

23 March 2017



### BSB Policy Statement on Bar Training

1. As the regulator of the Bar in England and Wales, the Bar Standards Board (BSB) is responsible for regulating the three elements of Bar training: we set out the academic qualifications required, the terms of entry to and the content of the vocational training which follows, and we regulate the provision of the final stage of pupillage (work-based learning).
2. Over the last few years, the BSB has conducted extensive research and public consultation to examine the ways in which students currently train for the Bar and to consider what reforms to the system should be made, to ensure that it better meets the four key criteria of:
  - flexibility
  - accessibility
  - affordability and
  - sustaining high standards.
3. These criteria were identified through our earlier (2015) consultation looking at issues in the current system.
4. The most recent consultation generated over 1,100 responses and we are very grateful to all those who gave up their time to offer their views.
5. We aim for a future system of training which meets those criteria, and which also allows us to fulfil our statutory objective of encouraging an independent, strong, diverse and effective legal profession so that there are barristers who can meet the needs of consumers in a fast-changing market for legal services and will promote access to justice and compliance with the rule of law. We also want to build a framework which encourages innovation and competition and allows all training providers to adapt and develop their teaching as new challenges and opportunities arise.
6. We have reached a major milestone in the work we have been doing and have now agreed a broad framework for the future. This framework is one in which a *limited number* of different methods of training should be able to operate in the market and provide flexible access to the profession whilst maintaining high standards.
7. We think this will allow us to:
  - retain and reinforce the best aspects of the current system;
  - deal with deficiencies in the present arrangements in a responsible; transparent and determined way; and
  - set in train important changes that will enable the system to evolve in line with the four key criteria identified.

8. The future system for training for the Bar will recognisably retain the three elements of training that have proved successful in the past: academic, vocational and work-based learning. The expected outcome of these three elements is expressed in the BSB's Professional Statement for barristers. This describes the knowledge, skills and attributes that a trainee will be expected to have accumulated on completion of the three elements of training and before they will be allowed to practise as a barrister.
9. Looking at those three elements in turn within the overall framework of enabling, and then explaining, what our next steps will need to be, our vision for the future is set out below.

### Legal Academic Learning

10. We have considered carefully whether to make changes to the current arrangements and, having carefully considered the many responses we have received, we have broadly decided not to do so. The Bar is a graduate profession. Just as they do now, students in future will need to have a degree graded as 2:2 or above. If that is not a qualifying law degree, they must do a postgraduate qualification that will provide them with the requisite legal knowledge (currently usually known as the Graduate Diploma in Law - GDL).
11. The law degree and GDL must cover the seven "Foundations of Legal Knowledge" as they currently stand, and the skills associated with graduate legal work such as legal research. We will, however, be encouraging innovation by academic institutions in the ways that these subjects are taught: through their provision, for example, of opportunities for students to gain work based experience or undertake clinical legal education. We agree with the Criminal Bar Association that it would be valuable if work-based aspects of the existing course could be offered to students *prior to*, as well as during, vocational training.
12. We will also be improving the way we provide information to students so that they are better able to assess their prospects of professional success as barristers, on the basis of their academic experience. For example, we agree with the Council of the Inns of Court (COIC), and others who responded to our consultation, that we should make clear that students who have only attained the minimum 2.2 degree classification are significantly less likely to obtain a pupillage than those with higher classifications of degree.

### Vocational Training

#### *BCAT*

13. After the academic stage, students will continue to need to pass an online **Bar Course Aptitude Test** (BCAT) which is designed to show how likely it is that they will succeed in the next level of training. Recent research conducted into the effectiveness of the current BCAT shows that it does so very well. Many have argued that the pass mark for this test has been too low in the past and this was one reason for the recent review of its effectiveness. Subsequently the pass mark was raised earlier this academic year and we think it is too early to say whether any further change is necessary at this stage. Another outcome of the recent review was that we decided to give students a detailed breakdown of their BCAT score and how that correlates with the level of success likely to be achieved at the next stage of training. This can help students assess the risk of investing in the next stage of training and we think that this information should therefore continue to be provided. We shall, however, keep the BCAT under review to ensure that it continues to be fit for purpose.

