who has an aggregate mark of Competent passes by virtue of scraping through on both parts of the assessment. This was seen as unfair and undesirable. One respondent commented that, while a student must pass all the elements of the BPTC, which means that in some elements, if one question suffers from being poorly worded, ambiguous, difficult or obscure, and candidates score poorly, it is much harder to recover and show off competence in the remaining questions. They saw this as being unfair. They also felt there was no good reason for aggregation of marks being allowed for some assessments, such as REDOC, but not others, such as Ethics. Two respondents, including the Family Law Bar Association, did state that they would not want to see any relaxation of the requirement to pass all components in order to pass overall. They believe that to alter this requirement would involve determining that some elements are less important than others, and accepting that a student who wishes to become a barrister need not demonstrate possession of all skills at the same time. They saw such an approach as inconsistent with the Professional Statement.

QAA responded directly to paragraph 151 A, which questioned whether the BSB's BPTC system may duplicate work carried out by them. They noted that although the QAA does carry out provider-level quality assurance activity for higher education providers, and as a result all of the vocational course providers currently validated by the BSB are reviewed by them, the BPTC does not fall explicitly within their remit. Their proposed risk-based approach to higher education quality assurance will be more proportionate and targeted toward providers who pose a greater degree of risk to standards.

Two respondents suggested that an improvement to the External Examiner system could alleviate many of the concerns regarding locally set assessments. One BPTC provider mentioned the previous concept that had been introduced by the BSB of 'super externals', with oversight of a complete subject. They suggested a small team of experts in each of the knowledge/skills areas could be recruited so that a more consistent approach could be adopted to standards in each area. They also noted that the External Examiners currently report twice in each academic year to the BSB, and that providers produce responses to these reports and any issues raised. They commented that often matters are raised which relate to the BSB, but the BSB does not respond to any of these issues and External Examiners have felt in the past that their comments have not been acknowledged or responded to by the BSB. Another respondent suggested that a system of appointing external examiners to examine specific modules across all the providers would reduce concerns raised in the consultation paper with regards to inequality of student experience of such things as teaching quality across the providers. Such a system was also seen as more easily identifying where there are concerns with regards to a module delivery and whether it is fit for purpose as taught by a particular BPTC provider.

There were a number of suggestions made as to other issues connected with quality assurance and assessment of the BPTC that the BSB should consider. These included:

- a thorough review of the current system of centrally-set assessments. Respondents expressed a number of concerns regarding many aspects of the process such as frequent typographical errors, errors of substantive law, overly prescriptive marking criteria and questions which require knowledge beyond the syllabus;
- fluctuating national pass rates year on year;
- the recruitment and training of external examiners, who can be of variable quality and experience;
- that consideration be given to using 'open book' assessments and problem based questions to assess students, rather than multiple choice and short answer questions.

Using these has refocussed the vocational skills training away from core skills to a more knowledge based memory test;

- that multiple choice questions be used more frequently over short answer questions;
- that there are inadequate processes for the checking of the quality of questions before they are faced by the student cohort and inadequate opportunity to perfect a marking scheme;
- that differences in pass rates over different years are due to insufficient experience at the CEB in setting assessments, and that the difficulty of CEB assessments is not stable year on year;
- that close attention be paid to the comparative performance of different providers in terms of the number who go on to secure pupillage. These numbers should then be widely publicised;
- that the BSB consider conducting an "exit poll" of all those who leave the course and go in to pupillage as to how useful they have found what they learnt;
- that the BSB allow greater flexibility in the time-limit to complete the course;
- that consideration be given to students being able to undertake separate elements of the vocational stage of training rather than as studying them as a continuous programme, to meet the needs of some students who work;
- that, due to the importance of ethics, a stand-alone assessment in the current format is inappropriate;
- a review of marking schemes for assessments, as these are seen as too prescriptive and not flexible enough, for example if a student fails to use a key word. There is a concern that talented students are being disadvantaged by a lack of reasonable flexibility and that BPTC assessments are not truly meritorious;
- greater clarity for students on how they are being assessed. It was suggested there needed to be an open and transparent way for students to challenge or seek redress after their results with clear explanations if a challenge is not upheld;
- avoiding setting standards based on historic pass rates, which have the danger of being perceived as operating as quotas;
- that there should be blind double marking of assessments to ensure fairness;
- that there should be a way for students to appeal a grade they have received;
- that all assessments should be centralised, with providers in competition with each other to find best ways to best prepare students for the centralised assessment;
- that the BSB revisit the assumptions that (a) knowledge should be tested in distinct exams rather than by practical application, (b) in relation to skills it is necessary to test competence alone and (c) that skills should be assessed distinctly rather than alongside other related skills;
- concerns with the CEB assessments including whether they are fit for purpose and whether they should be taken in the third term rather than the second to allow students more time for revision;
- That the BSB should limit its quality assurance role to specifying content, evaluating outcomes and outputs, and validation and revalidation. There should be more trust in existing QA systems of universities and of the market more generally;
- avoiding setting standards at levels not warranted by the regulatory objectives which may prevent access to the profession;
- ensuring standards are consistent with equivalent standards set by other legal services regulators; and
- that the BSB consider whether the current system of regulation of the BPTC is risk based and proportionate, and if not, to move towards this.

Question V10: Are the above issues in connection with the cost and affordability of the BPTC correctly identified?

Question V11: Are there any other issues connected to the cost and affordability of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

29 people responded directly to these questions.

While respondents mostly agreed that the issues with the cost and affordability of the BPTC the BSB had identified were correct, more than half of respondents to this question made further comments in relation to the identified issues. Respondents were glad that the issue of cost and affordability of the BPTC was being recognised. It was agreed that the cost of legal education is a serious issue to the extent that it may deter good candidates from less privileged backgrounds from pursuing a career at the Bar. Some respondents felt that more evidence in this regard would be useful in order to understand how to best address the issue.

A number of respondents urged caution in relation to concerns that the course could be considered poor value for money should there appear to be a disconnect with everyday practice. Some respondents thought that the role of education is not to precisely mirror professional practice, and if that were the case, then a system of apprenticeships would suffice. They saw the objective of the vocational stage as to provide students with the intellectual tools with which they can meet the demands of the profession. There was a suggestion that more could be done to ensure that students and practitioners understand that the course is intended to ready students for the next stage of training. Refocusing the course on *introducing* core skills and developing experiential learning abilities could help in this respect. Two respondents did not feel there is a significant disconnect between the course and the requirements of practice, and felt that evidence had not shown this. They were of the view that the existing body of research into the BPTC and its predecessors suggest that it is fit for its purpose.

In relation to the issue of the wider recognition of the BPTC qualification, and the decision of some providers to offer a 'top up' LLM to students, there was a range of views on this. One respondent felt that this should not be a regulator's concern, while another thought the offering of the LLM "top up" is misleading and unsuitable. It was suggested that the BPTC could potentially be made a Masters qualification from the outset, rather than offer the top up and this would allow students to take advantage of the £10,000 post-graduate loans that will be available from 2016-2017. This respondent advocated the creation of a specific Bar degree. One BPTC provider commented that providers with sufficient expertise in legal education are able to deliver skills training at masters' level and this means that little is required to "top-up" to full qualification. By converting the Legal Practice Course into an LLM, students have been able to access a wider range of funding from loans and this strategy has the potential to increase accessibility to the Bar. One respondent suggested the BSB should actively explore ways in which MLaw courses and Masters' level provision in general can provide some or all of the relevant qualifications at the vocational stage. If vocational training can be matched to recognised Masters' level qualifications, then this as seen as assisting with the perception of value for money, giving the qualification international credibility and would engage with established quality control mechanisms. CILEx noted in their response that they do recognise the QLD and BPTC as an alternative route to become a Graduate member of CILEx and offer a route to qualification as a Chartered Legal Executive once the individual can demonstrate the requisite amount of work experience.

Two respondents, including the Bar Council, welcomed the potential relaxation in some of the regulatory requirements associated with the BPTC, where these might allow appropriate reductions in cost but would not adversely impact on the student experience. However, they did note that as much of the vocational training is skills focused, there is limited opportunity to deliver that training in a manner which is not resource intensive. They also expressed concern that attempts to reduce costs could lead to a two tiered system emerging that enables wealthier students to acquire a higher standard of training experience, while less financially secure students opt for "cheaper options" which might result in short-term saving, but without long-term benefit. Two respondents would want to see clear evidence that BSB requirements were driving up the cost of the BPTC, before any changes were to be made. They suspected that many of the requirements currently made by the BSB with a view to ensuring quality, would be indispensable in order to achieve appropriate regulatory oversight. COIC noted that no independent audit of the calculation of fees has ever taken place. They suggested that if providers claim that the BSB's requirements impose unnecessary overhead costs, then this should be properly documented and evaluated.

Four respondents, including BPTC providers, suggested that it was incorrect to say that the BPTC qualification is not widely recognised, and that the notion that the skills learned on the BPTC do not have 'wider recognition' ignores the presentational and analytical skills that are provided on the course. It was suggested by all these respondents that it was ultimately important to ensure students were offered clear information about the BPTC in order for them to make informed choices about their careers. The Chancery Bar Association questioned whether it needed to be an aim of the BPTC to provide "wider value". They believe a lack of recognition of wider value should not be surprising, given that the BPTC is specifically designed to train barristers, rather than for some other general purpose.

Three respondents thought that the issue of "cost" of the BPTC and "value" of the BPTC shouldn't be conflated. They acknowledged the BPTC was expensive, but did not think this meant it does not offer value for money. The BPTC is made up intensive 'people-led' training, and the respondents thought it would be difficult for this to be made cheaper without compromising on quality or increasing numbers of students in a group. The effective assessment of advocacy skills was also thought to inevitably carry a significant cost. It was also suggested that the BSB compare the cost of the BPTC with other vocational programmes, such as executive MBAs. One BPTC provider commented that although cost is repeatedly cited as an issue, the more expensive programmes appear to recruit strongly, and the course fees do not deter significant numbers of students. One BPTC provider also suggested that when looking at cost, it should be considered what the course provides. Some providers incorporate within the fees things such as the BSB registration fee (£550), text books (including practitioner texts), an iPad or printing credits and transportation from the provinces to Inns' education days, among other things.

The Chancery Bar Association stated that they believe a number of the strengths of the current system identified in the consultation paper represent the interested of BPTC providers and the regulator rather than the public, consumers or students.

There were a number of suggestions made as to other issues connected with the cost and affordability of the BPTC that the BSB should consider. These included:

- the concern that the significant cost of the BPTC is deterring applicants from pursuing a career at the publicly funded Bar. The financial contributions from the Inns were acknowledged as a significant investment but not sufficient for individuals without the support of a second income;
- that as some public sector bodies pay the fees of individuals who obtain pupillage with them before they commence the BPTC, it is important to ensure that public money is

used effectively. The amount of fees charged should be fixed at the level necessary to deliver the training as cost-effectively as possible;

- that the BSB should consider whether there is a need for two practical stages - the BPTC and the pupillage. The BPTC is objectively assessable, while pupillage is not. The BSB should consider updating and improving the BPTC to match societal and technology changes, and removing the requirement for pupillage;
- whether a stand-alone training course is the best way to deliver the vocational stage of training;
- that the excessive costs of vocational training benefit BPTC providers, but not students. BPTC providers are seen as pricing out talented applicants who are unwilling to make the gamble with no guarantee of pupillage. This is seen as contrary to social mobility and the aim of creating a diverse and accessible Bar;
- that more evidence be collected on the issue of the cost of the BPTC acting as a deterrent to students from less privileged backgrounds. This may assist in understanding whether there is such a problem and the extent of any such problem;
- that the BSB consider lobbying the government to include professional fees within the student loan scheme to help students fund the course and potentially alleviate some of the concerns around cost;
- that costs are compounded by there only being eight providers of the BPTC and therefore the requirement of relocation or extensive travel. One suggested way to mitigate this was to break the course into segments and have elements covered by other, more widely spread, providers;
- the increased cost of higher education coupled with the fall in earning potential for junior barristers especially at the publically funded Bar, means greater debt burden is created which it becomes increasingly difficult to pay off;
- that the BSB consider which parts of the Professional Statement (or any other prescribed specification or set of outcomes) need to be fulfilled at the point of qualification. One respondent thought the probability was that delivery of those outcomes at the vocational stage would be the most cost-efficient way of meeting those objectives;
- that those providing philanthropic financial awards should be encouraged to increase the proportion that assist those in financial need, as opposed to helping those who have often already benefited from multiple advantages;
- that the BSB to take account of Recommendations 52 to 56 on page 18 of the Rivlin Report which are designed to address concerns as to affordability and cost of the BPTC. In particular, making it a requirement that BPTC providers publish success rates in terms of pupillage or other employment and explain their selection procedures;
- that concerns about cost and affordability may be lessened if the BPTC was a masters' level qualification, even if such courses themselves might be more expensive;
- that there is a pricing disparity between the "traditional" universities and the "for-profit" providers, which is seen by some as profiteering on the part of the for-profit providers; and that a two year pupillage be considered in place of the BPTC, with more involvement from the Inns of Court in providing advocacy training.

Approach 1: We will continuously improve the current arrangements

The consultation proposed that this approach would involve continuously improving the current arrangements. It suggested the existing course has been shown to provide a reasonably effective training for those that progress into the profession. As currently prescribed, it has only been in place for three years and as such has been subject to continuous review and adjustment. This approach suggested that it would be possible to continue the current approach to specifying vocational training requirements. This approach proposed that the BSB would be "holding the ring" on what the content and structure and delivery methods of the vocational training looked like, negotiating these with the profession

and the (existing and future) providers, and seeking to address some of the practical problems with the current BPTC without fundamentally changing its nature. We would continue to specify the requirements in detail and assure they were met.

Question V12. Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

Question V13: Are there any other advantages or disadvantages of this approach that you can discern?

Question V14: Are there any equality impacts of this approach that you are aware of?

27 people responded to these questions.

