

Note: the timings quoted on the agenda sheet are indicative only and the meeting may extend beyond the anticipated finish time.



REGULATING BARRISTERS

**Meeting of the Bar Standards Board
Thursday 23 March 2017, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ**

Agenda - Part 1 – Public

			Page
1.	Welcome and introductions (4.30 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes		
	• 23 February 2017 (*)	Annex A Chair	3-7
5.	Matters Arising (*)		
6.	a) Action points and progress	Annex B Chair	9-11
	b) Forward agenda	Annex C Chair	13-14
7.	Future Bar Training: Future Routes to Authorisation (4.35 pm)	BSB 021 (17) Justine Davidge	15-29
	Annex A - Consultation on the Future of Training for the Bar: Future Routes to Authorisation - Summary of Responses		31-114
	Annex B - Future Routes to Authorisation: Equality Impact Analysis (EIA)		115-170
	Annex C - LSB Guidance		171-176
	Annex D - Summary Briefing: Future Bar Training (FBT) – review of existing evidence		177-192
8.	BSB Business Plan for 2017-18 5.25 pm)	BSB 022 (17) Anne Wright / Vanessa Davies	193-222
9.	Collection of practice area information (5.40 pm)	BSB 023 (17) Ewen Macleod	223-225
10.	Qualifications Committee: Annual Report to the Board for 2016 and Update on Implementation of Governance Review (5.50 pm)	BSB 024 (17) Rob Behrens/ Clíodhna Judge / Joanne Dixon	227-237

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](#) before the meeting.*

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| 11. | Scheme of Delegations for BSB Entities - Proposed Amendments (6.05pm) | BSB 025 (17) | Clíodhna Judge | 239-241 |
| 12. | Chair's Report on Visits and Meetings: March 2017 (*) | BSB 026 (17) | Chair | 243 |
| 13. | Director General's Report (6.10 pm) | BSB 027 (17) | Vanessa Davies | 245-252 |
| 14. | Any other business | | | |
| 15. | Date of next meetings <ul style="list-style-type: none">• Thursday 27 April 2017 (Board Away Day)• Thursday 25 May 2017 (Board meeting) | | | |
| 16. | Private Session | | | |

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
16 March 2017

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](mailto:John.Picken@barstandardsboard.org.uk) before the meeting.*

BSB 230317

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public

Minutes of the Bar Standards Board meeting
Thursday 23 February 2017, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair)
Alison Allden OBE
Rolande Anderson
Rob Behrens CBE
Aidan Christie QC
Justine Davidge
Judith Farbey QC
Steven Haines
Zoe McLeod
Andrew Mitchell QC
Nicola Sawford
Adam Solomon
Anne Wright CBE
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council) – by phone
James Wakefield (Director, COIC)
Andrew Walker QC (Vice Chairman, Bar Council)
- BSB Executive in attendance:** Sam Benton (Professional Support Lawyer)
Vanessa Davies (Director General)
Rebecca Forbes (Governance Manager)
Oliver Hanmer (Director of Regulatory Assurance)
Sara Jagger (Director of Professional Conduct)
Ewen Macleod (Director of Strategy and Policy)
Ruby Newton (Senior Authorisation & Supervision Officer)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)
Angela Yin (Communications & Press Officer).
- Press:** Max Walters, Law Society Gazette

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting.

Item 2 – Apologies

2.
 - Anu Thompson
 - Andrew Langdon QC (Chairman, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
 - Viki Calais (Head of Corporate Services)

Item 3 – Members’ interests and hospitality

3. None.

Item 4 – Approval of Part 1 (public) minutes (Annex A)

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 26 January 2017.

Item 5 – Matters Arising

5. None.

Item 6a – Action points and progress

6. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list.

Item 7 – Performance Report Q3 (as at end December 2016)

BSB 012 (17)

8. Anne Wright highlighted the following:
- eight Business Plan activities are currently behind target delivery times as identified on the dashboard (Annex 1). Several of these are due to “reprioritisation” ie diversion of resources to urgent projects which then has a knock-on effect for other scheduled programmes;
 - the key messages for the Board to note are:
 - a caveat to the financial statement provided. There was not time for a re-forecast to be completed prior to the PRP Committee’s meeting. The management accounts (Annex 2) should therefore be read in this context;
 - continued close monitoring of the Future Bar Training (FBT) programme is required. This is a complex project which has significant impact on staff resources and needs to be managed within particular timelines. This will need to be reflected in the 2017/18 business plan;
 - staff turnover remains high. The committee received an analysis of leavers from the Director of HR. This identified several areas to explain the figures, in particular, high levels of short term contracts including those for maternity cover and higher than expected numbers leaving during or at the conclusion of their probationary period.
9. She also thanked Dan Burraway (Corporate Support Manager) who had covered for two absent colleagues in that Department during the period when the performance report was prepared.
10. The following comments were made:
- the report identifies several missed KPI targets; in particular:
 - Authorisations – applications completed within 6 weeks;
 - Professional Conduct – percentage of external complaints concluded or referred to disciplinary action within 8 months.
 - it is not clear if performance has been affected by variances in the volume of incoming work;
 - there are limits to the amount of “reprioritisation” that can be undertaken without detrimentally affecting the overall business plan. Future Bar Training is a key programme but it is not clear if resources are ring-fenced for it.