*Admission to an Inn*

14. Before they start the BPTC, students must be admitted to one of the Inns of Court as a student barrister: this will continue. Being “called to the Bar” by an Inn of Court, following the completion of the vocational stage of training is necessary to fulfil the statutory definition of a “barrister” and the Inns also provide an important environment in which students can meet members of the profession and develop and maintain ethical competence, which barristers must have - in both their own and in the public interest.
15. There are a number of other requirements at this stage of training, set by the BSB but delivered by the Inns of Court. These are known as “qualifying sessions” and consist of educational and professional networking activity which aims to develop a range of skill requirements in the Professional Statement.
16. Once students have met the requirements of the vocational stage of training (currently, by passing the BPTC) and completed the Inns’ other requirements, students can be “called to the Bar” by their Inn and are awarded the title “barrister”. Respondents generally saw no reason to change that definition and we agree, although it might have to be reviewed if COIC were to become more directly involved in delivering training. Some consultees specifically raised the possibility that a perceived conflict of interest may arise in these circumstances. The BSB is reviewing the requirements for call to the Bar delivered by the Inns, and the evolving role of the Inns in the formal regulatory arrangements of the BSB. We will report separately on that review.

*The BPTC*

17. The key focus of respondents to our consultation was the vocational stage of training: - the **Bar Professional Training Course (BPTC)**. This course can currently be undertaken (in a one year course full time or part-time over two years) at various sites around England and Wales. The BPTC is designed to ensure that students acquire the knowledge of procedure and evidence, professional skills, attitudes and competence to prepare them for the final stage of training, more specialised work-based learning (pupillage).
18. The Bar Council’s consultation response can be taken as typifying the great majority of the responses we received, where they criticised the current BPTC:  
  
*“The current authorised BPTC model is unsatisfactory, and extremely unpopular with the vast majority of those who take it. It leads to too many people wasting too much money paying for expensive courses which in most cases do not lead either to employment or to tenancy. The system does not ensure that those who wish to come to the Bar have a chance to do so at reasonable expense and with a prospect of success that is reasonable given the investment of time and money required. The system will only be satisfactory if this vocational stage is made much less expensive, and correspondingly open to a wider segment of society.”*
19. Some have also argued that the presence on the course of academically less able students, and students with weaker English language skills, may adversely affect the learning experience for other students.

*The need to make changes to vocational training*

20. The BSB agrees that changes to the BPTC must make it a less risky and more valuable investment (both financially and personally) for those who undertake it. This can be achieved in several possible ways, including changing, for example: the structure and modes of delivery of the course, the admissions policies, the nature of the qualification awarded – or a combination of these things.
21. For the immediate future the current BPTC will of course have to continue, at least in the short term, to provide training for those who have already been accepted onto the course (on a full time or part time basis) and to bridge any gap between the current system and the new one. However, as the licences of current course providers expire in 2018 and 2019 and as new potential course providers prepare to come forward, we shall therefore be considering their proposals against our four key criteria of:
  - flexibility
  - accessibility
  - affordability and
  - sustaining high standards
22. We are not proposing substantive changes to the general syllabus for vocational training, but respondents did argue that the BSB should review the way in which Ethics is taught and assessed. We shall do so. It can take up to three years to effect substantial change in a core syllabus area but we shall work with others to ensure that the earliest reasonable timescale is achieved.