While a number of respondents agreed with the analysis of the advantages and disadvantages of Approach 1 that had been identified, more than half of respondents to this question made further comments in relation to the identified issues.
A number of respondents stated that they were in favour of Approach 1 and saw the BPTC as it currently is as an educationally sound programme which is fit for purpose and provides good preparation for pupillage. One BPTC provider commented that because the current course is well established, providers have had years to refine their materials and methods of teaching. They were of the view that it would be a tragedy to lose all that work and development simply to cut costs. In contrast to this, the Young Legal Aid Lawyers thought that the phrase “reasonably effective training” which the BSB used to describe the existing course, does not encompass overall student satisfaction. They believe that those who have taken the course and progressed into the profession still felt negatively about the training they received, that the training level and education provided was not at a level that matched the amount paid and that the course was not necessary, as most necessary skills were acquired during pupillage.

One BPTC provider thought that Approach 1 had real potential benefits, however they expressed doubt that the BSB would have the ability to do what it was promising in this approach. They suggested the BSB would need to set up a programme with specific milestones to give confidence that they could deliver on the goals of this approach. It was felt the BSB would need to show how improvement was sought, in what areas and suggested that there would need to be a wider range of changes than those envisaged under Approach 1 for them to be fully satisfied with this approach.

A couple of respondents agreed that the current BPTC may not represent best targeted use of limited funds, due to its highly regulated nature. It was suggested that even if Approach 1 was adopted, this would not have to mean candidates would always start training at the same point and follow the same training pathway as suggested in paragraph 175. It was thought that improvements could be made to allow more flexibility under Approach 1, although not to the level of Approaches 2 or 3.

It was suggested by two respondents that the cost of the programme under Approach 1 could be addressed by removing some or all of the cost inflating requirements set out in the existing BPTC Course Specification and Guidelines, without necessarily going as far as Approach 2. Examples given included the requirements on staff:student ratios, maximum class sizes and prescribed minimum contact hours. One BPTC provider disagreed with the suggestion of the BSB that removal of the options would have a significant impact on course fees. They commented that many of the costs of the course are “fixed and front loaded” so the savings in removing six weeks of teaching were unlikely to be substantial.

One respondent expressed disagreement with paragraph 173, which they saw as implying that producing consistency of training experience, and ensuring each provider has an equal reputation and market value, is desirable. They suggested that students know this is not true that as providers are operating in a market economy, it should not necessarily be a goal of Approach 1.

Two respondents expressed strongly that they did not believe Approach 1 went far enough in addressing the problems with the BPTC and was only "tinkering around the edges" of the current position**.** They felt that the BPTC has been the subject of a number of reviews in the past but is still experiencing problems, and a more radical approach is required. The Young Legal Aid Lawyers agreed with the disadvantages of Approach 1 that had been identified and felt that this approach would only go a short distance in addressing the issues, lacked flexibility and would be unlikely to improve the affordability of the BPTC. They further did not believe that this approach would create a "community of practicing". They thought this would be difficult to achieve in an environment where providers want to protect their commercial interests over wanting to provide a high or central standard of education. They expressed a need to eliminate the competitive nature of providers because of their commercial interests and replace this with an interest to provide a standardised and equal level of education.

One respondent did not think Approach 1 was desirable and disagreed with the premise that the current arrangements are fit for purpose. They believe a number of the *"strengths"* of Approach 1 that were identified are strengths from the point of view of BPTC providers and the regulator but will not benefit students, consumers or the public.

One respondent suggested Approach 1 might work best if the BSB were to relax some elements of existing oversight while retaining strong oversight of assessment and outputs. They believe that if oversight is focussed on the outputs of courses (i.e. on assessment) then concerns about undeserved reputation of providers and 'gold standards' should be allayed. One respondent suggested that if there was a centralised assessment system for the BPTC, there would be no need to prescribe the content, structure, etc of the BPTC. The providers will then be in competition with each other to find best ways to best prepare students for the centralised assessment.

The Bar Council saw the main disadvantage of Approach 1 as being that it would inhibit the development of a two stage BPTC, such as that proposed by COIC, separated into knowledge acquirement and skills training. They saw this as being the model which would provide the best prospects for reducing the costs and risks to students of embarking upon the BPTC and improving the standard of students participating in skills training.

<u>Other advantages and disadvantages</u>

A number of respondents suggested other potential advantages and disadvantages of Approach 1 that the BSB should consider. These included:

- that the existing BPTC is a tried and tested route to qualification and has been endorsed in its earlier forms by every review undertaken by the profession and the qualification is recognised both by chambers and internationally;
- that there are a variety of ways in which the vocational stage could be delivered at lower cost and with greater flexibility. This could be achieved under Approach 1 if the BSB operated in a more consensual way with providers, so as to develop a community of practice sharing the best ideas;
- that this approach would enable good practice to develop, and would not prohibit the BSB from consulting and innovating;

- that this approach does not allow students the flexibility of training routes offered by other limbs of the legal profession. Able students may be lost to the Bar as they opt for other routes which are perceived as "safer";
- that changing the system would result in there being a pool of prospective pupils with different qualifications and a risk that one group or the other is adversely prejudiced in the application process as a result;
- if options are provided on the course (in areas of substantive law and practice, different to the core modules of the BPTC), these courses need to also be standardised across all providers; and
- that if a margin of appreciation is given to providers in terms of how long they take to implement change or how they go about implementing changes to the day-to-day teaching and running of the course, this may mean that the changes will be implemented very slowly. If changes were to be made to the current course, providers would need to be provided with a time frame in which to make the changes.

Equality Impacts

The majority of respondents to this question thought that the cost and entry standard of the BPTC under Approach 1 would be likely to have equality impacts. One respondent noted that the certainty of Approach 1, which would allow candidates to plan their route to qualification as the stages are clearly mapped, could help all students, but particularly those facing financial pressures. Another respondent commented that the structure of the current course makes completing it on a fulltime basis while earning very difficult. The nature of the full time course was also seen as being particularly difficult for those with caring commitments. One respondent suggested that Approach 1 would give the BSB greatest control over equality impacts but did acknowledge that if a complicated programme structure was retained, then this could have an impact on diversity by reason of expense.

Most respondents felt that an equality impact assessment would be needed and that more evidence would be required to assess the equality impacts of this approach.

Approach 2: We will allow any training that demonstrates the barrister has achieved the required outcomes

This approach, as outlined in the consultation, would represent the greatest extent of change in the regulation of vocational training. It envisages that the BSB would approve programmes of training by which the prospective provider can demonstrate (with evidence) achievement of the required outcomes as set out by us, and a limited number of other requirements that we specify. However, the BSB would not specify many requirements at all.

Question V15. Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

Question V16: Are there any other advantages or disadvantages of this approach that you can discern?

Question V17: Are there any equality impacts of this approach that you are aware of?

26 people responded to these questions.

The majority of respondents agreed with the analysis of the advantages of Approach 2. Some respondents made further comments in relation to the advantages, and particularly the disadvantages. Two respondents thought it was difficult to speculate as to advantages and disadvantages without more detailed information on how the scheme would operate.

One respondent expressed concern that this approach appears not to prescribe any route and stated that they were opposed to this lack of guidance. They believe applicants need prescribed pathways to follow.

One respondent commented that Approach 2 is most in keeping with the LSB's objectives and the requirement that regulators adopt an outcomes-focussed approach. Two respondents also saw Approach 2 as providing the greatest scope for innovation in delivery of vocational training, and that the flexibility of Approach 2 would provide greater agility in meeting the changing demands of the market in legal services.

A number of respondents disagreed with the suggestion that some courses becoming perceived as a "gold standard" would be a disadvantage of Approach 2. Some saw it as an advantage of the approach that providers would need to compete on quality, which would drive up the standards of all providers. If certain "gold standard" providers did emerge, this was seen as forcing those providing lower quality courses to improve to stay in the market. One respondent stated that the current BPTC could be seen as the "gold standard" as it represents years of development and refinement of teaching materials and expertise in the classroom. They considered it likely that students who could afford to pay for it would choose a course which offers a similar level of support.

Many respondents rejected the suggestion that complexity in the market might confuse candidates, careers advisors and employers/chambers. Bar students were seen as sophisticated consumers of legal education and it was thought unlikely that they would find any complexity in the market confusing. It was also thought that the provision of clear information detailing the differences between providers, would minimise the risk of any problems.

Many respondents commented on the suggestion that without standardisation of training too many candidates would fail to achieve the required standard. They disagreed with the statement and felt that, provided that outcomes are correctly identified and tested, this would not lead to a drop in standards. It was suggested that the BSB should retain sufficient input to be able to ensure consistent outcomes and standards, as providers seek to make a profit from their courses and without proper oversight and monitoring the risk that standards will slip is too great. Three respondents noted that Approach 2 does not imply that entry requirements would be abandoned and that training standards were unlikely to drop as providers will be strongly motivated to provide excellent training as they rely on the quality of their reputation. Two respondents did agree with the BSB that this was a disadvantage, and thought standardisation was necessary to ensure that the course is fair and that there is a level playing field, in terms of training, on completion of the course. One respondent commented that Approach 2 represented a seismic shift that could have negative and unintended consequences, without a concerted effort at standardisation to ensure that candidates are not achieving at varying standards.

One respondent saw it as a disadvantage of this approach that it would rely on providers to design courses. They felt there was a risk that those providers who try to improve the standards of teaching and change the way things are done may not find it financially viable. They also did not believe that that students would continue to choose the old BPTC re-packaged, for fear that others would not be accepted by Chambers. This respondent felt that the current BPTC had a "terrible reputation" among Chambers and that they would potentially encourage students to go to the newer providers.

Four respondents disagreed with the implication that a course that had characteristics of the old BPTC would be a bad thing. They noted that the preponderance of research into the BPTC and its predecessor had established that it was fit for purpose.

One respondent agreed with the BSB's statement that delivering assessments more frequently and in a wider range of areas may not be cost effective for the scale of possible demand. They thought this would be a disadvantage if a more appropriate approach to assessment was not developed. Two respondents felt that whether or not this would be a disadvantage would depend on the approach taken to assessment. Three respondents noted that the potential flexibility of Approach 2 might be limited by the need for cost effectiveness unless the BSB ceased acting as an assessment board. They believe flexibility could be achieved by providers undertaking their own assessments monitored by the BSB through an enhanced system of external examiners.

Two respondents expressed concern that Approach 2 was too broad and would need to be heavily regulated. They felt that this would end up costing more money and potentially driving up the cost of vocational stage training. One respondent suggested that Approach 2 would require the most specificity in the Professional Statement, and that consideration should be given to whether all parts of the Professional Statement should be provided by the same provider or whether some elements of the outcomes could be achieved within undergraduate or Masters' level programmes.

The Young Legal Aid Lawyers disagreed with the idea that the course should be opened up to all providers. They questioned how a provider would be able to "demonstrate… that required outcomes could and would be met" if they had never provided the course, and questioned how often they would have to demonstrate this. They did acknowledge however, that a potential advantage of Approach 2 could be that creating more providers would force more competition between them and this had the potential to lower the price of the courses. However, the Chancery Bar Association expressed concerns that allowing a system along the lines of Approach 2 would likely result in a race to the bottom, and so they would counsel against such an approach.

While one respondent strongly agreed with the idea that an advantage of Approach 2 could be the ability to take advantage of new technology, they were concerned this could raise social mobility issues. They noted that for this to work, all students would need access to the internet, access to a laptop and working knowledge of how to use a laptop and its software. If not everyone on the course started with the same levels of IT literacy, this could mean some students may be disadvantaged. One respondent also expressed concern at the assumption of the value if online delivery in the BPTC when they thought the course should largely be based on interactions and face to face engagement.

<u>Other advantages and disadvantages</u>

Nine respondents suggested that another potential advantage of Approach 2 was that it is the most consistent with the outcomes-based approach required by the Legal Services Board. One respondent also though Approach 2 could encourage competitiveness and innovation within providers, allow courses to be structured in a way which will maximise access opportunities and increase diversity, and allow training to be more responsive to changes in the profession and the law. One respondent thought greater diversity of approach might be achieved more speedily under Approach 2 , especially if the BSB were nimble in its processes of considering and approving providers' proposals. However, concern was expressed that providers may be unwilling to innovate and offer a different model for fear of it not being accepted by students and may also be reluctant to lower costs as students can sometimes align cost with quality.

One BPTC provider suggested that the lack of predictability of outcome is one of their major concerns with this approach. They believe it will take time for clear options to emerge and students embarking on the academic stage and the associated costs that entails will have no certainty as to what is going to be available at the conclusion of their studies. They also

believe that any model based on final central assessments for all subjects and skills, would suffer the same problems as the current CEB exams.

One respondent raised issues with the idea of outcome based education. They expressed concern that when determining if an outcome has been achieved assessments may become too mechanical, looking only to see if the student has acquired the knowledge. They believe this focus on determining if the outcome has been achieved could lead to a loss of understanding and learning for students, who may never be shown how to use the knowledge they have gained. They also suggested that education outcomes can lead to a constrained nature of teaching and assessment. Teaching and learning may become so prescribed that spontaneity and initiative is stifled. They also thought a total concentration on the achievement of clearly-defined objectives may lead to the production of students who are well-trained in specific areas, but lack the broad spectrum of abilities, skills and desirable traits that are normally associated with a balanced, 'rounded' education.

Equality Impacts

All respondents to Q17 thought that an equality impact assessment would be needed and that more evidence would be required to assess the equality impacts of this approach. One respondent suggested that the BSB would need to retain responsibility for ensuring equality of access on some level. They also thought this approach would likely create the least expensive route to qualification and therefore open up access. The Family Law Bar Association suggested that the flexibility in this approach might improve diversity if it produces courses which enable students to work from home and engage in tutorials remotely. Students who have caring roles or are in employment would find this helpful. At the same time it was seen as being the most confusing of the approaches and could create disadvantages for those who are not able to access useful careers advice. They believed such an approach would require active effort to ensure clear information is provided about all potential providers.

Approach 3: We will specify and control only a final stage of training, following a barrister's achievement of key outcomes determined by assessment.

The consultation proposes that this approach, which is something of a hybrid, would not rely upon centralised assessment alone to assure standards at the point of qualification as a barrister, but it would also not be necessary for the entire training process to be specified to the current extent. It might be possible to identify a core of knowledge-based requirements for which assessment (examination) by the BSB might be sufficient means to assure the standards required. Training routes to the assessment would be free for the market to provide as it saw fit. We would then specify only a programme of advanced skills training, focussed very specifically on the identified needs of an intending barrister.

Question V18. Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

Question V19: Are there any other advantages or disadvantages of this approach that you can discern?

Question V20: Are there any equality impacts of this approach that you are aware of?

28 people responded to these questions.