11. In response the following comments were made:
- the figures for Authorisations were recently discussed by the Qualifications Committee. The salient points were:
 - the reasons for the shortfall are now largely historic and unlikely to recur collectively again (a mixture of staffing difficulties, backlogs and implementation of new governance arrangements);
 - some applications are more complex than others and therefore require more time to complete;
 - the completion figures for authorisations within 8 weeks were significantly better, notwithstanding the above issues;
 - the KPIs for Professional Conduct were affected by the closure of several long standing cases. Whilst this is welcome it nevertheless impacts on these figures in a detrimental way;
 - the volume of work does vary but both the Regulatory Assurance and Professional Conduct Departments can address these ebbs and flows in a flexible manner by adapting staffing resources accordingly. The same is true of the FBT programme for which resources are not specifically ring-fenced but can be allocated on an “as required” basis;
 - notwithstanding the above, the Professional Conduct Department has been running “lean” for some time due to vacancies created through staff turnover. This means it has been less resilient in terms of its capacity to consistently meet existing KPIs. A full complement of staff sustained over a prolonged period would be able to meet these targets.
12. **AGREED**
to note the report.
- Item 8 – Youth Proceedings Advocacy Review Update: Youth Proceedings Competencies and Guidance**
BSB 013 (17)
13. Oliver Hanmer highlighted the following:
- the report reflects a significant level of engagement by the BSB with a wide range of stakeholders over the last 18 months. It sets out a three phase action plan to improve advocacy within the youth justice sector;
 - the first of these is to publish the relevant competencies and guidance information (Annex 1 of the paper) followed by stakeholder engagement;
 - subsequent phases include further consumer oriented publications, compulsory registration of Youth Court Advocates and embedding this approach within the BSB’s wider quality assurance strategy;
 - the value of compulsory registration is that the BSB can then identify who is undertaking this work and ensure standards are met by monitoring CPD choices.
14. He also referred to the Ministry of Justice (MoJ). The salient points were:
- the MoJ is not prioritising the findings of the Taylor Review of the Youth Justice System in England and Wales (Dec 2016). This is unfortunate as this publication had given extra momentum to the BSB’s work in this area;
 - it is also not seeking to raise the fee for Youth Court work despite the findings of the Review that lower payment was a key factor for the perception that these cases are of lesser value compared to Crown Court work.
15. Members commented as follows:
- it is pleasing to see the progress made on an issue which directly affects a vulnerable group;
 - it would help to know more about the communications strategy we have in place;

Part 1 - Public

- it would be useful to hear about the proposed procedures for the registration of Youth Court Advocates;
 - the guidance at 4.3 (Annex 1) states that barristers should be able to “empathise, understand and communicate effectively...”. It also quotes a range of protected characteristics in this regard. The language here needs to be reconsidered, in particular the reference to empathy. This is not possible to measure in any meaningful way. The overriding principle is that barristers must represent their clients’ interests in the best possible way at all times;
 - there is a reference to ‘employ other available services” at 4.3.2 (Annex 1) in the context of barristers supporting young people for whom direct communication is difficult. It is not clear what is meant here and some clarification would be welcome;
 - it would be helpful to know the extent of involvement from young people in the design of consumer oriented publications and the best approach for those clients for whom reading English is a barrier;
 - it is not clear how the impact of this work will be measured;
 - it would help to know if this topic is covered on the current BPTC curriculum or otherwise what training opportunities there are available.
16. In response, the following comments were made:
- the communications strategy includes:
 - a press release for 24 February 2017;
 - articles in Counsel magazine;
 - a series of talks at related events / seminars;
 - liaison with the national press;
 - the procedures for registration are being drafted and this is on the premise that barristers will be able to register retrospectively. We want to avoid creating any barriers that would frustrate their participation in these cases;
 - the wording could be amended. It is primarily a language issue - empathy is not synonymous with sympathy but it is open to misinterpretation. To show understanding is broader and remains relevant in the context of protected characteristics;
 - the research work undertaken included direct contact with young people and the client material produced reflects that experience;
 - the impact of the work will be measured indirectly through feedback from bodies such as the Magistrates Association. We could also complete some comparative research in 18-24 months’ time;
 - youth court work is a niche area and does not feature in the more general BPTC curriculum. There are specialist training providers available, however, and part of the project is to raise awareness of this within the Bar. In addition, there are alternative opportunities within the voluntary sector.
17. **AGREED**
- a) to approve the Youth Proceedings competencies and guidance subject to amendments to paragraphs 4.3 and 4.3.2 as identified above.
 - b) to note the continuing work on the Youth Proceedings Advocacy Review.

OH

Item 9 – Future Bar Training: Consultation update

BSB 014 (17)

18. **AGREED**
to note the report.

Item 10 – Chair’s Report on Visits and Meetings: February 2017

BSB 015 (17)

19. **AGREED**
to note the report.

Item 11 – Director General’s Report

BSB 016 (17)

20. Vanessa Davies commented as follows:
- the report was written in advance of the proposed follow-up workshop on CPD referred to in paragraph 3. This was, in fact, postponed;
 - the latest revision to the Handbook means it will be in “gender neutral” form;
 - the responses to the Future Bar Training consultation have been made available via an online site for the benefit of Board Members. This includes all those from Specialist Bar Associations.

21. **AGREED**
to note the report.

Item 12 – Any Other Business

22. None.

Item 13 – Date of next meeting

23. Thursday 23 March 2017.

Item 14 – Private Session

24. The following motion, proposed by the Chair and duly seconded, was agreed:
That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes;
 - (2) Matters Arising;
 - (3) Action Points and Progress;
 - (4) Corporate Risk Register;
 - (5) FBT – arrangements for March meeting;
 - (6) Review of the standard of proof applied in professional misconduct proceedings;
 - (7) Update on Brexit implications – Bar Council proposal;
 - (8) Any other private business;
 - (9) Review of the Board meeting in terms of conduct and outcomes.