*The two-part vocational training model*

23. Most respondents to the consultation argued strongly in favour of a new two part model for vocational training, as proposed by COIC and the Bar Council. A key aspect of this proposal would be to split vocational training into two parts:
  - Part 1 would consist of the knowledge-based parts of the course – civil and criminal procedure and evidence, which are centrally examined by the BSB. Candidates would be able to prepare for Part 1 either independently or on a formal course.
  - Only those who pass Part 1 would then be able to proceed to Part 2 which will consist of the remaining skills-based elements – which include advocacy, drafting, ethics, and conferencing skills. Unlike Part 1, Part 2 would require formal attendance at a course.
24. The criticisms of this approach from other consultees centred around two concerns: whether the division of the course into two parts would encourage best-practice learning through the integration of knowledge and skills, and whether it would in practice meet social diversity objectives.
25. Many respondents argued that this two-part model should be the only recognised means of training for the Bar in future. They submitted that having a wider range of permitted pathways would create needless confusion amongst students and pupillage providers, encourage some students to choose courses which would give them inferior chances of gaining pupillage and lead to unnecessary regulatory costs which would have to be borne by the profession. Some respondents also argued that some models might actually deter Chambers from offering pupilages in future.

26. While we agree that the interests of those preparing for pupillage and the views of those Chambers which offer pupillage are of fundamental importance, it is important to bear in mind that the current BPTC, as a one year full time course, is also greatly valued by international students – 46% of students enrolled on the BPTC course in 2016 were not domiciled in the UK and most of those will have their success in it recognised on the professional qualification route in their home jurisdiction. Arguably, these professionals become world-wide ambassadors for compliance with the rule of law and the common law system of England and Wales.
27. Additionally, some 18% of practising barristers work at the employed Bar (such as in the Government Legal Service or Crown Prosecution Service) and this is another reason why not all bar trainees may not be seeking pupillage in Chambers. It is vital that any system of vocational training also meets the needs of the employed Bar.
28. The vocational stage of training also gives people very valuable transferable skills for a wide variety of roles in the justice system as well as in the commercial world and in the public sector and many who do not obtain pupillage nevertheless have very successful careers. Our future system must take into account these factors as well.

*The combined academic and vocational model*

29. In recent years we have allowed providers (for example, Northumbria University) to combine the BPTC with a Master's degree in Law and this helps to reduce the costs of training. It enables students to fund those costs through the student loan system and gives them a more widely recognised qualification, whether or not they then go on to seek pupillage. We see this as a positive development. Some students may continue to want to follow this route and to choose courses where they can learn knowledge and skills together. We think therefore that this model should also continue subject to its meeting the criteria in our new Authorisation Framework.
30. A number of providers of the current BPTC already offer a “top up” LLM, and this is to be welcomed in our new system.

*The modular or apprenticeship model*

31. We also think that the model of training most similar to (higher) apprenticeships must also be permissible in our regulatory framework, though we recognise that it is unlikely that providers and employers will be quick to come forward with proposals under this model. The employed Bar indicated particular interest in this model and we consider it to be particularly fitted to that training environment.

*Conclusion (vocational training)*

32. We agree with those respondents who have argued that having too many routes for qualifying at the Bar would offer no benefit and create confusion for both course providers and students. Although we do not rule out the possibility of other models being proposed in future, we see the four models above as being the only likely models which will be proposed to us for authorisation at present. We set out more about our proposed Authorisation Framework below.

## Pupillage

33. During pupillage, pupil barristers undertake a year of paid, practical training supervised by experienced barristers. On successful completion of pupillage barristers are fully qualified and become entitled to their first full practising certificate.
34. The operation of an improved BPTC, the two-part vocational model and the combined academic and vocational model would not require substantive changes to the current arrangements for pupillage. But we shall be improving our oversight of pupillage as a regulator and taking steps to ensure the consistency of the outcomes at the end of pupillage – to give the public confidence that, wherever and however a barrister has done this final stage of training, the same minimum standard as set out in the Professional Statement has been achieved. The apprenticeship model, depending on the exact details of any proposal received, may require an alteration to some current pupillage arrangements to allow for greater flexibility and, potentially, partnership between providers. However, this model would, we anticipate, generally operate outside of the chambers system and therefore traditional chambers work-based learning will not face significant change.
35. Currently, there are far fewer traditional chambers based pupillage places available than well-qualified students called to the Bar seeking to complete their training as barristers. The BSB notes that of those enrolled on the BPTC from 2011-2014, only 39% of UK/EU students who have been called to the Bar have moved on to pupillage.
36. There are many other opportunities for people who have been called to the Bar to contribute to society with their legal knowledge and skills and the personal attributes of barristers such as independence, honesty and integrity. We want to encourage the profession and the wider justice system to value their potential contribution. We shall maintain our regulatory relationship with them and they remain subject to our Code of Conduct because they are barristers. We shall also take steps to encourage a wider range of pupillages, and other final-stage training opportunities, to be made available and we shall aim to expand the range of work-based learning that we recognise as valid in meeting the requirements of the Professional Statement.