Some respondents made further comments in relation to the advantages and disadvantages of Approach 3 identified by the BSB.

One respondent commented that, while the cost of vocational training was clearly an issue, the focus should be less on the cost of the training and more on whether it represents value for money. Five respondents, including BPTC providers, also commented that the advantage set out by the BSB of the market developing to cost effective training opportunities might not be borne out in practice, and that any drop in costs may be temporary.

One BPTC provider questioned the statement by the BSB that the gateway assessment could become a qualification in its own right. They felt it was unclear why the achievement of this assessment would constitute a valuable qualification in its own right if the whole of the current BPTC does not. They also commented that initial centrally set assessments could remain extremely costly to administer and the time needed to fully assess the results could limit flexibility. One respondent thought that the gateway assessment would prioritise the knowledge element of legal education in an unhelpful way, divorcing it from the skills element of training. As a number of respondents noted in other sections, the best way of ensuring that potential barristers engage with relevant legal knowledge is to learn it and use it in an applied setting. The concern was that students would be encouraged to engage in surface learning.

One respondent commented that the potential disadvantage of providers preventing lower cost opportunities for training from emerging was overstated. They did not think providers would be able to continue to justify charging high sums for a slimmed-down course. They also thought the Inns of Court may intervene to provide their own course at a reduced price, thereby preserving their own scholarship funds. Another respondent suggested there was no reason to suspect that the any provider would look to artificially keep BPTC costs inflated, and that a competitive market would produce the opposite effect and lower costs, as long as tighter regulations on providers are relaxed.

One respondent thought Approach 3 would only suit a minority of students and that students may over-estimate their ability to home study and teach themselves the necessary material. It was noted that students are struggling to pass the BPTC even with weekly intensive tutorials, extensive online resources and easy access to tutors on a daily basis. It was suggested that very few students would be able to develop the knowledge required in the assessments by home study alone. This would result in students needing to resit, and potentially having to then register at a provider and undertake another year of study in order to pass. There was also a concern that unregulated crammer courses could develop, potentially delivered worldwide, with no safeguards in place for students. There was further concern that this approach would encourage surface learning, to the detriment of the public interest and the interests of consumers.

Two respondents agreed that the main disadvantage of this approach is that a “gold standard” route may develop. The Young Legal Aid Lawyers were concerned that this may produce social mobility issues, as one particular route to the advanced training may be more expensive, if it can prove to have a higher rate of people getting through to the advanced training. This would mean those who cannot afford it will be excluded, lessening their chance to progress to the advanced stage. They suggested that a way to get around this issue would be to introduce a price cap on those providing initial entry assessments and training for this assessment. However, two other respondents did not see the emergence of a gold standard as a disadvantage and while they acknowledged there may be providers of differing quality, they did not think this was of any greater concern than in the academic stage. The Chancery Bar Association questioned how a “gold standard” could emerge if all candidates sat the same, centrally standardised, knowledge-based exam. They believe that if the exam is sufficiently challenging to be worthwhile then the fact of having passed the exam would be a sufficient “gold standard” to indicate the candidate’s ability.
The Bar Council strongly agreed with the analysis of the advantages of Approach 3. They thought the disadvantages of this approach had been overstated, and the likelihood of the

Inns becoming more involved in training under this approach would be an advantage. They hoped that the Inns would ensure (for example, by providing training themselves, or by using their financial muscle in the provision of scholarship money) that providers would be unable to control the training environment to their financial advantage, and that the Inns' provision of scholarships based upon need has the capacity to influence the diversity of candidates. Another respondent also disagreed with a number of the identified disadvantages. In terms of the BSB having less opportunity to influence diversity, they stated that it is difficult to see how the diversity position could be worse than it is under the current system. They did not believe that currently the BSB is able to influence the diversity of candidates coming forward to any meaningful extent. They also did not believe that any concern about cost effectiveness could be a rational objection to Approach 3 considering what they saw as the total lack of cost effectiveness in current arrangements.

The COIC, in their response to the consultation, suggested an approach very similar to Approach 3, which they saw as a radical restructuring of the BPTC, to help provide a remedy to the problem of admission standards. Their proposal has already been the subject of a detailed COIC study and was referenced by a number of other respondents in their response to the consultation. The main feature of COIC's proposed re-structure is that the course should be divided into two Parts – 1 and 2. Part 1 would consist of the knowledge-based components of the course, which would be centrally examined. Students could prepare for Part 1 in any manner and with whatever support they might choose; but it would be a condition of entry on to Part 2 that they should have passed Part 1 first. It is proposed that students should be allowed only one re-sit, within a yet to be defined period, of a paper which they have failed first time round. The reason for this proposal is that limiting the number of opportunities to resit will ensure the integrity of the assessments and the quality of those ultimately passing the assessments. They stated that the CEB assessments taken at Part 1 were not proposed as an entry test, nor as a replacement for BCAT. They did however believe that a Part 1 knowledge based approach would however exclude, at an earlier stage, many of the students who, under the present system, attend the whole course at great personal expense and end up failing it.

<u>Other advantages and disadvantages</u>

A number of respondents suggested other potential advantages and disadvantages of Approach 3 that the BSB should consider. These included:

- that it may not bring down costs;
- that, if as the consultation suggests, 'a number [of candidates] will be prepared to invest significantly in formal training', this could have extreme diversity implications;
- that if students are expected to study at home, then they will be expected to know less than they currently do;
- that a two-tier pathway could emerge, where those who are more capable, but unable to afford the fees for 'formal training' in Stage 1, are left behind those less capable but willing to pay;
- the separation of the knowledge subjects as a prior requirement before students may study the advanced practice skills has a number of disadvantages both in educational terms and in preparing students for practice, particularly in achieving the Advocacy requirements of the Professional Statement;
- that the skills course could operate at a higher level as students could be assumed to have a detailed knowledge of procedural and evidential law. This knowledge could also be refreshed during the skills course;
- that BPTC providers currently provide useful advice to students still looking for pupillage. Changes to the course under Approach 3 may mean that the timing of the course may not correlate to periods when particular pupillage advice is required;

- the narrowly focussed structure of Approach 3 favours students who have an ability to digest and recall large volumes of information As a consequence, some very good students who have the necessary skills and character to become a barrister will be lost to the Bar. This approach may also result in students passing who do not understand, which will be detrimental to the public interest;
- that Approach 3 could lead to widespread selection of the LPC as a safer route to qualification, with the Bar potentially permanently losing talent in the process;
- that a course that does not broadly follow the academic year would likely deprive students of access to the student housing markets, and inhibit Commonwealth students from being able to come to the UK;
- that if costs are reduced, the number of students undertaking the course may increase, which could be an issue if there is no increase in the number of pupillages available;
- that this approach is much more complex than the others, and students may have more difficulty understanding the progression pathways that are available to them;
- that if new providers of a different kind enter the market, costs will likely reduce. Currently the market consists of higher education institutions who seek to make as much money as they possibly can out of the BPTC, as the fees they can charge in this area are not regulated, since the BPTC is not generally eligible for funding via student loans;
- that if the Inns became involved in providing vocational training, the substantial funding they currently provide to BPTC students could be reallocated;
- that the full-time element of vocational training could be made much shorter. This current BPTC structure of a full year of full time study, makes it almost impossible for students to seek to offset the cost of the course by working part-time during the year. If applicants were able to take a full-time job for part of the year and spend only part of the year taking the component elements of the course, that would also be a great advance on the current position and might enable some applicants to pay off the cost of the course during the course year;
- that the threshold knowledge-based exam may not be made sufficiently challenging to be worthwhile, in the same way as the BCAT. It was suggested that it needs to be tough and a real measure of ability, to provide a genuine guide to those recruiting for pupillage and to prevent people at the very beginning of their career spending a lot of money on a qualification that proves to be useless if pupillage is not obtained;
- that requiring students to focus initially just on passing a knowledge test will encourage a superficial approach, and, without the learning put into context, students will struggle to understand the rules that they are learning; and
- that if COIC or the Inns were to provide a Part 2 vocational course, there would need to be a review of the existing rules about Inns membership. There would be an issue over whether it was right that all BPTC students have to be a member of an Inn, if at the same time the Inns were one of a number of competing vocational stage providers.

<u>Equality Impacts</u>

Eight respondents commented that Approach 3 risks damaging diversity at the Bar and continuing links with Commonwealth jurisdictions. It was noted by these respondents that under current visa provisions it will be difficult for Commonwealth students to obtain a visa for anything other than a vocational course of a full year. Approach 3 is the only alternative that is inconsistent with a full academic year's study.

Three respondents, including the Association of Law Teachers and a BPTC provider, commented that the students who gain most from the current form of the BPTC with its integrated approach to knowledge and skills learning, are those who have not had the opportunity to develop advocacy skills before they arrive on the course. This includes those who have had to engage in part-time employment during their vacations and/or their studies

in order to be able to study and support themselves, leaving little time for extra-curricular activities such as mooting, debating, and pro bono activities. Students from more privileged or wealthier backgrounds will also be able to enhance home learning with paid tuition and thereby gain an advantage.

One respondent suggested that the flexibility in this approach might improve diversity if it produces courses which enable students to work from home and engage in tutorials remotely. Students who have caring roles or are in employment would find this helpful.

A number of respondents suggested that a full equality impact assessment would need to be undertaken.

Question V21: From the three approaches outlined above, do you have a preference and if so, why?

31 people responded to this question.

Of the three approaches, six respondents expressed a preference for Approach 1, five for Approach 2 and nine for Approach 3. Seven other respondents to the question expressed that Approach 3 should not be adopted as its disadvantages outweighed its advantages, but that due to uncertainty as to how Approaches 1 and 2 might be implemented, they found it difficult to make a clear choice between the two. One BPTC provider commented that Approach 2 posed the greatest regulatory risk, but without more detail on what was envisioned under Approaches 1 and 3, they did not feel able to make a choice between them.

One respondent stated they were unable to express a preference as they believe none of the approaches address the key issues with the current system, namely cost and inequality.

Those who preferred Approach 1 did so for the following reasons:

- it is tried and tested and there is no evidence that students who progress to pupillage are not adequately equipped for it;
- it offers the clearest progression route for the student whilst fostering a climate of dissemination of good practice;
- it allows the BSB to encourage cost saving measures be taken by the providers, whilst preserving the quality of the student experience;
- it matches the requirements for vocational training for the Bar,;
- it produces high standards; and
- it produces consistent quality entry standards and outcomes.

Those who preferred Approach 1 did not think that it would prevent providers from adapting training to meet market needs or taking advantage of new technology. They also felt that Approach 2 and 3 would not ensure the consistency or rigour of vocational training required for those who wish to practise at the Bar, and would be a leap into the unknown.

Two respondents, one being a BPTC provider, suggested an approach closest to Approach 1 but with some elements of Approach 2. These respondents believe that some deregulation would enable providers to cut costs and offer more flexibility whilst still maintaining standards.

Those who preferred Approach 2 did so as they supported an outcomes-focussed, proportionate and efficient system of regulation for legal education. It was also seen as allowing for provision of vocational training by a broader range of providers, allowing more

innovative approaches to vocational teaching to develop and the best approach to deliver agility in the face of a changing legal market. One BPTC provider preferred Approach 2 as they saw it as being the "least worst" option, with Approach 1 seen as a recipe for stasis, and Approach 3 causing them significant and far-reaching concerns. They suggested that Approach 2, if not harnessed to centralised assessment, has the potential to focus on assessment for learning, rather than teaching for assessments, and to allow for real advances in the teaching of the vocational stage.

Those who preferred Approach 3 did so for the following reasons:

- Approach 3 is a positive approach that would reduce costs and improve the quality of training, while Approach 1 is too similar to the current system and Approach 2 would leave the BSB with too little control over the standard of teaching provided;
- Approach 3 would allow the Inns to become more involved in the vocational stage;
- Approach 3 would focus the training and development of advocacy skills on fewer, more able candidates in circumstances where achieving high levels of advocacy skills is more likely;
- Approach 3 incorporates inbuilt and testable standards; and
- it addresses some of the concerns around affordability. For instance, knowledge may be acquired via home study and other cost effective means of training offered.

As previously outlined, COIC had suggested a system similar to Approach 3 earlier in the consultation when discussing the structure of the vocational stage. They advocated splitting the vocational stage into two parts, with entry to the second part of the course being dependant on having passed the first. Part 1 would be assessed by a centrally set exam that tested legal knowledge, but students would be open to prepare for this exam in whatever way they saw fit. The second part of the course would then focus on the skills needed to practice as a barrister. They saw the advantages of this approach as being:

- students would have freedom to prepare for Part 1 in whatever way they chose, anywhere in the world, with or without support from course providers and without having to join an Inn;
- the freedom to choose to undertake the Part 1 examination when they felt ready; and
- the freedom to decide, for any reason whatsoever, to discontinue studies in Part 1.

While COIC did not think this approach would solve all the problems inherent in the BPTC, they did think it would address the question of cost. They believe this approach has the advantage of making Part 1 significantly cheaper, both in terms of fees and living costs, by allowing students to prepare for it otherwise than by attending an expensive course. They also suggested it would address the question of standards in part, by filtering out at the Part 1 stage students whose written and analytical skills are insufficient, and who are therefore likely to fail at the end or are extremely unlikely to obtain pupillage. They did acknowledge concerns that within this regime the regulator will lose control of the system in terms of quality assurance, admission, accessibility and diversity. The respondent believed that these problems can be addressed by the BSB by setting appropriate standards for the passing of Part 1. The respondent did not agree with arguments that the vocational stage needs to be "holistic" so that there is no hard and fast distinction between the knowledge and skills based elements of the course. They suggested instead that the split structure would mean that students would cover subjects more than once, in both Parts of the course, and so have more opportunities to understand and embed their learning by the completion of the vocational stage. Some other respondents, including the Bar Council, the Chancery Bar Association and the Family Law Bar Association, expressed agreement with this approach and in particular with the idea of a preliminary knowledge-based exam.

One respondent did not offer an opinion on which approach would be the most appropriate, but wanted to state that focussing on the outcomes of the training would be likely to enable alternative routes to qualification to emerge which could produce high quality barristers.

Question V22: Have you identified any other approach we might reasonably adopt in respect of vocational training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

26 people responded to this question.