25. The meeting finished at 5.30 pm.

**BSB – List of Part 1 Actions
23 March 2017**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
17a (23 Feb 17) – Youth Proceedings Advocacy Review	publish the Youth Proceedings competencies and guidance subject to amendments to paragraphs 4.3 and 4.3.2	Oliver Hanmer	immediate	24/02/17	Completed – amendments made and documents posted on the BSB website with a press release
21b (26 Jan 17) – section 69 order to extend BSB’s powers	discuss detailed drafting points of the s69 order with the MoJ and the LSB before finalising it, in particular around intervention and disciplinary powers	Ewen Macleod	before end February 2017	15/03/17	Ongoing - Feedback given to MoJ lawyers. We have identified a need to get some external advice which we are seeking urgently.
				15/02/17	In hand – discussion held. MoJ lawyers have come back with advice and request for further instructions. We are currently considering the points raised, will update Board in due course.
15b (27 Oct 16) – definition of “employed barrister (non-authorized body)”	draft a rule change to amend the scope of in-house employed practice subject to further information discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance	Ewen Macleod	by end Jan 17	15/03/17	Ongoing – draft application due to be submitted to LSB by end March
				15/02/17	Ongoing – awaiting meeting with BACFI
				17/01/17	In hand – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.
27c (19 May 16) – Youth Proceedings Advocacy Review	seek further discussions with the MoJ and Legal Aid Agency on how to address the financial value placed on the youth justice system	Oliver Hanmer	Review April 2017	18/1/17	In hand – At a discussion with the MoJ on 18 January 2017, value did not appear to be a priority for them. At a subsequent meeting with the Youth Justice Board on 14 March 2017, discussed continuing to put pressure on MoJ about this issue. There will be ongoing engagement with the YJB, LAA and MoJ on the issue of value.

**BSB – List of Part 1 Actions
23 March 2017**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
20d (26 Nov 15) – Gov review & revised SOs	establish two new roles to support the changes in education and training ie: <ul style="list-style-type: none"> • a “Visitor” to hear challenges against Centralised Examination policy and procedures • an increased role for the Independent Observer to the Centralised Examination Board. 	Victoria Stec	before 31 March 16	15/02/17	In hand – Meeting with Governance team took place. Proposals for internal audit are not yet at a stage where any change to interim arrangements is proposed and nature of expertise required is, in any case, likely to mean that these roles cannot be undertaken by an internal auditor. Agreed no change at present.
				13/01/17	In hand – Meeting with Governance team set up on 1.2.17 to discuss how to move on from interim arrangements.
				08/11/16	In hand – Interim Independent Examinations Observer participated in the resit Boards and this worked well. The arrangement will continue until internal audit is clarified.
				17/10/16	In hand – Interim Independent Examinations Observer appointed for work on resit Boards in October 2016. Contract will be ongoing but with 3-month termination clause so that when future of internal audit is clear, other arrangements can be made if needed.
				20/09/16	In hand – title of “Independent Reviewer” rather than “Visitor” has been agreed and interim Independent Reviewer is in place on an ad hoc basis from July 2016; recruitment processes for permanent role not yet complete.

**BSB – List of Part 1 Actions
23 March 2017**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
21b (23 July 15) – insurance for single person entities	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Rob Wall	by 31 Jul 15	15/02/17	Ongoing – Meeting with APEX members to discuss next steps on 21/02/17. Meeting between BSB and BMIF boards scheduled for 05/04/17
				16/11/16	On track – oral update on Part 2 agenda
				20/10/16	For discussion - see Board paper BSB 080 (16) – item 6 on the Part 2 agenda
				20/09/16	On track – economic analysis now complete. This will be considered by a Task Completion Group on 22/09 and presented to the board in October.

Forward Agendas**Thursday 27 Apr 2017 (Board Away Day)**

- Remuneration for barrister members
- BSB public image, including logo and strapline
- Scenario planning for LSB Vision paper / MoJ response to CMA recommendations

Thursday 25 May 2017

- PRP Report: includes the BSB YE Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register
- Assurance Framework Update
- Shared Parental Leave
- Regulatory Risk Prioritisation

Thursday 22 Jun 2017

- CMA report: approval of action plan
- Draft Annual Report 2016-17

Thursday 27 Jul 2017

- Annual Report 2016-17
- Enforcement Report 2016/17
- Authorisations Governance Project Update
- Regulatory Standards Framework – BSB self-evaluation
- Standard of Proof – response to draft consultation

Thursday 28 Sept 2017

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- GRA Committee Annual Report
- Schedule of Board meetings Jan 2018 – Mar 2019
- CMA recommendations on transparency: approval of consultation
- Business Planning and Budget Bid for 2018-19
- Corporate Risk Register
-
- Qualifications Fees – Consultation Update
- Entity Review

Thursday 26 Oct 2017**Thursday 23 Nov 2017**

- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Corporate Risk Register

Thursday 7 Dec 2017 (Board Away Day)**Thursday 25 Jan 2018**

Thursday 22 Feb 2018

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Draft BSB Business Plan for 2018-19
- Corporate Risk Register

Thursday 22 Mar 2018

- BSB Business Plan for 2018-19

Future Bar Training: Future Routes to Authorisation

Status

1. This paper is for **discussion** and **decision**.

Executive summary

2. The consultation on *Future Routes to Authorisation* opened on 3 October 2016. On 1 December the BSB published an addendum which set out a further proposal supported by the Council of the Inns of Court (COIC) and the Bar Council. We also extended the closing date of the consultation. On 31 January 2017 the consultation closed. Copies of all responses to the consultation paper have been shared with all Board members and (with the exception of those provided in confidence) will be published in due course.
3. The 2016 Consultation put forward a number of policy principles relating to how future training pathways may be authorised. At its July 2016 Board meeting, the Board agreed to support an approach which was most consistent with:
 - the BSB’s risk-based approach to regulation and an outcomes-focussed view of education and training;
 - the ability of the new training system to meet our regulatory objectives and the LSB guidance on education and training;
 - the ability of the new training system to meet the Professional Statement; and
 - the principles on which we consulted, namely: accessibility, flexibility, affordability and sustaining high standards.
4. The various approaches for the BSB’s regulatory framework are set out in the consultation paper. The “**Evolutionary**” approach sets out a framework which would require few changes to our Rules and retain the current training pathway as (normally) the only pathway to authorisation to practise. The “**Managed Pathways**” approach would enable a more flexible approach to be taken whereby the BSB would seek to authorise a limited set of alternative pathways, which may include those described in the consultation. A further pathway jointly put forward by the Council of the Inns of Court (COIC) and the Bar Council suggested a split vocational learning course, whereby students learn procedure and evidence before learning advocacy (and other skills). The **COIC/Bar Council split BPTC** proposal would be permissible within the “Managed Pathways” approach, although some have suggested it should be the only permitted route. A third approach, the “**Bar Specialist**” approach would introduce an entrance exam similar to other jurisdictions, including US state Bar examinations, with a shortened skills course and work-based learning following the exam(s).
5. We are not yet in a position to authorise training providers and / or individual pathways they may put forward. However, once a decision is taken on a new regulatory framework, we would expect training providers to propose pathways which meet the requirements of the Professional Statement and would be validated by satisfying any further requirements to be set out in a new Authorisation Framework. Key to this will be the principles on which we consulted: that the offerings in the new system should be accessible, flexible, affordable, and sustain high standards.
6. At its February 2017 meeting, the Education and Training Committee discussed the outcome of the consultation and the related policy principles which the full Board is now being asked to consider. In light of this, the Committee has made a number of recommendations to the Board:

Part 1 – Public

- i. That a **Managed Pathways** approach be adopted to enable a limited number of alternative pathways to be validated. The Education and Training Committee agreed that this approach is the only one of the three approaches which provides sufficient flexibility to enable other, more innovative approaches to training, including those which were illustrated in the consultation and the COIC/Bar Council proposal.
- ii. That we should not seek to change **section 207(1) of the Legal Services Act (LSA)**, which provides that a “barrister” is called to the Bar by one of the four Inns of Court. This question was seen to be non-contentious but it was noted that a review of the relevant governance arrangements would be required to ensure good practice in our regulatory arrangements, particularly if the Inns themselves were to enter the training market.
- iii. That the Bar should remain a **graduate profession** and that any training pathway would normally require a degree classification of **2:2** or equivalent. There was discussion among members about whether to raise the minimum degree award to a 2:1 but it was noted that there are a number (albeit a small percentage) of barristers with a 2:2 who have gone on to obtain pupillage and have built successful practices at the Bar. Setting a higher barrier may limit access to the profession in a disproportionate way.
- iv. That the seven ‘**foundation subjects**’ comprising part of the ‘**Qualifying Law Degree**’ (QLD) requirements of our existing Rules continue to be specified to the extent necessary to enable law degree providers to meet the requirements of the professional statement. Following submissions during the consultation period, the Committee agreed that there is a public protection duty which outweighs the desire to see greater innovation in academic learning of law (but that innovation in how the subjects are taught should still be encouraged and permitted).
- v. That the **BCAT** should not be altered, as the change to increase the pass score was only introduced in 2016 and that it would be too early to judge the success of this change.
- vi. That the assessment of **Ethics** be reviewed. Following responses to the consultation, the Committee agreed that the BSB ought to review how Ethics is taught and assessed.
- vii. that we continue to work with other regulators, including the SRA, to develop a set of **principles for future recognition of professional legal qualifications**.

Recommendations

7. After careful consideration of the responses to the consultation and the principles on which we consulted, the **Board is asked to approve** the recommendations of the Education and Training Committee:
 - i. that Option B – the “Managed Pathways” approach – be adopted but with the number of pathways to be limited;
 - ii. that no change is sought to s207(1) Legal Services Act 2007¹;
 - iii. the Bar to remain a graduate profession with the minimum entry requirement normally being a 2:2;

¹ Note that there is work under way to review the governance arrangements of the Inns of Court.

- iv. that the seven foundation subjects comprising the Qualifying Law Degree be specified to the extent necessary to enable law degree providers to meet the requirements of the professional statement;
- v. that no change to the BCAT is required at this stage;
- vi. that the teaching and assessment of Ethics be reviewed; and
- vii. that we continue to work with other regulators, including the SRA, to develop a set of principles for future recognition of professional legal qualifications.

Further, the Board is asked to **comment on the draft Policy Statement** on the future system, which has been drawn up to express in an accessible way the effect of these recommendations (NB Policy statement to be distributed under separate cover to follow.)

Discussion

Future Bar Training Programme

8. Informed by the Legal Education and Training Review (LETR) and the LSB's statutory guidance (attached at Annex C) the BSB began work to address the issues raised in the review by initiating a wide range of policy activities under one programme, Future Bar Training (FBT). Since this time, we have:
 - Published the **Professional Statement** in 2015, updating it with the necessary **Threshold Standards** in 2016. The Professional Statement sets out the minimum competences for practice at the point of authorisation. This publication can be seen as the basis for all future activity relating to education and training, as we seek to ensure an outcomes-focussed approach.
 - Published **BPTC Key Statistics** annually, starting in 2015. This annual publication allows the BSB and others to understand activity in the Bar training market and make informed decisions. For the BSB, this data will also help guide some of our supervision activity. For providers, it provides data on the 'whole of market' activity in the provision of BPTC courses. For students, the data can be used to help them make informed decisions about where to study, based in part on how well previous students perform. More work can be done to make it more user-friendly but we see this step as an important one as we seek to use the evidence to inform other aspects of our work.
 - Launched the **new Continuing Professional Development (CPD)** regime for established practitioners.
 - Introduced relaxation to some regulatory prescription in the current BPTC. We have committed to continue to make improvements where we can, prior to any new system being introduced.
 - Raised the **pass score of the BCAT** and improved the information candidates receive in relation to their score and chances of success.
 - Strengthened and improved **centralised assessments**.

FBT consultation: Future routes to authorisation

9. The 2016 consultation continued to build on the themes and policy issues expressed in the first FBT consultation, which was more wide-ranging in its scope. Based on feedback from the 2015 consultation, we set out three very different regulatory approaches as well as an assessment of relative strengths and weaknesses.