## Next steps - The Authorisation Framework

37. We shall provide more detail about the criteria in our Authorisation Framework later in 2017, which will be developed in collaboration with stakeholders. In the meantime, we set out some (non-exhaustive) indications of what they mean below:
  - flexibility: we think diversity (and possibly also affordability) will be enhanced if training at this stage is permitted to be available in a wider range of modes – not just part time or full time, but through distance and blended learning and integration with paid work, for example.
  - accessibility: it is vital the profession is open to the widest possible range of students and that its diversity is maintained and enhanced. So we shall want to hear from prospective providers about their arrangements to encourage admission of, and enhance support for students from under-represented groups. We shall also want to ensure that training is available across England and Wales.
  - affordability: postgraduate level professional training is very rarely cheap, but we want to see specific proposals from providers that actively address the balance of cost and risk to the students and enhance the value for money of their training compared to the current system. Understanding the financial and market implications of all new models will be essential.

- sustaining high standards: whatever the structural model a provider puts forward for approval, graduate admission standards will be maintained, as will a higher BCAT score for entry. The BSB will continue to control a range of centralised assessments so that the public is assured of a consistency in “day one” outcomes: that whatever route a barrister took to being called to the Bar and subsequently being awarded their first practising certificate, a minimum standard of competence, skill and knowledge has been achieved. We will also need to be sure that a provider is sustainable, accountable and adequately quality assured and that its proposals are financially sound and operationally feasible.
38. So, while we welcome, for example, the proposal of a two-part vocational course and anticipate that it is theoretically capable of meeting the criteria in our Authorisation Framework, the question of *when* that new model, or any other new model for vocational training, can first be offered will depend on the course providers. The exact details of how training is to be provided and how this can ensure accessibility for those from different backgrounds will also determine whether or not whether any individual proposal is authorised. For our part, we will do everything we can to assist in a smooth and swift development of the model. The two-stage model clearly has strong support from the profession and it could become very popular, given the possibility of studying Part 1 more flexibly, especially if it proves possible to study both Part 1 and Part 2 at a lower cost than the current course.

#### **Aligning our approach with that of other legal regulators**

39. Finally, we are conscious that the different branches of the legal profession (notably solicitors and barristers) have been thought to be developing divergent and mutually exclusive systems for future training. Ensuring alignment between our plans and those of the Solicitors Regulation Authority (SRA) wherever possible within our own principles has been a constant in our development work. Neither our new approach nor that of the SRA will drive students to make inappropriately early decisions as to whether to become either a barrister or solicitor, as some have suggested. The SRA approach will be different from ours, but compatible with it. For example, a law degree which includes preparation for the proposed Solicitors Qualifying Examination (SQE) is almost certain to meet the BSB’s requirements. We will continue to work with the SRA to develop a set of principles for recognising qualifications, including across jurisdictions.
40. Our work so far on Future Bar Training has engaged actively with a wide range of individuals, groups, communities and institutions. We will continue to work constructively and closely with all those with an interest in our work as we move to developing our Authorisation Framework over the course of 2017, submitting an application for changes to our regulatory arrangements to the LSB by the end of 2017/18, and rolling out a new system incrementally from autumn 2018 onwards.