Of the 26 respondents to this question, eight answered that they had not identified any other approach the BSB should adopt, seven answered that a combination of Approaches 1 and 2 would be preferable, and 11 offered further suggestions for potential approaches.

Those that proposed combining Approach 1 and 2 thought that Approach 2 as outlined provided for a "complete free-for-all" in course design which would make it difficult for potential entrants to understand. They felt that if instead, the BSB provided clear guidance as to required content and approach (rather than, as now, tightly prescribing class size, learning method, etc.), there should be a sufficient common approach at a high level to avoid confusion for entrants.

One respondent suggested that the best approach would be to reduce the level of prescription on the more cost intensive elements of the BPTC Course Specification. They saw this as being an adjusted version of Approach 1. Another respondent also suggested a modified version of Approach 1 which included more rigorous entry requirements, greater flexibility for providers to develop their provision around the demands of their students, a review of central assessments and QA procedures and a relaxation of rules regarding the completion of the BPTC to give greater flexibility to those students who may wish to undertake vocational training alongside paid employment.

One respondent discussed the suggestion that had been advocated by some that there should be a 2 year pupillage instead of the current BPTC plus pupillage. They disagreed with this suggestion and thought it had a number of disadvantages, including equality issues with access and recruitment to these pupillages, the difficulties of regulating the standards of so many pupil, the cost and practicalities of chambers running the enhanced pupillage and training and the time required to set up such training for the numbers of students requiring it.

One BPTC provider suggested an approach where the regulator prescribes, in some detail, the syllabus, learning outcomes and length of the course but entrusts the method of delivery and assessment to the providers. They saw this as allowing for providers to use their own expertise and resources in a way which is most efficient for their institutional structure. This approach would mean there was sufficient similarity to ensure a minimum level of quality and for students to be able to compare providers.

CILEx suggested an alternative approach where it would be possible for chambers and employers to recruit pupils on the basis of a more rigorous and expensive BCAT, after they have undertaken a degree (or appropriate academic alternative) which tests the skills required to be a good barrister. The outcome of this expanded BCAT could then be used to enable chambers or employers to select pupils at this point in the process. Although this increases the initial cost, even a significantly extended BCAT would not require anything like the outlay that is required on the current BPTC, thereby allowing individuals to limit investment in an unsuccessful attempt to become a barrister at an earlier stage. Only those who have secured a pupillage would then be able to register to undertake the BPTC. This would mean the £4m currently available in scholarships from the Inns, could be better

targeted at those who would definitely obtain a pupillage and are most likely to qualify. It would also enable chambers/employers working in publicly funded areas such as criminal and family law to offer pupillages, as there would be financial support to assist them in offering the training. The Chancery Bar Association also favoured an approach similar to this with an enhanced BCAT type preliminary exam. They also proposed that pupillage and the BPTC should be combined so that it is a necessary prerequisite for entry on the course that a person has a pupillage. They saw this as operating in a similar way to the accountancy profession where there is a longer period of pupillage with mandatory periods of study leave taken and exams passed at certain stages to give provisional practising status and entitle a pupil to become a fully-fledged tenant and undertake advocacy on their own behalf. This would allow students to learn about different aspects of practise through the course being taught as well as seeing it operate in practice.

The Family Law Bar Association supported an approach that included greater involvement of the Inn. They saw this as having several advantages, including:

- that the Inns are incentivised by the simple but crucial goal of producing high quality advocates for the sake of the public and the profession. If they were to deliver the advocacy skills courses themselves it is likely to achieve a high quality course at much lower cost than is currently charged;
- that the content of the training is likely to be more consistent with practice and to provide a continuum with advocacy training during pupillage;
- that the Inns have demonstrated their commitment to expanding diversity at the Bar; and
- that through COIC the Inns could work closely with each other and the BSB to ensure common standards of training and assessment. However, steps would have to be taken to ensure that the providers of the advocacy skills course outside London were not excluded from these advantages and were enabled to provide the course at competitive cost.

The UKLSA suggested a system that operated in the same way as the USA's system. This would involve the BSB setting up a centralised assessment for the BPTC, allowing providers flexibility in the way in which they prepare their students to pass the centralised assessment, and allow people to practice once they had successfully passed this assessment. They saw this as allowing for those who are capable to join the profession regardless of background, socio economic status or connections.

One respondent made the general comment that in developing the vocational stage, whatever approach is taken, the BSB should consider the wider role and duties of a barrister. They highlighted that barristers would need serve consumers who purchase legal services at times of stress and may be vulnerable. They emphasised the importance of regulators, and consequently legal service providers, understanding and responding appropriately to the needs of consumers.

Summary of responses to the questions

Part 3: The Professional Stage

Question P1: Have we correctly identified the issues relating to recruitment and selection and access to pupillages?

Question P2: Are there other issues which the regulator should take into account when thinking about recruitment and selection and access to pupillage?

23 people responded to these questions.

15 respondents to this question agreed that the BSB had correctly identified the issues relating to recruitment, selection and access to pupillage. Eight respondents offered further comments. 11 respondents offered suggestions for other issues the BSB should take into account.

Three respondents, including the Bar Association for Commerce, Finance and Industry (BACFI), pointed out that the BSB had set out the issues it had identified relating to pupillages in traditional barristers' chambers, but that no mention was made of access to pupillage in non-chambers organisations. They felt that regardless of the practice a young barrister intends to undertake, spending some or all of a pupillage with a commercial organisation is likely to be of benefit, and the framework for qualification, recruitment and training needs to be flexible enough to allow individuals to move between traditional chambers, law firms and commercial organisations. These three respondents requested that the BSB consider the contribution that commercial organisations might make to the provision of training for barristers, and to design the pupillage framework with commercial organisations in mind. They suggested that simplification of the requirements to become an accredited pupillage provider may help encourage the availability of pupillages at the employed Bar. They felt there was currently a number of barriers for non-chambers organisations offering pupillages, including:

- the advertising requirements for pupillage are inflexible and prohibitive. The current advertising requirements mean companies are unable to promote from within and this was seen as acting as a barrier to increasing access to pupillages in companies;
- the requirement under the current BSB Guidelines on authorisation as a PTO that each pupil must be supervised by a registered pupil supervisor and have regular contact with at least one solicitor or barrister with 3 years' experience of practice and rights of audience in the higher courts. It was suspected that this requirement may put off a number of organisations;
- the requirement to appoint an authorised training officer who may supervise a maximum of three pupils is reasonable within the context of a traditional chambers but does not take account of the structure and resources of a commercial organisation. For example, a commercial organisation might employ only one barrister within its legal department but is likely to have other practising lawyers, a HR department and a Learning and Development department; and
- the circumstances in which waivers are required, as set out in paragraphs 255 to 262 of the consultation. These represent immediate barriers for a streamlined commercial organisation.

COIC agreed that the opportunity for pupillage in the private business sector, where the employment of in-house counsel is growing, had not been properly explored. They suggested this is a career path which is attractive to barristers who cannot or do not wish to obtain a conventional pupillage and tenancy. They noted that the Bar Association for Commerce Finance and Industry (BACFI) and one of the Inns have been looking at a model

of pupillage involving collaboration between a commercial organisation and a set of chambers whereby 6 of the 12 months would be served in an approved law office within the organisation and another 6 would be served in chambers, the whole period of training being funded by the commercial employer. They believe this this type of arrangement and other suggestions made by BACFI deserve serious consideration.

One response from a Chambers disagreed with the BSB's assertion that the market in commercial pupillages is more susceptible to anti-competitive or abusive market behaviour, due to the majority of those seeking pupillages having little bargaining power. They suggested that the current reality for those amongst the top commercial sets is that there is a small number of outstanding candidates for pupillage whom the top commercial sets are competing to recruit, and that therefore this was not an issue. The same respondent felt that a significant emphasis on the academic credentials of pupillage applicants is appropriate, realistic and necessary given the intellectual demands of the Bar, and that it would be misleading and dangerous to suggest otherwise.

The Chancery Bar Association agreed with the assertion in the consultation paper that one reason why BPTC performance plays a less significant role in selection than previous academic attainment is because many candidates will not have completed the BPTC at the time at which they apply to chambers. However, they believe the more fundamental reason is that chambers at the Chancery Bar do not generally take the view that the BPTC is a good test of whether a candidate has the right attributes to undertake a career at the Chancery Bar. They stated that the view taken at the Chancery Bar of the BPTC as a course is a broadly negative one whereas the academic stage is regarded as being a genuine test of a candidate's skills.

A number of respondents discussed equality and diversity issues in the recruitment and selection of pupils and access to pupillage. One respondent noted that there are many complex factors which affect the reduction of opportunity at the Bar for applicants from a diversity of backgrounds other than the scarcity of pupillages. They gave examples of the introduction of tuition fees and the reduction in means-tested grants in higher education is having an impact on social mobility and social diversity within the profession. The Young Legal Aid Lawyers raised concerns that the quality of pupillage recruitment is variable between chambers. They believe that some are very aware of social mobility and diversity issues, and others seem blind to it. They were particularly concerned that those who recruit for pupillage need to be aware that many of the most valued "traditional" ways that experience is gained, involves voluntary work or unpaid internships, and this is not something available to those from low-income backgrounds or those who have dependent children. They felt that more needs to be done to educate those recruiting for pupillage about these considerations, regulate chambers to ensure they are transparent about the criteria they use to assess applicants, and introduce a mechanism to challenge those chambers who do not give appropriate weight to "non-traditional" experience. One respondent did note that selection committees must now be trained in the principles of fair and open selection, though they acknowledged that little monitoring of selection processes takes place. They agreed there could be scope for increasing monitoring, subject to the availability of knowledgeable and qualified staff within the BSB. Another three respondents noted that pupillage selection can only be fair if a sufficiently diverse number of students are available for selection, and so it is therefore important to ensure the vocational stage is as diverse as possible. They suggested Chambers and employers should be encouraged to establish systems of recruitment that take advantage of knowledge of performance on the vocational stage.

One respondent commented on the fact that the amount of funding available to those who obtain the 60 largest Pupillage awards could sustain 300 Pupillages at the minimum rate. Whilst they acknowledged that Chambers are free to choose how they invest their own

money, they thought that data should be collected demonstrating that those who obtain these awards are drawn from diverse backgrounds. There was also the suggestion made that the BSB should explore the possibility of third parties providing financial support to Pupils. One respondent expressed the belief that some Chambers still adopt policies for Pupillage selection which do not reflect best practice in ensuring diversity. They included examples such as holding a single round of final interviews without a first round stage, holding interviews with less than a week's notice, not having a clear and consistent grading system for shortlisting, and blacklisting candidates because of "gossip" about their personal lives. This respondent suggested that as this is an area of importance and one where the risk of abuse is highest, that robust regulation is called for in respect of this process. They suggested Chambers should be required to have their individual Pupillage recruitment process approved by the BSB in order for the Pupillage to be registered. Another respondent suggested there should be closer inspection by the BSB of how each chambers operates their recruitment and selection policy, potentially through random quality checks, with reasonable notice to those chambers, to observe processes of recruitment and selection.

A number of respondents also discussed the differences in pupillage between commercial sets and those that are publicly funded. It was thought that access to pupillage for those from low-income backgrounds, or who do not have parental support is not just impeded by the recruitment process, but by the very low pupillage award in many publicly funded sets. They believe that simply raising the minimum award is not an appropriate response, as the decrease in available pupillages in publicly funded areas will become even more pronounced thereby limiting the pool of future barristers to practise in these areas. They suggested that more needs to be done to secure additional funding from other sources to ensure that individuals are financially able to train in publicly funded areas of law. Two respondents agreed with the BSB that the apparent polarisation in pupillage opportunities was just a feature of a normal functioning market. They felt it was vital to the good health of the Bar that the wider concerns of the publicly-funded Bar, though valid and understandable, do not result in the imposition of restrictions or requirements which could unnecessarily limit the freedom of commercial sets to select, recruit and train their pupils.

One respondent suggested the adoption of a new pupillage recruitment and selection system, in the spirit of the Equality Act 2010. The respondent noted that Self-employed barristers are members of 734 chambers. They suggest that there be a mandatory intake requirement per set for the non-practising six months of pupillage, with the decisions on who receives those places jointly made by chambers and the BSB. They believe this will be a more transparent, effective and fairer system of entry to the profession, and may serve to combat discrimination and disadvantage at the Bar. The same respondent also suggested that funding problems were the cause of issues with recruitment, being responsible for the limited number of pupillages offered. They suggested a centralised system of Pupillage Funding where each set of chambers that intended to offer pupillage in a season would contribute, a fixed amount into the Pupillage Fund administered by the BSB. The contributions will be based on a sliding scale, where large commercial sets and approved training organisations, contribute a higher proportion. They believe this would result in more pupillages being offered, and each pupil would receive an identical award in the First Six which translates to a sensible 'living wage'.

The Family Law Bar Association suggested that it should be made a requirement of professional practice that the pupil supervisor course is undertaken by all practitioners by a certain stage of practice, and that evidence be provided that practitioners have taken part in pupil supervision and training to a minimum level. They felt that all members of chambers need to be aware of what is required and what is not allowed in terms of the pupillage experience. In contrast, the Bar Council suggested that currently there was no career advancement for barristers from becoming a pupil supervisor, and that it was often difficult to persuade barristers to do it as it can be a drain on their time. They suggested that for this

reason pupillage should not be made overly bureaucratic or burdensome. The Bar Council and the Family Law Bar Association also suggested that the BSB should consider how the system of mini-pupillage is operating, in the interests of protecting and promoting diversity in recruitment to the Bar. They commented that mini-pupillages are often a gateway into pupillage as there is an assessment of the mini-pupil as prospective pupil, formally or informally. Obtaining mini-pupillage was seen as being as competitive as obtaining pupillage but there is no uniformity in approach and limited advertising. They suggested it may be necessary for chambers to adopt coherent policies on access to mini-pupillages so that the profession is as open and transparent as possible.

Another respondent also suggested a new system for recruitment and selection of pupils, in particular to enhance the chances of "mature entrants" gaining pupillages. Currently only 2.5% of pupillages are awarded to applicants over 45. They suggested a system similar to the American football draft, where applicants who had passed the BPTC would be selected at random for pupillages and chambers would then be able to trade. They acknowledged that this idea would likely not work practically but saw it as one way of providing everyone who is qualified with an equal chance at gaining pupillage. Alternatively, they suggested that pupillage training be taken away from Chambers and an independent body set up that could offer a sufficient number of pupillages.