10. The “**Evolutionary**” approach sets out a framework which would require few changes to our Rules and retain the current training pathway as the only (normal) pathway to authorisation to practise. The “**Managed Pathways**” approach, on the other hand, would enable a more flexible approach to be taken whereby the BSB would seek to authorise a limited set of alternative pathways, as described in the consultation. A third approach, the “**Bar Specialist**” approach would introduce an entrance exam similar to other jurisdictions, including US state Bar examinations, with a shortened skills course and work-based learning following the exam(s).
11. The three Options were examined based on the criteria that we set out in consultation, namely that any new training system ought to be guided by the principles of improving **flexibility, accessibility, affordability and sustaining high standards**.
12. A further pathway jointly put forward by the Council of the Inns of Court (COIC) and the Bar Council suggesting a split vocational learning course, whereby students learn knowledge of procedure and evidence before learning advocacy (and other skills). The **COIC/Bar Council ‘split BPTC’** proposal would be permissible under the “Managed Pathways” approach. This proposal was not assessed in the same way as the others within the consultation document, but an addendum to the consultation was published outlining the case for that proposal.

Broad principles guiding our decision

13. The 2016 Consultation put forward a number of policy principles relating to how future training pathways may be authorised. At its July 2016 Board meeting, the Board agreed to support an approach which was most consistent with:
 - the BSB’s risk-based approach to regulation and an outcomes-focussed view of education and training;
 - the ability of the new training system to meet our regulatory objectives and the LSB guidance on education and training;
 - the ability of the new training system to meet the Professional Statement; and
 - the principles on which we consulted, namely: accessibility, flexibility, affordability and sustaining high standards.

Outreach events and responses to the consultation

14. Prior to publishing the 2016 consultation, we undertook an extensive engagement campaign to raise awareness of the consultation and actively to seek responses. In July we hosted a debate in which different options were explored and championed by members of the profession and providers.
15. Following the launch of the consultation, we undertook a series of roadshow events in London, Manchester, Newcastle, Leeds, Nottingham, Birmingham, Cardiff and Bristol.
16. 148 delegates attended these events and feedback was gathered from a wide range of stakeholders including practitioners, academics, students, the Inns and other interested parties. Feedback to consultation questions collected during these events is analysed as part of the Summary of Responses document.
17. The schedule of preparation and publication of the consultation is set out in the following table.

Table 1: Timeline for FBT consultation: Future routes to authorisation

Options reviewed by BSB Board at Away Day	21 April 2016
Public Statement on FBT announced	2 May 2016
Consumer Group Workshop	2 June 2016
FBT Task Completion Group meeting	9 June 2016
Education & Training Committee: consider approach to consultation	4 July 2016
Stakeholder “debate” event	7 July 2016
BPTC conference	15 July 2016
Board meeting: consider approach to consultation	26 July 2016
Publication of consultation: Future routes to authorisation	3 October 16
FBT Roadshow – London (students only)	25 October 2016
FBT Roadshow – London	25 October 2016
FBT Roadshow – Manchester	27 October 2016
FBT Roadshow – Newcastle	1 November 2016
FBT Roadshow – Leeds	2 November 2016
BSB / Bar Council – Joint Education and Training Committee meeting	8 November 2016
FBT Roadshow – Nottingham	9 November 2016
FBT Roadshow – Birmingham	10 November 2016
FBT Roadshow – Cardiff	16 November 2016
FBT Roadshow – Bristol	17 November 2016
BPTC London Student event	24 November 2016
Young Bar Council discussion	25 November 2016
Publication of COIC / Bar Council Addendum to consultation	1 December 2016
Kings College London QLD event: Impact of regulatory reform at the Bar on the study of law	19 January 2017
BSB Education and Training Committee	28 February 2017

18. In addition to the feedback received at the events, there were 1,109 responses to the consultation, including 529 barristers and judges who signed an open letter in support of the COIC/Bar Council proposal and 206 barristers who sent emails in support of responses from the Commercial and Chancery Bar Associations. For the purposes of the consultation analysis, where COMBAR or the Chancery Bar Association are referenced this should be taken as inclusive of all respondents who wrote in support of their response and asked for it to be adopted as their own. This is also the case for the Open Letter.
19. 374 people and organisations also offered individual substantive responses which were received from the following:
- 250 Barristers;
 - Ten Academics;
 - Two academics who also practised as barristers;
 - Sixteen special interest groups
 - Eleven Specialist Bar Associations;
 - Twenty-one students;
 - Nine pupils;
 - Nine Academic Institutions (not offering the BPTC);
 - Eight (all) institutions offering the BPTC;
 - Ten Judges;
 - Eleven Chambers; and
 - Seventeen “other” respondents.

Key findings

20. Key findings from the consultation analysis show that there is broad consensus from respondents on a number of issues raised in the consultation. Some of the key messages from the consultation analysis are:
- Among most respondents, there was broad support for the BSB's position not to seek change to s207(1) of the Legal Services Act which restricts the title of barrister to someone called to the Bar by one of the Inns of Court.
 - Among most respondents, there was broad support for the principle that the Bar remain graduate and that the BSB should retain the requirement for degree classification of 2:2 or raise it to 2:1.
 - Among most respondents, there was broad support for the seven core 'foundation subjects' to be retained as part of any future 'qualifying law degree' or graduate diploma in law.
 - Most respondents to the consultation supported the introduction of the COIC/Bar Council proposal to split the BPTC into two parts, one for knowledge and one for skills.
 - Among most respondents, especially those supporting the COIC/Bar Council Addendum, there was concern that the current BPTC enables too many students to undertake an expensive, year-long course with little prospect of obtaining pupillage to qualify and practise;
 - Among most respondents there was a recognition of the need for greater efforts to be made in widening access to the profession from under-represented groups. Respondents in support of the COIC/Bar Council Addendum argued that the debt burden of the current system also negatively impacts on diversity and social mobility.
 - Respondents supporting the Managed Pathways approach argued that the greater flexibility would enable providers to improve access from under-represented groups and reduce costs and/or offer more transferrable qualifications, such as those linked to a Masters-level award.
 - Among most respondents, there was agreement that too many pathways has the potential for creating a tiered system in which Chambers would have preferred pathways and that others would become seen as "second rate". Respondents supporting the COIC/Bar Council Addendum stated that this would have a further impact on diversity and social mobility as those with the least social capital and knowledge of the Bar may choose one of the "weaker" pathways.
 - Current BPTC providers stated that the BPTC course provided offers value for money, especially as the skills training is time and resource intensive.
 - Among most respondents, there was broad support for Ethics to be taught and assessed in a more integrated way instead of as a stand-alone subject which is examined centrally.
 - Among academics and BPTC providers, there was broad support for BPTC qualifications to be linked to other Masters-level awards.
21. There were mixed views about the extent to which the options were capable of meeting the requirements of the Professional Statement, the BSB's regulatory objectives and the LSB's statutory guidance on education and training.
22. A full summary of the consultation responses is available as [Annex A](#).