One respondent noted that the number of pupillages being offered by many criminal sets has fallen in recent years. They believe this problem is magnified in smaller sets, whether in London or across the rest of the country. They suggested that whatever changes the BSB considers, they should ensure the system is not made too bureaucratic which would further disincentivise smaller sets to offering pupillage.

Two respondents, including the Bar Council, specifically addressed the issue of "exploding offers". They suggested this issue was not created by giving insufficient time for candidates to consider an offer, but rather because of the fact that some chambers/PTOs recruit much earlier in the year than those who recruit using the Pupillage Gateway. A candidate is therefore unable to make an informed choice and may accept an offer from a less preferred chambers/PTO for fear of losing their only opportunity. This impacts particularly on those from less privileged backgrounds who can less afford to take the risk of failing to secure pupillage in that year. It also punishes those chambers/PTOs who are adhering to pupillage best practice by using the Gateway, as they miss out on candidates who are recruited earlier in the year. It was suggested that to address this, the BSB should make the use of the Pupillage Gateway system compulsory for all PTOs.

One final respondent noted that there appears to be significant variation in the conduct of pupillage interviews, including in the length and the number of rounds. They had suggested that, anecdotally, it appears that chambers undertaking publicly funded work seem to have a more rigorous interview process. It was suggested by the UKLSA that selection which cannot be objectively assessed cannot be fair, and that it leads to unequal access to the profession.

Question P3: Have we correctly identified the issues relating to the structure of pupillage and the quality of experience for the pupil?

Question P4: Are there other issues which the regulator should take into account when thinking about the structure of pupillage and the quality of experience for the pupil?

21 people responded to these questions.

14 respondents to this question agreed that the BSB had correctly identified the issues relating to recruitment, selection and access to pupillage. Seven respondents offered further comments. Nine respondents offered suggestions for other issues the BSB should take into account.

BACFI noted that commercial organisations faced many other issues that had not been identified in the consultation. These included:

- the lack of flexibility in the structure meaning the offering of pupillage is not attractive and, in many instances, not practicable for commercial organisations;
- the inability of pupils to move between traditional chambers, law firms and commercial organisations. It was suggested a more flexible approach which encourages commercial organisations and traditional chambers to work together to educate pupils, much as with the Government Legal Service and the Navy, would increase the number of training opportunities available and make it easier for the best candidates to enter practice at the Bar;
- the current structure places too much reliance on waivers. They suggested that a better approach might be to list outcomes and require the training provider to deliver those outcomes; and
- the formality of requiring a pupil supervisor instead of an approved training programme does not fit with the organisational structure of most commercial organisations. A company with HR and Learning and Development departments could create a well-structured training programme with supervision provided in accordance with departmental organisation.

BACFI was keen for the BSB to consider removing some of these barriers as they believe prospective self-employed commercial barristers would benefit from the perspective and insight to be gained by experience working within a commercial law firm or the legal department of a commercial organisation.

The Bar Council and one other respondent thought the concerns around current practices of pupil mentoring and supervising that could be leading to a dysfunctional learning environment are overstated. The Chancery Bar Association suggested that the relationship between pupils and supervisors is often highly positive and assists not only in terms of training the pupil during the pupillage year, but also in providing the pupil with a mentor on an ongoing basis as they continue in practice. One respondent noted that if this was a real problem, then there are “light touch” solutions that might exist, such as encouraging chambers to rotate pupils every three months. It was pointed out that Barristers have to undergo compulsory training before they can be accredited as pupil supervisors, and have to be selected by their chambers and approved by their Inn of Court as suitable before they will be entrusted with responsibility for the training and supervision of pupils. Further, pupillage is coordinated and managed in accordance with the BSB’s “Supervision and Guidance” by the Head of Pupillage in each chambers, a position which is required under the rules set out in the BSB’s Pupillage Handbook. Three respondents suggested it would be helpful to have a clear statement of expectations of PTOs, in terms of information to be provided to the pupil at the commencement of pupillage, mutual feedback and review of pupillage, and provision of reasons for rejection of a tenancy application. This statement could be provided to the pupil with other information provided by the BSB prior to commencement of the pupillage. The Bar Council acknowledged that there could be a level of dependency in the relationship between pupil and pupil supervisor, which arises because it is commonly upon their recommendation that a pupil is taken on as a tenant in a chambers. They believe that no alteration of the structure of pupillage would change this, and therefore there is little that a regulator can do to alter the situation of dependency and low rates of reporting of problems. COIC expressed disagreement with the statement in the consultation that a pupil at the self-employed Bar is not protected by the provisions of either apprenticeship or employment law.

They suggested it is unclear what protection for pupils is missing as *Edmonds v Lawson* [2000] QB 501 decided that the pupillage relationship is contractual, although it is not a contract of employment for the purposes of the minimum wage, and section 47of the Equality Act 2010 prohibits discrimination against pupils. The minimum sum payable for pupillage is also set at the minimum wage at least.

It was suggested by four respondents that further consideration should be given to financial support for students undertaking pupillages in chambers which principally do publicly funded work. Another respondent agreed with the observations in the consultation that more should be done to protect the interests of pupils, and thought this should include ensuring that pupils are being appropriately treated and mentored through the pupillage experience.

Two respondents expressed strong disapproval of the idea of part time pupillages. They felt that individuals who had done a part time pupillage would be at a significant disadvantage when it came to chambers deciding on tenancy, and also emphasised the importance of continuity and consistency of supervision. They further suggested that serious consideration should be given to extending the period of pupillage to a minimum of eighteen months and/or two years.

Two respondents, including the Chancery Bar Association, suggested that there should be much more of a blend between the Vocational Stage and the Professional Stage. One of these respondents believes that in the first six months of pupillage, pupils can often de-skill and lose the benefits obtained during the Vocational training, particularly in relation to advocacy skills. This applied particularly to those pupils who do not obtain a pupillage to start immediately after the Vocational Stage. They suggested there should be regular opportunities available during the first six months of pupillage to practise advocacy, and providers of the BPTC could assist in this role and report to pupil supervisors. The same respondent believed a much stricter policy should be set down as to the structure of each pupillage, to ensure that every pupil has the experience of working with other pupil supervisors and tenants. The Chancery Bar Association suggested a longer professional stage with release time for study. They saw no reason why pupillage providers could not release pupils so that they can attend college during their pupillage. They suggested that times for attendance at college could be planned far in advance and time would need to be made to prepare for college and this would need to be respected by chambers. They suggested this new structure would mean that tests in advocacy, opinion writing and drafting would take place throughout or at the end of the professional stage such that the standard would be set by the BSB and not by individual chambers. This would mean that pupil supervisors could not be said to be “marking their own homework”, they would have a modicum less power over their pupils and pupils would all be judged at the same level such that the BSB could be satisfied that the pupil was fully trained prior to them being given a full practising certificate.

Question P5: Have we correctly identified the issues relating to meeting the required standards in pupillage?

Question P6: Are there other issues which the regulator should take into account when thinking about meeting the required standards in pupillage?

21 people responded to these questions.

13 respondents to this question agreed that the BSB had correctly identified the issues relating to recruitment, selection and access to pupillage. 8 respondents offered further comments. Seven respondents offered suggestions for other issues the BSB should take into account.

Three respondents did not suggest any other issues the BSB should take into account, but emphasised the seriousness of the ones identified in the consultation. They suggested that anecdotal evidence indicates that standards of training and 'assessment' in pupillage remain very variable. They suggested that there should be some research undertaken to confirm this. They emphasised that the variability of standards in pupillage makes it even more important that all entrants receive a thorough training at the vocational stage.

BACFI noted that companies that provide pupillages face some different difficulties to chambers. One of these difficulties is providing sufficient exposure to courtroom advocacy experience. Organisations such as Government Legal Service, CPS and the Navy have approved arrangements for secondments to chambers. However, not all companies will be able to set up such an arrangement. They feel this is one of the main barriers to organisations being able to offer pupillages and suggested that more could be done to encourage chambers to take pupils on secondments, maybe by way of exchange to give their pupils exposure to commercial work. They further noted that the standard checklists are not entirely relevant to employed practice. They suggested that the customised checklist for an employed pupillage which General Healthcare developed could be promoted as an alternative. The respondent suggested that generally the BSB should consider other ways in which the standards could be met within a commercial setting. They suggested the BSB should consider how such advocacy could be met by a pupil training within a commercial organisation (for example, through participation in board meetings, commercial negotiations, mediations, arbitrations, regulatory investigations or employment tribunals) and ensure the standards are flexible enough to accommodate these.

The Family Law Bar Association disagreed with concerns about pupils getting different levels of exposure and opportunity to develop skills, depending on where they undertake pupillage. They agreed that pupils do get significantly different levels of exposure and opportunities to acquire the skills in the Professional Statement, but thought this just meant they have different strengths and weaknesses as barristers, not that they do not become competent practitioners. In contrast another respondent did share the concern that pupils at some sets may have less of a chance to put into practice advocacy skills in the second six months of pupillage. They noted that many chambers do provide in-house advocacy training which can (at least in part) make up for this, but some do not. They suggested the BSB might want to consider whether further such provision could be encouraged. The same respondent proposed combination of the vocational and professional stages, which they thought would improve pupils' training in advocacy as it would allow them to learn by watching and doing at the same time, rather than 'doing' for one year on the BPTC and then 'watching' during pupillage, often with a significant gap in between the two periods of training.

One respondent did not feel the BSB had correctly identified the issues relating to the structure of pupillage or the quality of experience for the pupil. They did not agree with criticisms of the pupillage checklists as they have found them to be very useful for both pupils and pupil supervisors, and do not consider them confusing or difficult. Two respondents, including the Chancery Bar Association, expressed the belief that independent validation of the outcomes of pupillage is already provided when a pupil is offered a tenancy by chambers. They asserted that Chambers would not offer tenancy to a pupil who has not made the grade, because that tenant would divert valuable resource from other, better, candidates, and would damage that chambers' reputation and market standing. They also suggested the BSB had not sufficiently acknowledged that the advocacy experience required of a pupil aspiring to a criminal practice will be very different from the advocacy experience required of a pupil in a chancery set. They see it as a matter for each individual chambers to ensure that their pupils have sufficient advocacy experience of the kind they will be exposed to in practice at that chambers, and is not for the BSB to prescribe a universal standard or criteria by which pupils' advocacy skills should be judged. They were also of the opinion that there is already sufficient external assurance and oversight of PTOs by the BSB.

COIC commented on the idea of pupil supervisors "marking their own homework" in that they are required to sign off on the pupillage checklist without independent oversight. The respondent recognised that it is reasonable to question whether the system is built on excessive trust, but did not think that currently there was any evidence that this trust was misplaced. They also suggested that it is necessary to appreciate that because pupillages cannot be 'one size fits all', the BSB cannot eliminate the need to trust those who have the closest connection with pupils' performance and progress. They also commented that if the standard of oversight is to be improved the BSB should publish clearer statements about the thresholds to be reached and how they are to be assessed in practice.

One respondent expressed agreement with the observations that simple completion of tasks on a checklist, does not guarantee that learning objectives have been met, and that it is very difficult to develop a list of particular tasks or experiences pupils should have had. Different chambers do different work and it was seen as being part of the reality of pupillage that different pupils would be exposed to different things. A respondent suggested that provisional and full authorisation to practise are granted at the stage at which the Pupil can evidence that they can demonstrate competence. The GLS thought the current checklist system is confusing and does not adequately assess the pupil's ability to practise without supervision. They believe the current checklists focus on individual's experience (in the sense of whether or not they have performed a particular task), rather than the skills they have developed and knowledge they have acquired. They would therefore prefer an approach which measured the competence of the pupil in relation to a particular area or activity. They also believe the BSB should take a flexible and risk-based approach to the regulation of the completion of pupillage in ATOs. They suggested this would involve periodic checking of the quality of training provided at ATO level, rather than the submission of completed checklists assessing the breadth of work experienced at individual pupil level. They invited the BSB to consider a process for extending a period of pupillage in cases where the ATO takes the view that a pupil barrister has not met the required standard, but can be expected to within a short period of time.

One respondent suggested that current pupil supervisor training should be enhanced to ensure consistency and quality of approach. They were of the view that BPTC providers could deliver this kind of training.

Question P7: Have we correctly identified the issues relating to the regulator's role in pupillage?

Question P8: Are there other issues which the regulator should take into account when thinking about the regulator's role in pupillage?

18 people responded to these questions.

12 respondents to this question agreed that the BSB had correctly identified the issues relating to recruitment, selection and access to pupillage. Four respondents offered further comments. Four respondents offered suggestions for other issues the BSB should take into account.

BACFI endorsed a risk-based approach to supervision and the lessening of bureaucracy in the PTO approval process. In terms of companies that offer pupillages, the respondent pointed out that many companies have dedicated HR and Learning and Development departments and that companies regulated in other industries will have training and competence obligations under their industry regulations. They also thought companies would be more likely to have their own checks and systems for training standards and the delivery of development programmes and that this should be taken into account when assessing a company's ability to provide effective training to pupil barristers.

The Family Law Bar Association did not agree that a different approach to regulation might offer the opportunity to accommodate more pupillages in the field of crime, family and immigration. They noted that the consultation does not explain how that might be brought about. They also noted that chambers and practitioners who are heavily reliant on publicly funded work do not have the capacity to expand pupillages. This is not only because of the requirement to fund pupillage, but also because the practitioners are working longer and longer hours in order to earn a living and simply do not have the personal capacity to meet the needs of a pupil. They also believed that taking more pupils who spend more time on external placements would not reduce the burden but would enhance it, as there would still be overall financial and personal responsibility for the pupils. They did agree that some changes should be made to the regulator's role, and the BSB should take a greater role in quality assurance of PTOs and training providers within pupillage.

Another respondent strongly disagreed with the suggestion of the BSB that there would appear to be a case for a more rigorous and consistent framework for supervision of pupillage by the BSB. They did not feel that any objective evidence had been produced to support that suggestion and that the current level of regulation and supervision of pupillage carried out by the BSB is sufficient and appropriate. Two respondents particularly opposed the suggestion that there should be an independent assessment of preparedness to practise at the end of pupillage, carried out by an external body as they strongly believe that individual chambers are best placed to formulate their own criteria for tenancy, and to decide whether a pupil has adequately met those criteria and is a suitable candidate for tenancy. They do not want to see rigorous and fair pupillage assessment procedures which have been developed by individual chambers after years of refinement and discussion be undermined, diluted or over-complicated.

In contrast, another respondent suggested that the BSB should become more involved in checking the quality of processes and monitoring outcomes of pupillage. They thought clearer benchmarks and outcomes-focussed on public research and consultation with chambers and PTOs should be set.

One respondent suggested that the question whether the BSB should be more closely engaged in oversight of pupillage depends upon the resources available to the BSB. They stated they would not object to more oversight by the BSB, provided that the supervision or monitoring was placed in the hands of individuals who had a clear understanding of practice at the Bar and of what should happen in a properly conducted pupillage.

The Bar Council suggested that the "bottle neck" for pupils, whilst it appears to be the number of pupillages offered, is actually a function of the amount of work available for the junior bar. They believe the amount of work available for the junior bar has been cut because the amount of publically funded work has been cut. They suggested that this is market-driven and therefore there is little the BSB can do about it. There agreed that there may be a regulatory interest in maintaining a credible market for pupillage in fields such as crime, family and immigration, but suggested that when there is no work in the area the regulator is impotent.

Question P9: Are there any other issues not raised in the categories above which we have failed to identify in relation to current arrangements for pupillage?

18 people responded to this question.

14 respondents to this question believed there was no other issues that the BSB had failed to identify, while 4 raised some further issues for the BSB's consideration.

BACFI raised the advertising rules as being an issue that causes problems for companies seeking to appoint pupils. They suggest that many organisations wish to grant pupillage training to existing employees including paralegals, other professionals (such as patent or trade mark agents), or legal secretaries. However, often such employees will not have been recruited "with a view to pupillage" which they saw as the BSB's current requirement. They were of the view that if such employees were recruited originally through open competition then this should satisfy the advertising requirements. The same respondent also mentioned the over-reliance on waivers as being an issue that the BSB should consider.

One respondent agreed with the BSB that the regulatory objective of ensuring that there are sufficient pupillages in publicly funded areas of law is a crucial part of the regulator's role. However, they are also concerned that social mobility and access to the profession are also vitally important and that this is something that should be considered as influencing the regulator's role in pupillage. The same respondent was also concerned at the proposal of an external assessment at the end of pupillage as they believe a one-size fits all approach is unlikely to be helpful and there is a real concern as to who would bear the cost of any such assessment. They felt it is unrealistic for those being paid the £12,000 minimum pupillage award to cover the cost of an additional assessment. Also, for those chambers specialising in publicly funded areas of law, who are operating at the margins, covering the cost of the assessment would provide a further financial disincentive for taking on pupils.

One respondent suggested that the personally funded pupillage should be reintroduced. They noted that pupillages are extremely hard to come by and that some sets may choose not to offer pupillages due to the costs incurred. They acknowledged that the reason the personally funded pupillage was discontinued was because it was said to encourage inequality, however they saw this as being "the way of the world today". They commented that many students may opt out of doing a university degree because of the cost, however others choose to finance with the belief that the future rewards for doing so will outweigh this cost. They felt the same reasoning could apply to personally funded pupillages. They do not want to see students who are capable held up at the third stage due to lack of available pupillages.

One BPTC provider suggested that the BSB should consider the scope for incorporating into the current model how other experience of advocacy may count towards a pupillage. They gave the example of a reduction in time of pupillage by giving value to roles carried out in companies such as Legal Practice Clerks and Kearns

The LCLCBA suggested that the BSB should be aware of the fact that obtaining regulatory authorisation is not the primary purpose of pupillage for either pupils themselves, or the chambers who host them. They stated that the primary purpose of pupillage for pupils is that it is a precondition to tenancy, while the primary purpose of pupillage for Chambers is that it is the process whereby Chambers selects its future tenants. They believe it follows from this that nothing the BSB can do is likely to be able to increase the number of pupillages available. They saw the number of pupillages available as a function to a great extent of the number of tenancies which chambers expect to be able to offer.

Question P10: Do you agree with this fundamental position regarding work-based training as a pre-requisite for authorisation?

13 people responded to this question.

All respondents agreed that there should be a period of work-based training as a pre-requisite for authorisation, save two. The UKLSA, who did not agree, did so because entry to work-based training cannot be objectively assessed. They acknowledged that work-based

training is helpful, but suggested that if the aim of the BSB is to improve equality, it should not be a pre-requisite unless it can be objectively assessed. They believe that as entry to pupillage cannot be objectively assessed it can lead to unequal access to the Bar, and it does so at a stage when candidates have invested large sums of money and time to gain access to the profession. They suggested that if work-based training is to be retained as a pre-requisite, the BPTC should be abandoned. This would mean that candidates would not have to spend large amounts of money and time to find out whether they can join the profession.

The other respondent who did not agree that there needed to be a period of work based training, suggested that it could be appropriate for the English Bar to move to a system such as that of many US states, where the candidate becomes licensed to practise immediately on passing the Bar exam, without any further requirement for work-based training.

Respondents who did agreed that work-based training should be a pre-requisite for authorisation noted that few alternative experiences will offer the advocacy and specialised training that work based training such as pupillage provides. One respondent stated that the system of pupillage has developed over many years as the optimal system for training future barristers, and that the system is consistent with, and compares favourably with, work-based training required and provided in other professions. Another two respondents did express a belief that work based training should be subject to more flexibility as to how it is delivered and how the standards are reached. It was also suggested by one respondent that work based training must be rigorous and have high training standards that are consistently applied. Two further respondents, including the Bar Council, suggested there should be more of a blending between the BPTC and pupillage.

One respondent thought the real issue was what sort of work based training would suffice. They were of the opinion that there are various roles which could prepare individuals for future life as a barrister and, provided that quality standards are not lowered, such work-based learning and training should be recognised even when it does not fit the mould of a traditional chambers-based pupillage. They suggested that pupillage of an equivalent period of training could be provided by a wider range of bodies or organisations than it is at present, and that it should be recognised that some of the skills needed to be a barrister can be provided by jobs or voluntary roles which do not provide all of the skills needed to become a barrister.

Question P11: Do you agree that pupillage should be more flexible in its content, with the BSB taking a more generally permissive approach to the sorts of activities that might constitute appropriate content, as long as the requirements of the Professional Statement could be demonstrated as being met?

Question P12: What are the risks, if any, associated with this?

20 people responded to these questions.

12 respondents agreed that pupillage should be more flexible in its content and that the BSB should take a more permissive approach to content as long as the requirements in the Professional Statement were being met. Four respondents disagreed. One respondent noted that it was difficult to answer this questions without seeing the final version of the Professional Statement.

Six respondents stated that they agreed with the idea in paragraph 295 that a chambers should be able to make its own arrangements for a pupil to spend training time with professional clients or in another institution, without the individual student needing a specific waiver from the BSB. However, the same respondents disagreed with the idea in paragraph

296 that this may lead to more pupillages becoming available. They believe that the main influence on the number of pupillages is the market for the legal services supplied by barristers. Another respondent also expressed strong support for allowing different forms of pupillage, apart from those taking place wholly in chambers as is currently the case. They believe that more receptiveness to the commercial needs of organisations would encourage other organisations to offer more pupillages. They also suggested the BSB should look more favourably at the idea of pupils assembling their own "portfolio" of relevant experience to demonstrate that they meet the requirements for practice. They also suggested careful consideration should be given to the prescription of how much court-room advocacy should be required at the pupillage training stage. They commented that the BSB should keep in mind that advocacy is a skill which will be improved continually throughout the professional life of a barrister, and all the ways of acquiring training in courtroom advocacy should be considered. They noted that the SRA is now moving away from having a period of recognised training that a solicitor is expected to have completed, with the Law Society having now admitted as a solicitor a candidate who had worked as a paralegal without doing a training contract. The respondent did not want the solicitors' profession, by modernising their entry requirements, to be able to capture extremely well-qualified potential barristers, simply because they have a more flexible approach to the vocational stage of qualification as a legal professional.

The Chancery Bar Association thought there was a good case for all or the vast majority of pupillage to take place within chambers. They believe there is room for further development of skills after tenancy is gained by means, for example, of spending time on secondment with professional clients. However, they thought the risk of allowing this to take place during pupillage would be that some chambers might be tempted to offer such arrangements to professional clients for commercial gain, when this might not necessarily be the best thing for the pupil's development.

One respondent expressed the view that the regulator should not get involved in PTOs' additional specialist training requirements for its pupils. They also felt that the "*work-based*" element of training should continue to be 12 months, in order to provide sufficient training for practice, and to give chambers sufficient time to monitor and assess performance.
One respondent agreed that allowing additional opportunities for pupils would be a positive step. However, they suggested there would need to be safeguards to ensure that this was training offered during a pupillage through the PTO, and not an additional hurdle that prospective pupils would need to jump before making the door of a Chambers. They believe creating an additional hurdle would inevitably add to the costs of those entering the profession, which in turn would impact on the already difficult issue of squeezing those from less-privileged backgrounds out of the market.

The Family Law Bar Association agreed that added flexibility should be permitted, but only on the basis that specified external training is set out by reference to achieving defined learning outcomes in a pupillage programme approved by the BSB.

One of the respondents who disagreed with the idea that the BSB should take a more permissive approach felt strongly that the BSB needed to take an extremely prescriptive approach to pupillage to ensure a comprehensive and uniform standard. This was seen as the only way to ensure that at the completion of pupillage all barristers are minimally competent to exercise their audience rights. It was also suggested that chambers who take pupils should be required to develop written policy documents or programmes for pupillage. The respondent did appreciate the attraction of a more permissive approach but felt that this could be explored once tenancy had been obtained, to give the new practitioner more depth, and to explore ways to build their practice. The other respondent did not believe a more 'permissive' approach was appropriate, unless a risk-based assessment is undertaken and there has been a clear identification of needs and benchmarks to ensure quality. They

thought that a more permissive approach could be acceptable if mechanisms could be put in place to ensure that the requirements of the Professional Statement are being met. They felt that currently this is not the case.

The Bar Council, who disagreed that a more flexible and permissive approach should be taken, noted that presently solicitors who have done the short course to obtain their higher rights are exempt from pupillage and can practise immediately as a third six pupil or tenant. They believe that such candidates often lacked the requisite skills to practise at the Bar since these are acquired throughout the professional stage of a barrister's training. They believe that this would suggest that any flexibility in training would not be of any assistance, as it would not provide the standard of training necessary. They also thought the suggestions around more flexibility were likely to see a pupil having less court time which they saw as the most valuable aspect of the pupil's experience.

13 respondents identified potential risks of a more permissive approach. All but one of these respondent stated that the risk of such an approach was that increased flexibility could lead to reduced standards in work based training and assessment. One respondent did suggest that this risk could be easily mitigated through a risk-based and outcomes-focused approach to authorisation and supervision. One respondent also thought a risk of this more permissive approach could be more consumer complaints, and diminishing public confidence in the profession. It was also noted that there was a risk that pupils would be placed in solicitors' firms or other entities to work for free and in ways that are not addressing the learning outcomes in the Professional Statement, and would lose the benefit of oversight of their developing skills by a practitioner who knows them well and have invested in them. COIC suggested that the area of potential training outside of chambers was one in which the Inns would not wish the regulator to give up its powers of oversight.

Question P13: We have consulted separately on the Professional Statement and you may or may not have responded to that consultation. If you have not, do you agree that the Professional Statement should be used to define the knowledge, skills and attributes to be demonstrated at the end of pupillage?

15 people responded to this question.

13 respondents to this question agreed that the Professional Statement should be used to define the knowledge, skills and attributes to be demonstrated at the end of pupillage. One respondent did not express an opinion that the Professional Statement should not be used in this way, but did express concern about the adequacy of the current draft.

One respondent noted that the present Professional Statement is very high level and does not offer clear guidance as to what a barrister is expected to be able to do on day one of practice. They believe further consideration will need to be given to the Threshold Guidance when it is published.

Question P14: Do you agree with the principle of the rebalancing of responsibility for pupillage as between the "entity" (chambers or otherwise) and the individual pupil supervisor? Why/Why not?

21 people responded to this question.

16 respondents agreed with the principle of rebalancing the responsibility for pupillage between the entity and the individual pupil supervisor, with several noting that this was likely to improve the consistency of the experience of pupillage. 3 respondents did not agree, and one, while agreeing that greater chambers' supervision of pupil supervisors is likely to

ensure a greater consistency of training, wanted greater detail on how this would work before they felt they could take a position.

BACFI commented that a rebalancing of responsibilities would be able to be adopted by companies who undertake pupillages, as well as chambers. Though another respondent noted that in some organisations, the legal department would have the primary responsibility for training and therefore regulation of the entity should be tailored to and focussed on the relevant department rather than the organisation as a whole.

The Young Legal Aid Lawyers noted that any regulatory burden would still fall on individual barristers within chambers, and the BSB would need to ensure that any such regulation did not further decrease the number of available pupillages in publicly funded areas.

The UKLSA noted that the current system places a significant amount of responsibility with the supervisor, and this can leave pupils in a vulnerable position. Another respondent suggested that the entity should be responsible for the training experience of all its trainees, including setting the standard for quality and content, running the scheme and being responsible for the overall quality of the training provided. This would mean that the pupil supervisor could focus on training, quality assurance at an individual level and the continuity of development throughout the period of training.

The Chancery Bar Association supported the rebalancing of responsibility, but urged caution in the level of any additional regulation imposed, since the people dealing with this within PTOs will often be committees of individual barristers who give up their time voluntarily in the same way as the supervisors do.

One respondent who disagreed with the idea of rebalancing responsibility did not think that a more structured approach to the oversight of PTO's is required, particularly in the way set out in paragraph 307 of the consultation. They believe it is fairer that the cost of pupillage supervision by the BSB be borne by the entire profession as an alternative model would disadvantage publicly funded chambers and their pupillage applicants. They feel that the consultation assumes that the administrative burden and responsibility for organising and assessing pupillage often falls on one individual pupil supervisor, whereas they believe such a model is outdated and is now rare. They are of the view that the present arrangements are sufficient. The Bar Council, who also disagreed with the rebalancing, thought that the present system works well and there was no reason to change it.

Question P15: Do you think there should be more systematic initial validation of PTOs and supervisors?

19 people responded to this question.