Key policy issues arising from the consultation

Policy considerations relating to any Option

23. In the consultation, we set out a number of policy considerations which would apply to any new training system. These are considered below.

Call to the Bar: s207(1) of the Legal Services Act 2007

24. This related to the definition of the title ‘barrister’ as someone who is called to the Bar by one of the Inns of Court.
25. Most respondents to the consultation agreed with our analysis. However, a significant proportion of respondent academic institutions, alongside the Committee of Heads of University Law Schools, have qualified their agreement with the proposal by raising concerns about whether the Inns are to enter into the market as providers of education. These respondents noted that a potential conflict of interest could arise between the Inns’ role in validating barristers’ education through call to the Bar and their role as providers of education were they to enter the market as a provider of part of a split BPTC model.

Graduate profession / 2:2 degree classification requirement

26. There was broad agreement that the Bar remain a graduate profession and that the minimum requirement ought normally to remain 2:2. This is consistent with our objective to widening access to the profession.
27. We acknowledge most students who receive a lower second class degree have a lower chance of success than those with an upper second or a first. However, the BSB does not consider raising the degree requirement to be a proportionate response, particularly when we know that students can succeed with this degree classification.

Bar Course Aptitude Test

28. There were strong opinions on the BCAT, despite it not featuring as a question of policy. Most statements regarding the BCAT argued that the pass mark was set too low, allowing far too many candidates onto the BPTC, most of whom will have little chance of securing pupillage.
29. The pass score was increased this year to deal with the issues addressed by many of the respondents. From this year, candidates will also receive their score as well as an indication of likely success, based on their score. These improvements will allow candidates to make an informed decision before they commence with any further studies. Therefore, we think that it is too early and disproportionate to consider whether the pass mark needs to be recalibrated again.

Qualifying Law Degree foundation subjects

30. There were varying comments from respondents regarding the academic stage of training. In the consultation, we suggested that universities may be given greater flexibility in how they design and deliver law courses at undergraduate level. We also suggested that the BSB could remove prescription around the seven foundation subjects, thereby dispensing with the need to validate a ‘qualifying law degree’ for the purposes of recognition by the BSB.

31. Respondents to the consultation have argued that there is a need for a common foundation of knowledge for all practising barristers. This sentiment is acknowledged in the Professional Statement, which states that Barristers will:

“Have a knowledge and understanding of the key concepts and principles of public and private law” (s1.2 Professional Statement, 2016).

32. The question, then, arises as to what constitutes the key concepts and principles of public and private law. Can it be determined by each institution or is there a need for the regulator to determine a minimum requirement? There may be some debate among academic legal providers. At an event we held at Kings College, London, there were varying arguments, for and against. There is, however, no doubt amongst the practising Bar that the existing ‘foundation subjects’ represent the minimum for all candidates to the Bar.
33. As a risk-based regulator, it is incumbent on the BSB to set the minimum standards required of all barristers – this is the purpose of the Professional Statement. If some candidates for the Bar are training without gaining the knowledge and understanding that may be regarded as the key concepts and principles, then it may be difficult for the BSB to validate the competences acquired in the academic legal stage of training. Moreover, there may be an issue of public protection if there is inconsistency in basic knowledge, which could affect our regulatory objectives of protecting and promoting the public interest and the interests of the consumers.

Foundation subjects - Impact on Graduate Diploma in Law

34. For candidates who have not studied law at undergraduate level, a conversion course is offered which provides flexibility for transferring graduates. This is currently one of only two permitted pathways for meeting the academic stage requirements set by the BSB. Without the foundation subjects, the GDL may not adequately prepare non LLB graduates with the core legal knowledge as highlighted above in the Professional Statement.
35. After careful consideration of the this proposal, we think that the most proportionate response would be that the seven foundation subjects comprising the current Qualifying Law Degree be specified to the extent necessary to enable law degree providers to meet the requirements of the Professional Statement.

Review of how Ethics is taught and assessed

36. Most respondents argued, in varying ways, that Ethics ought to be taught in a more integrated way on the BPTC. A number of law schools agreed with our analysis and felt that the teaching and assessment of ethics should be blended so as to draw out ethical principles with an ability to recognise and apply principles in skills-based sessions. Moreover, BPP and Nottingham Law School felt that a closed book assessment of ethics is not realistic or relevant to practice because if barristers are faced with an ethical issue, they are able to access resources for guidance.
37. Therefore, we think that it is proportionate to review how Ethics is taught and assessed as we develop our Authorisation Framework. Continued specification of centralised assessments will be reviewed as part of the Authorisation Framework and pathway validation process.

Regulatory Objectives - Options Analysis

38. In the consultation we set out the issues relating to each of the Options, their relative strengths and weaknesses and how they met the requirements of, inter alia, our Regulatory Objectives, the Professional Statement, and the LSB's statutory guidance for education and training.
39. In light of the consultation responses, we discuss here some further issues relating to each of the approaches.

COIC/Bar Council proposal as the only pathway

40. Some respondents to the consultation have suggested that this proposal should be the only pathway authorised. Based on information submitted to date, the COIC/Bar Council pathway appears to be viable and has merit. Whether the BSB were to approve it as a pathway would be determined by our assessment of whether it met the requirements of our authorisation framework in due course. This would include considering the extent to which this pathway will support improved access to the profession from under-represented groups and promote an independent, strong, diverse and effective legal profession. However, the pursuit of the regulatory objectives and the desire to encourage innovation and competition in the training market would suggest we should not adopt a single, exclusive pathway, particularly one that is still at an early stage of development.

Option A – the “Evolutionary” approach

41. The majority of respondents argued that the high cost of the course and low success rate of most students indicates that the BPTC, as it is now, is not fit for purpose. There were also concerns raised about the ability of this Option to improve access to the profession and improve the flexibility of training pathways.
42. Respondents from current BPTC providers argued that this approach was a tried and successful pathway for both home and international students with a good reputation worldwide that serves to promote our regulatory objective to support the principle of the rule of law. Respondents also pointed out that it offers a good deal of flexibility in terms of location (regional locations) and a good mixture of part time or full time study options.
43. The concerns raised above are valid and must be addressed. Based on our equality impact assessment, there is a risk that this Option does not sufficiently address our desire to promote wider access, which precludes it from being considered the only permitted route to authorisation.
44. However, as one of a limited number of “Managed Pathways” this approach may still be attractive to some BPTC providers, international students and chambers who have responded in favour of this approach. Some of the respondents who also supported the COIC/Bar Council proposal suggested that these two routes be offered alongside one another.
45. In the consultation, we committed ourselves to ensuring continuity for students who have already started training for at least two years. This position is entirely consistent with our objectives of protecting and promoting the public interest as well as consumers as students will undoubtedly question what transitional arrangements are being put in place before the new system is introduced. An ongoing dialogue with providers will help us to understand whether this pathway will be offered longer-term

and how it may be adapted to meet other requirements, such as alignment to a Master’s award as a matter of course, with the potential for providers to offer clinical legal experience or a legal research module.

Option B – “Managed Pathways” approach

46. There were mixed views on this approach from respondents. Many academic and BPTC providers could see the merit in enabling flexibility in training pathways, especially as this is now the case already with Northumbria offering the combined academic/vocational pathway (albeit by exception). Others highlighted that there is opportunity to improve access to the profession and encourage innovation in the market. Indeed, the Bar Council, in its response to the consultation stated that “all the Bar Council and COIC seek is that the BSB enable their proposal.” Although both COIC and the Bar argue that they believe that a split BPTC approach (which might itself be delivered through multiple pathways/providers in due course) is the only viable way of training candidates; further analysis of this proposal, as well as critiques of the proposal are offered below.
47. The majority of respondents who supported the COIC/Bar Council proposal argue that improved access for those of lower socio-economic backgrounds would be negated by the confusion created by having a number of different pathways and that those with lower levels of social capital may end up on pathways perceived by some as “second rate” with limited opportunities to secure employment at the Bar. Respondents also argue that the high costs of training on any pathway other than a split BPTC course would continue to exclude those from under-represented backgrounds.

COIC/Bar Council proposal - Split BPTC

48. As noted above (and throughout the consultation period), this proposal is capable of being one of a limited number of pathways, so long as a provider is willing to put forward a proposal to the BSB for validation. COIC and the Bar Council, along with most barrister respondents, argue that splitting the BPTC is both possible and a more effective way of teaching for the Bar. They argue that by splitting the course into knowledge and skills, this will enable students to consolidate learning from the knowledge (part 1) by applying it on the skills course (part 2). Another advantage is that students will need to pass an exam or set of exams before being admitted to the skills course, filtering out the “weaker students” and saving them from having to spend more money than is necessary. There was also support for the idea that part 1 could be delivered in a number of ways, including by self-study, through online distance learning or by attending classes and that this would create the type of flexibility the BSB is looking to achieve.
49. Respondents have, however, also highlighted concerns. Current BPTC providers argued that the design of the BPTC, as an integrated knowledge and skills course, provides the best basis to teach knowledge and skills and that separating out knowledge and skills from the course, whilst possible, would be to its pedagogical detriment. On cost, the proposal offers no firm evidence on which to draw on conclusions, nor is it yet clear who might deliver either of the parts either separately or together.
50. Moreover, some respondents felt that the failure rate, described in the Addendum, would undoubtedly increase as more students would take the chance by sitting exams, perhaps without preparing properly through class-based learning, and fail to reach part 2. Further information is required to explore what impact, if any, this pathway may

have on under-represented groups, particularly those from lower socio-economic backgrounds.

51. As we set out in the consultation, we think that the variety in the routes available under the “Managed Pathways” approach, including the split BPTC approach, offers the greatest degree of flexibility and will improve access to the profession and promote competition in the market without a disproportionate level of regulation or prescription being imposed. Furthermore, this approach will also support the principle of the rule of law and access to justice.

Option C – “Bar Specialist” approach

52. There was limited support for this approach. However, those who support this approach argued that Option C would increase innovation in training, it would reduce excessive regulation and a shorter course would increase access. Other respondents stated that there was greater potential for reducing cost and regulation with the approach.
53. Several respondents felt that there are already flexible learning arrangements and this proposal would not increase accessibility or diversity. Many respondents questioned the ability of a three month vocational course to adequately cover what is required to equip students with the necessary skills and knowledge. One respondent argued that the segregation of the knowledge elements of the course from the skills would be undesirable and cause a false divide. Concerns were raised that this would impact on consumers.