15 respondents agreed that there should be a more systematic initial validation of PTOs and supervisors. Three respondents disagreed and considered that the present arrangements and requirements are sufficient. Two respondents suggested that a more systematic initial validation would ensure that all PTOs start with a consistent standard of competency, but one felt they could not comment on their specific position until more specific proposals on how this would work are formulated. BACFI commented that although they agreed there should be a more systemic initial validation, the approach should be flexible enough not to deter companies from applying to become PTOs.

One respondent commented that they had gathered anecdotal evidence that potential PTOs would like more detailed, clear guidance from the BSB as to what they need to do in order to become authorised. They felt that the current guidance is very high level and generic.

Question P16: Do you think there should be periodic re-validation of PTOs and supervisors?

19 people responded to this question.

13 respondents agreed there should be periodic re-validation of PTOs and supervisors. 6 respondents disagreed, with one noting that there are already requirements for barristers to undergo 'top up' pupil supervisor training if they have not had a pupil for three years, and to repeat the pupil supervisor training if they have not had a pupil for five years. They believe that requirement is sufficient. One respondent commented that although they agreed there should be periodic re-validation of PTOs and supervisors, this re-validation process should be flexible and accommodating and should not deter companies from applying to become PTOs.

The Family Law Bar Association was resistant to the introduction of any additional layers of regulation unless they are demonstrably necessary as there will be cost implications. They noted that chambers which regularly take pupils who become tenants will be required to evidence how their pupils acquire the knowledge, skills and attributes in the Professional Statement, and that this would be an effective process of re-validation. They did believe the BSB should be able to call for a different form of re-validation for good cause, such as a pupil supervisor being the subject of a complaint which has been upheld, or pupils not being offered tenancy on a regular basis. One respondent suggested that to avoid the costs of periodic re-evaluation being too great, the BSB should operate a risk-based approach to this area of regulation. They thought this may involve re-evaluating new PTOs who do not fit the traditional Chambers-based pupillage mould more frequently than other providers in their first few years to ensure that the new model is working appropriately. They believe that such an approach would enable the BSB to divert resources to where they would most be needed in the adoption of a more flexible approach to pupillage.

The Chancery Bar Association thought periodic re-evaluation would be likely to increase the time and cost associated with running pupillage schemes within chambers and for individual supervisors. They suggested that if this was to be adopted, any periodic re-validation should only take place at relatively long intervals and should not be too burdensome. They suggested that the appropriateness of pupillage arrangements within a PTO could be judged by reference to whether there is a pupillage programme document in place which adequately sets out how pupils' training is achieved and which secures their fair treatment during the pupillage year. They further suggested that re-validation of individual supervisors would be undesirable, given the additional time that would be involved.

Question P17: Do you think there are benefits in a published list of approved PTOs and supervisors?

19 people responded to this question.

16 respondents agreed there were benefits in a published list of approved PTOs and supervisors. Two respondents disagreed but chose not to give reasons for this. One respondent commented that the argument against such a list was that organisations would be inundated with applications, however they felt a published list was necessary in the interests of transparency. They saw such transparency as having benefits for the Bar, trainees, prospective students, PTOs and the regulator. One respondent disagreed there were benefits of a published list, as if pupils and those seeking pupillage know that PTOs have approved supervisors, they thought this should suffice.

Two respondents commented that, while they saw the value in a single comprehensive list of PTOs, they felt that there were differing views on publishing a list of supervisors (in light of

the fact that pupils apply to chambers rather than to individual supervisors and are not offered a choice of supervisor) and that it was unclear what additional benefit this would provide.

Approach 1: Continuous improvement of the current arrangements

The "continuous improvement" approach would see us adopting some of the principles and ideas set out in the consultation, such as more flexibility in structure, duration and content, the adoption of the Professional Statement and a rebalancing of the regulatory touch between the PTO and individual supervisors). It was proposed that this approach might involve the BSB setting out "minimum terms" and a standard Pupillage Programme document, upon which a PTO might draw, with variations from the standard requiring our agreement. The "minimum terms" might cover areas such as:

- policies for pupillage recruitment, administration and dispute resolution;
- delivery of the training, including what external training may be used;
- how pupillage must meet the Professional Statement requirements; and
- the training, oversight and other responsibilities of pupil supervisors.

Question P18: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

Question P19: Are there any other advantages or disadvantages to this approach?

Question P20: Are the any equality impacts of this approach that you are aware of?

19 people responded to these questions.

All respondents to this question save one generally agreed with the analysis of advantages and disadvantages of Approach 1, however, some offered further comments. 8 respondents were of the view that advantage b – the broadly fixed duration and cycle of pupillage largely matched to the academic calendar creates a stable and uncomplicated market for recruitment – was actually a disadvantage. They saw this as encouraging pupillage selection to be undertaken before levels of performance in the vocational stage are known, and therefore before applicants had demonstrated the necessary aptitude.

The Bar Council suggested that the regulation of pupillage itself requires tightening rather than relaxing. They saw continuous improvement as being a positive step and that it need not come at great expense either to the regulator or to those who offer pupillage. In relation to the BSBs concerns that this approach might not give PTOs the flexibility they seek, they believe that flexibility is required in the delivery of the BPTC, not in the routes to qualifying as a barrister.

One respondent agreed with the advantages of Approach 1 that had been identified, but did not believe any of the principles or ideas identified earlier in the consultation, such as more flexibility in structure and content or the rebalancing of responsibilities, needed to be adopted.

The Chancery Bar Association also agreed with the advantages that had been identified, but made a number of further comments in relation to the disadvantages. They welcomed the proposal for a pupillage programme document. They also suggested that the document might also contain details of how the tenancy decision is to be made, since the provision of such information is important to the pupil being treated fairly and would have a positive equality impact. They believe that a requirement to put together a pupillage programme

document would focus chambers' minds on how adequate training of pupils should be achieved and also give pupils a valuable resource of information about their rights and how their training will be advanced. They also believe such a document would help resolve issues in relation to the vulnerability of pupils, and so this would not necessarily be a disadvantage in relation to Approach 1. They thought that there is the possibility of rebalancing the responsibilities for pupillage within Approach 1 if desired, and so this should not be considered a disadvantage. They also disagreed that this approach might not meet the BSBs objective of focusing on outcomes and they believe that effective outcomes could still be achieved via this approach.

Another two respondents, including BACFI, suggested that while the current approach to pupillage has proved effective for chambers, it has not proved effective in providing opportunities for pupillage in non-chambers organisations. While they agreed that an important consideration was the impact on the businesses of chambers, and that a system that changes organically would be less likely to impact this, they also encouraged introducing greater flexibility. They believe this would increase the opportunities for pupillage in non-chambers organisations without having an impact on chambers, as chambers could continue with their current approach and companies could offer training better suited to their structure. One respondent suggested there is an urgent need for significant revision of the current accreditation and waiver system of PTOs to facilitate an increase in the number of in-house pupillages. They believe the current regulatory approach places too much emphasis on waivers, and this process is cumbersome, expensive, difficult and time-consuming. They suggested that the waiver system presupposes that the traditional chambers-based pupillage is the norm, and that any departure from this model must be justified. They believe that a revision of the current accreditation system could be achieved with little risk if the standards required of a PTO were clearly identified.

The Family Law Bar Association considered that the disadvantages of this approach had been overstated. They believe the setting of minimum terms is more likely to address regulatory risks than making no changes or taking the other two alternative approaches. They suggested that the minimum terms should make it clear that overall responsibility for the pupil lies with the PTO and that there must be periodic review of the pupillage by the pupillage committee in consultation with the pupil supervisor(s).

In relation to equality impacts, one respondent felt that this approach would not be seen to encourage part-time pupillages or pupillages over a longer period. They saw this as likely to affect single parents, others with dependents and those who do not have the financial means to fund full-time study. They also thought this approach might not encourage the provision of pupillage by commercial organisations with the result that there will be fewer opportunities outside London or for people from less privileged backgrounds. One respondent thought there needed to be an awareness of retention issues, and that pupillages should be more flexible to recognise things such as return from maternity, flexible PT working and care for a disabled person or family member. The UKLSA commented that if selection for pupillages cannot be objectively assessed, such as through centralised exams, inequality is inevitable. The Chancery Bar Association noted that a requirement for a pupillage programme document would provide information about what pupillage will involve, what is expected of a pupil, how tenancy decisions are made and what redress and support mechanisms exist. They suggested this would be a step towards ensuring fair treatment.

The Bar Council noted that achieving equality and diversity at the Bar is complex and cannot be achieved by regulation alone. They believe that improving diversity requires not only more flexible routes to training but also ensuring that the message the Bar is open to all is communicated to students, their families and those in education or careers information roles.

Approach 2: Approval of any pupillage schemes proposed by PTOS that demonstrate the achievement of the standards set out in the Professional Statement

This approach would retain some formality of structure and content in pupillage, while supporting the development of alternative approaches and adapting to the needs of the market. In this approach, it is proposed that the current more rigidly prescribed pupillage, its term and structure, would be replaced with a requirement for prior approval from the BSB of pupillage programmes proposed by PTOs.

They would need to provide evidence that they meet specified criteria for quality and learning outcomes, which matched the Professional Statement. It might be possible in this approach to be more flexible about the duration and content of work-based training and it may not need to be as rigidly prescribed as it is today.

QP21: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

QP22: Are there any other advantages or disadvantages to this approach?

QP23: Are the any equality impacts of this approach that you are aware of?

11 people responded to these questions.

Two respondents largely agreed with the analysis of the advantages, and BACFI in particular commented that a more flexible approach to the structure of pupillage and the removal of waiver requirements would make it easier for commercial organisations to offer pupillage. This would lead to more opportunities for pupils. However, they largely disagreed with the analysis of the disadvantages, as they believe such an approach would not be difficult for chambers to adopt. It was suggested that the identified disadvantages could be mitigated in a number of ways: PTOs could be required to set out clearly what the programme would offer so as to ensure that a prospective pupil was fully aware of what pupillage programme they were selecting, and there could be careful scrutiny of the PTO prior to validation and during re-validation. They also supported Approach 2 as the traditional pupillage in chambers model could still be maintained, with chambers electing whether to stick to the traditional model or adapt their current training models to provide more flexibility and secondment experiences for their pupils. Pupils would then have a greater pool of PTOs to choose from and pupillage schemes could be offered for specific purposes.

They acknowledged that Approach 2 might result in differences in the content and scope of training programmes, but thought this was not a disadvantage. They saw differences in content as allowing chambers and other PTOs to tailor training programmes to their needs. They commented that pupils joining specialist chambers currently will already receive training of different styles and focus, and that this is necessary to allow the Bar to continue to specialise and to offer a standard of expert service to the public.

In contrast, three respondents thought the disadvantages of Approach 2 were well identified, but did not believe that there would be any advantages to this approach. They saw it as being more costly and unnecessarily complex. It was suggested that Approach 2 is seeking to fix a system which is not fundamentally broken.

One respondent expressed concern that Approach 2 has a number of significant flaws. They questioned what experience and expertise PTOs have in designing courses, assessing courses and running courses providing skills training. They commented that there is already a system in place that teaches students advocacy, skills, ethics etc, and that is the BPTC. They thought that any notion of this burden being met to a large degree by PTOs and not

institutions designed and experienced at meeting that need is flawed. They questioned how there would be quality assurance of what PTOs provide, and suggested that without the sort of quality assurance that governs BPTC providers in their delivery of skills, this approach will be likely to result in very different experiences for different pupils. They believe the risks of running such a course could stop PTOs from offering pupillages and reduce access to the Bar.

One respondent expressed concern about the idea that under Approach 2 it may be possible for advocacy skills to be built through formal classroom training and observation of real life practice, or in different combinations than under the current model. They consider that this would lower standards, reduce the quality of training during pupillage, and reduce the availability of pupillages. They did not agree that formal classroom training would be appropriate or sufficient training for a career at the Bar during the pupillage stage, and that this would merely replicate the theoretical vocational training already provided. They were strongly of the opinion that there is no substitute for pupils observing barristers on their feet in real-life cases, having had the chance to read and work on the papers in advance, and with the benefit of discussing the case with the barrister.

Another respondent commented that Approach 2 entailed too great a risk of inconsistency of standards, because of potential variations in the content and delivery of training. They suggested it was not likely to produce a greater number of pupillages, but that it would open the door to less careful and conscientious treatment of pupils which will be difficult to detect.

In relation to equality impacts, one respondent commented that more flexibility would give opportunities to those candidates who wish or need to undertake a pupillage part-time or over a longer period. The Family Law Bar Association thought this approach would provide far less protection for pupils and less scope for monitoring the opportunities to meet the parameters of competent practice.

Approach 3: Authorisation of candidates on the basis of their own evidence of having met the requirements of the Professional Statement, with possible final external assessment

This approach proposes removing any system of prescription or prior approval of the term, structure and content of pupillage. Regulatory action would be focused entirely upon verification of evidence that the pupil has achieved specified learning outcomes that match the Professional Statement.

Evidence would need to respond to guidelines related to each of the skills, attributes and areas of knowledge defined in the Professional Statement at the Threshold Standard. This approach would therefore provide a very high degree of flexibility to the pupil and to the PTO and arguably represents the most radical departure from current practice in pupillage.

It would be possible and/or desirable under this approach for the BSB, in conjunction with other competent bodies, to require a final, summative assessment, based on the Professional Statement, to be passed before a barrister could be authorised to practise.

Question P24: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

Question P25: Are there any other advantages or disadvantages to this approach?

Question P26: Are there any equality impacts of this approach that you are aware of?

12 people responded to these questions.

BACFI commented that they thought the analysis of Approach 3 was heavily weighted towards the disadvantages. They felt strongly that there is a need to open up more pathways to qualification without sacrificing quality and that Approach 3 could be a way to do this. They were of the opinion that this approach would give a degree of flexibility that commercial organisations would welcome, though they did not think the approach had been fleshed out to any degree. They felt that ways could be found to deal with all the disadvantages that were identified and recommended that the BSB spend times developing such a regime. However, they did acknowledge that as a whole the profession is very conservative and may not favour Approach 3.

The Family Law Bar Association thought the advantages of Approach 3 had been overstated, while the disadvantages has been understated. They did not think there were any advantages to this approach. They did not think it would be possible for the BSB to manage the myriad combinations of experiences that would be put to them by pupils as acceptable methods of qualification. They also disagreed with the premise that the current system of pupillage supervision is holding pupils back by imposing standards that are too high and that it should be made easier for pupils to meet the requirements of the Professional Statement without oversight by and guidance from members of a PTO over a prolonged period. They were particularly concerned about the possibility for inexperienced practitioners to be able to provide a wider range of legal services, and noted that the consultation does not suggest how provisional authorisation would be provided under this approach. They did not believe that the public interest would be served by an approach which amounts to self-certification by a barrister, at any stage, and doubted that consumer groups would be content for such a development. They also thought it likely that pupils would become more vulnerable to exploitation by entities which had no investment in the future of the pupil and would be able to offer working opportunities without guidance or oversight. Lastly they were did not see how a summative assessment could be an acceptable replacement for a system where a PTO takes responsibility for the pupil and the pupillage, guides and monitors the pupil and helps him to develop into a competent practitioner.

Another three respondents also believed that there were no advantages to this approach and disagreed with the ones identified. They suggested this approach would be inconsistent with the BSB's responsibilities to seek to raise standards wherever possible and thereby protect and serve the public interest. The Chancery Bar Association commented that they did not see the need for further flexibility at this time, they are not convinced that this approach would unlock further demand and it would introduce new risks to the public in circumstances in which the existing system has been proven to produce competent and effective practitioners.

Another respondent felt strongly that demonstrating evidence that a pupil had achieved specified learning outcomes by reference to the Professional Statement would not be sufficient to maintain the high quality of training that currently pupillage offers, or the high standards of the Bar. They thought that some of the disadvantages identified, namely that it would become more costly and difficult to assure consistent outcomes and necessary standards and that this approach is outside the experience of the profession and could risk a loss of confidence and capacity amongst those providing the training, were likely to eventuate. They were of the opinion that the current pupillage model of twelve months of work based training under the supervision of experienced and accredited barristers, coordinated by a head of pupillage, is the optimum model for training barristers of the future.

The LCLCBA expressed concern that Approach 3 seemed to be proposing that there may be no requirement to be 'empupilled' to any actual pupil supervisor. The pupil would instead need to provide evidence that they had achieved specific learning outcomes. The same

respondent also thought Approach 3 overlooks the fact that those pupils who enter into practice are those who are accepted for tenancy by chambers. Where chambers offer tenancy to individual pupils, it is because chambers are satisfied that those pupils meet the requisite standard of practice at that set of chambers. Proposing that a pupil satisfy the requirements of the BSB for practicing, is not the same as a pupil satisfying the requirements that a chambers may have for itself.

One respondent agreed with the advantages identified in relation to Approach 3 and considered that this approach could eventually be adopted if there were already a more flexible approach to pupillage and its content in place. However, they felt it was difficult to see how the current market would make the transition from the current system to Approach 3. They felt that Approach 2 was probably a necessary intermediate stage. They did see Approach 3 as having some serious issues, including the difficulty of striking the right balance between quality standards and costs of regulation and the risk that inappropriately experienced people will become qualified. They suggested that if Approach 2 were adopted first, it would be easier to move to a more permissive regime when both the regulator and the market had adapted to flexible pupillages and an expansion of the PTOs offering pupillages.

A further advantage to Approach 3 identified by a respondent was that this approach would likely find favour with companies who could then integrate pupils into their existing training schemes for legal trainees. They felt that there is considerable potential for barristers to be trained within companies and that any degree of flexibility in the training route would be welcomed. However, companies would need reassurance that their scheme would result in a practising certificate for their barrister trainees.

In relation to equality impacts, one respondent commented that the possibility of combining paid work with training would open up training to those who might otherwise not be able to afford to train as a barrister. It was seen as particularly helping those who want or need to work or train part-time.

Question P27: From the three approaches outlined above, do you have a preference and if so, why?

22 people responded to this question.

Of the 22 responses to this question, eight respondents preferred Approach 1, one respondent preferred Approach 2, three respondents preferred Approach 3 and ten respondents expressed no preference.

Nine of the respondents who expressed no preference gave the reason that they did not feel able to make a recommendation on which approach should be adopted without up to date objective research into the experience, training and assessment of pupillage. Two respondents, including the Association of Law Teachers, recommended that research such as that conducted by Joanna Shapland and Angela Soresby: Good Practice in Pupillage, (General Council of the Bar, 1998) be undertaken into the experience of pupillage, combined with research into the quality of the training provided and the effectiveness of assessment. One respondent who also expressed no preference suggested that the BSB undertake focus groups of practising or aspiring barristers to discuss the different approaches to change.

Those respondents who preferred Approach 1 gave the reasons that they did not believe other approaches were robust enough, and that the other approaches would not ensure and maintain the high quality of training that currently pupillage offers, or the high standards of the Bar. COIC was in support of Approach 1 and suggested that any sudden and major change to pupillage would involve considerable cost and generate uncertainty and risk. One

respondent who advocated for something closest to Approach 1 suggested that within this approach, the BSB should make every decision informed by the desire to lower cost and raise standards. They thought this would have positive impacts on equality that would be welcomed by the Bar. It was also suggested that within this approach the BSB should move towards a model of pupillage based on the authorisation and validation of training organisations rather than individual pupil supervisors. They thought this would lead to more effective regulation. One respondent thought that Approach 1 was preferable, but adopting some elements of Approach 2 which would allow for more flexibility. One respondent expressed their support for Approach 1 but noted that they did so while advocating for the pupillage period be combined with the vocational stage.

The respondent who preferred Approach 2 did so as they believe Approach 1 is too conservative and fails to address the present imbalance of pupillages to well-qualified candidates. They also believe Approach 3 is probably too radical to take as an immediate step and may raise serious costs issues. They are of the view that Approach 2 is a good way forward between the two other approaches. However, they did suggest that Approach 3 should be kept open as a future step and should not be taken off the table by the BSB.

Those respondents who preferred Approach 3 gave the reasons that it offered maximum flexibility. However BACFI commented that before fully endorsing such an approach they would want to see it worked up as a detailed proposition. They also suggested that there could be potential benefits in combining elements from Approaches 2 and 3. The Legal Services Consumer Panel also suggested that Approach 3 could help create a culture, starting at the pupillage stage, where individuals lead their own development and focus on what they need to do to stay up to date and improve their performance. They also felt that under Approach 3 the number of people converting a vocational stage qualification to full authorisation might increase, as more forms of advocacy and legal advice could count towards authorisation.

Question P28: Have you identified any other approach we might reasonably adopt in respect of professional, work-based training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

16 people responded to this question.

Of the 16 responses to this question, 13 respondents stated that they had not identified another approach the BSB might reasonably adopt. One respondent suggested that a hybrid of Approaches 1 and 2 could achieve the appropriate balance between the regulatory objectives. BACFI suggested a holistic approach to training that could be adopted by the legal profession as a whole and does not fit with the sequential three-stage approach outlined in the consultation. This respondent proposed three stages of training – pre-professional, professional and continuing. In the pre-professional stage, prospective lawyers would attain the necessary academic competence in law whether as graduates (in law or other disciplines), postgraduates, or suitably qualified and experienced non-graduates (such as legal executives). The proposed professional stage would be a two- to four-year period of blended learning combining elements of academic, technical and practical training. Training at this stage could be common to all lawyers, whether intending solicitors or barristers, and flexible enough to allow transfer between streams whilst also providing opportunities for specialisation. They saw the advantages of such an approach as:

- providing greater flexibility and allowing trainees to move between law firms, chambers and commercial organisations more easily and gain exposure to a wider variety of practice areas and approaches;

- providing more entry points to the legal profession and exit points to practice at different levels;
- allowing trainees to earn as they learn;
- making the professions more accessible to people from less privileged backgrounds;
- being more accessible to people who wished to train or work part-time or over a longer period;
- allowing prospective lawyers to gain more experience before having to decide between the different legal professions;
- allowing lawyers to move between the different parts of the legal profession more easily; and
- producing lawyers with a wider breadth of experience that would ultimately be of benefit to the public.

The saw the disadvantages of such an approach as:

- taking time to implement as it represents a significant change from the current system which is unlikely to be achievable in the short to medium term; and
- making it more difficult for the smallest organisations to attract trainees because of competition from larger organisations that are able to offer higher pay and better benefits.

One BPTC provider suggested making more use of current providers of the BPTC to blend the training provided by them and by each PTO. They thought this would ensure better processes, a higher quality of learning experience for the pupil and enhanced support for the un-paid pupil supervisors, whose contribution they felt is significant, but not fully recognised.

Summary of responses to the questions

Part 4: Publication of Key Statistics

Question I1: Do you agree that the BSB has this responsibility? If not, why not?

20 people responded to this question.

The respondents were all in agreement that there needs to be an independent body publishing relevant statistics on a regular basis, and that the publication of statistical information was important to enable students to make informed decisions. The large majority of respondents stated that they thought the responsibility for this should lie with the BSB. It was commented that the regulatory objectives in the Legal Services Act 2007 would indicate that the BSB has some responsibility to publish key data about the Bar.

One respondent expressed concern that the current diversity reporting by the BSB is ad hoc and, due to various reports and pages containing different amounts or types of information, there could be varying perceptions as to diversity at the Bar depending on where a person looks for the data and what they read. It was suggested this could lead to confusion and that the current statistical information the BSB makes publicly available should be reviewed. One respondent noted that the BSB is not, as yet, subject to the Freedom of Information Act. They suggested that if this changed, it is likely that requests will seek information along the lines suggested in the consultation and that the BSB should make a full publication of data at that time. They noted that it should be the responsibility of the BSB to publish quality assurance reports and the function of the regulator is to be concerned with quality. They questioned the responsibility of the BSB to provide other types of information as it is unclear what the purpose and intention in doing so might be.

One BPTC provider commented on the proposed publication of certain types of information included in the consultation. They expressed concern about information broken down by BPTC provider, as some providers are currently operating cohort sizes of less than 100, and they did not think such a small cohort could provide statistically valid information. They also suggested that the proposed publication scheme outlined is deficient in terms of information on pupillage. Only a small number of students are able to proceed directly from the BPTC to an immediate pupillage, and these tend to have studied at the most prestigious universities. They were also averse to the publication of CEB assessment results, due to the general concerns about this assessments.

Another respondent also expressed concerns about publishing data on centrally set assessments. They believe there are such major problems with the operation and fairness of the centrally set assessments, that they would have reservations about whether such data can give a prospective student a proper understanding of the quality of teaching at each provider. They also had concerns about the publication of historic data, as each provider will have collected data in different ways and therefore a true and fair comparison may be difficult to achieve. They suggested that the publication of external examiner reports may be of much greater value to students.

Further concern was also expressed about the proposed “Overall student progression” data. As a majority of chambers tend to recruit pupils after they have completed the BPTC, there was a view that this would mean that progression statistics at the point of exit of the BPTC are an unhelpful and misleading snapshot. It was suggested a more useful approach could be to publish the total number of pupillages each year with an indication of how many pupils went to each BPTC provider. This data has been published in the past.

Question I2: Are there other categories of information you think we should collect and analyse? Please explain briefly why?

20 people responded to this question.

The large majority of respondents were satisfied with the information the BSB currently collects and analyses. However, a number of respondents suggested further categories of information that could be usefully captured.

In relation to the "Overall Student Profile", it was suggested that all of the protected characteristics should be reported on and that the population size of the Bar would be large enough to ensure that individuals could not be identified by published data. It was also suggested that the Overall Student Profile could include data on further qualifications (e.g. Masters), topics of first degree and, that results by GDL should be represented, alongside results by first degree classification. One respondent requested that the BSB collect information on the protected characteristics and academic history in relation to First Six Pupillages to enable people to track the performance of discreet groups as they progress through their legal education.

One respondent also requested that information on the BPTC be broken down by provider, in order to help potential students make informed decisions. Another highlighted a gap in information as the BSB does not currently collect or publish data on internships/vacation schemes/mini pupillages. While the BSB has committed to publishing data on "success rates in securing pupillage", it was felt that it would be useful to capture data on who applied for mini pupillages, who was granted mini pupillages, and also on the range of informal work experience at chambers that do not fall under the umbrella of a "mini pupillage."

One respondent suggested a five year longitudinal survey of past students should be undertaken and that information the BSB collects should go beyond First Six, and look at Second Six, Tenancy and numbers achieving 5 years as Tenants in Independent Practice. The Socio-Legal Studies Association questioned why the BSB proposed to publish data concerning domicile, gender, ethnicity and disability in relation to student results and student profile, and not for BPTC graduates entering pupillage. They recommended that statistics on the gender, ethnicity, disability, religious affiliation, educational background and social class of this group be published, and that if these statistics have not been collected in the past, they should be collected going forward. Many of these are protected characteristics under the Equality Act 2010, and all are important considerations in monitoring the diversity of the Bar and the future judiciary.

Respondents thought that the BSB should collect information that will reflect the Bar's commitment to equality and diversity in the widest sense. This would include:

- a continued commitment to collection and publication of information concerning sexual orientation. This continued commitment could encourage people to self-declare and thereby reassure potential applicants to the Bar;
- the collection of information concerning social class. It was seen as particularly important that the Bar be seen to be committed to welcoming a broad range of candidates, irrespective of their social class;
- the collection of regional information, particularly for UK entrants into training for the Bar. While the BSB currently collects domicile information, it was suggested that increased granularity of information concerning the geographic origin of entrants to training would be useful in increasing understanding of various issues concerning diversity;

- the publication of additional comparative contextual information. It was suggested that information on the relative performance of candidates for the Bar compared to other professions could be useful in helping the Bar to attract the most able candidates; and
- the collection and publication of progression data. While this consultation focuses on entry to the Bar, progression within the Bar post entry was seen as an important matter of public concern. Progression rates can influence the career decisions of potential candidates from a very early stage.

One respondent particularly emphasised the importance of analysing the correlations between the characteristics that the BSB collects data on. It was felt that there has been a lack of sophistication in the past in how many of the legal services regulators present and use diversity data.

Question I3: Are there any categories of information we ought to collect, but that we should not publish, even if under the relevant legislation we have the choice whether to do so?

20 people responded to this question.

The large majority of respondents to this question did not identify any information that would fall into this category. A number of respondents stressed the importance of transparency and, while it was understood that information may need to be published in a form that avoids any breach of privacy principles or risk of personal identification, there was not thought to be any categories of information that should remain completely confidential.