Concerns relating to the Managed Pathways approach

54. One of the key concerns arising from the consultation responses related to the idea that there may be too many pathways and that this would create confusion among students, particularly among under-represented groups and that a two-tiered system would further disadvantage some students. This risk may be further compounded by multiple providers offering segments of a training pathway and may be a significant risk to diversity.
55. We have maintained that we would not authorise more pathways than there is a need for and this risk would need to be assessed as part of the Authorisation Framework. We will also have to ensure that through the Authorisation Framework and subsequent quality assurance that all pathways meet the same standards.
56. The BSB must clearly set out the routes to qualification as they are authorised. One way of tackling this might be to develop a well-designed page on the BSB website to help prospective students to understand the routes available. A pro-active approach with careers advisors can aide in awareness of the website.
57. As for chambers favouring some pathways, it could be argued that the current system does this by default (eg preferring Oxbridge graduates.) However, further engagement work with chambers’ recruitment panels might help in sharing best practice around recruitment practices.
58. As noted elsewhere, most respondents who support the COIC model have also said that we ought only to enable that proposal. There is a risk that this would disproportionately interfere with the training market’s ability to provide other, flexible, innovative and outcomes-focussed training pathways.

59. It is also possible that one pathway or provider could become dominant, in which case we would need to monitor the market for signs that a de facto monopoly had a negative impact on cost or access (if, for example all students preferred the Inns' approach). There are other concerns, highlighted in the Equality Impact Assessment that, should this occur, the training market might contract, placing greater emphasis on London-centric training providers and reducing real 'choice' for candidates.

A limited number of pathways

60. The responses to the consultation have suggested that the options that were identified as B(i), B(ii), B(iv) and the COIC/Bar Council routes may be feasible. Option B(iii), however, seems unlikely to be offered in the near future. Whilst the Education and Training Committee agreed that we should take a permissive approach, it noted the arguments against allowing a proliferation of approaches. Not only could this lead to confusion for candidates (with those currently under-represented in the profession perhaps being disproportionately affected) but it might not be sustainable given the size of the profession. It is therefore important that the Authorisation Framework takes these issues into consideration and limits the number of pathways to a sustainable number.
61. Option B(i) is an amended version of the current pathway. This will still be attractive to current providers and for international students. It must also be offered to students who have already started training for at least two years. An ongoing dialogue with providers will help us to understand whether this pathway will be offered longer-term and how it may be adopted to meet other requirements, such as a Master's award.
62. Option B(ii) – This option involves combined academic legal education and vocational learning, followed by work-based learning. The Committee saw no reason to prevent this pathway from being normalised by changes in the Rules. There may be others looking to adopt this model.
63. Option B(iii) – This option involves academic legal education, followed by combined vocational and work-based learning. There has been some interest in this option as an integrated teaching pathway. However, most respondents commented that it may be seen to be overly burdensome for chambers and therefore of little interest to the self-employed bar. Whilst permissible under the Managed Pathways framework, it may be some time before this route is developed enough to be feasible. It would, however, have the benefit of opening up alternatives to the current pupillage model.
64. Option B(iv) – This pathway may be delivered as apprenticeship or modular format, in which components of a qualification can be acquired separately, over time. Responses to the consultation have not addressed this pathway in great detail. There is also some misunderstanding about how it might be delivered. We think that if a large organisation, such as the Government Legal Service or Crown Prosecution Service is able to adopt an apprenticeship model that satisfies our requirements, this should be enabled. Moreover, BPP have suggested that they may be interested in developing a pathway similar in nature to an apprenticeship.
65. COIC/Bar Council – in principle, the Committee felt we should permit this model. With any of the possible pathways, it would need to be shown that it would meet the requirements of the professional statement and our Authorisation Framework in due course.

Implementing the Managed Pathways approach

66. The current BSB Rules require most candidates to train and qualify on a single pathway. We anticipate adopting an approach in which:
- Candidates must meet the requirements of the Professional Statement in order to be authorised; and
 - Candidates who are successful in an approved training pathway will be deemed to have met the requirements.
67. To achieve this regulatory approach, we are seeking to take a permissive approach in approving pathways which meet our requirements. This means that education and training providers, whether law schools, current BPTC providers, employers and chambers will be able to propose training routes covering all or part of a training pathway, so long as they fit within the limited number of approved pathways (examples of which described above).
68. We are currently developing an Authorisation Framework, which will enable us consistently to assess whether training proposals meet the requirements set out in the Professional Statement. If we continue to specify centralised assessments, these will be clarified in the framework.
69. We anticipate that before a training route could be authorised, it would need to satisfy whatever requirements the BSB considers relevant, including at least the following:
- Degree awarding powers and any related quality assurance measures;
 - A training market needs analysis;
 - The ability of the new training system to meet our regulatory objectives and the LSB’s statutory guidance on education and training;
 - The ability of the new training system to meet the Professional Statement as well as how and when assessments will take place; and
 - The ability of the proposal to meet the principles on which we consulted, namely: Accessibility, Flexibility, Affordability and Sustaining High Standards.
70. We anticipate that potential risks associated with particular training proposals may be raised during the validation process in which we consider the issues highlighted above; we have begun to start exploring some of these in the interim Equality Impact Assessment. If, for example, a risk is identified that suggests that a particular proposal may be detrimental for access to the profession from currently under-represented groups, further work may be required of the provider to mitigate against these risks.

Role of centralised assessments in all training pathways

71. Based on the responses to the consultation relating to how Ethics is taught and assessed, we foresee a need to review all assessments, including those which are currently examined centrally; Ethics is to be reviewed with Civil and Criminal Litigation. This review is to be conducted in line with the development of our Authorisation Framework. We will also need to consider the impact of a “split BPTC” model on centralised assessments.
72. The Authorisation Framework will require providers of training to specify what assessments will be carried out at what point in the course of a given pathway they propose, including those that may be centrally assessed.

Impact on work-based learning / pupillage in all pathways

73. As we set out in the consultation, we are looking to introduce new flexibility in work-based training. We expect most Chambers will want to continue to provide pupillage the traditional way but others will be given greater freedom to propose alternative programmes for pupillage or work based training. It is possible, as suggested in the consultation, that other organisations may come forward seeking to become approved training organisations. There is no reason to prevent this if the necessary requirements are satisfied. This could contribute to reducing the disparity between the numbers of students called to the Bar and the number achieving their first authorisation. We do not believe it would be proportionate to address this issue by, for example, restricting access to vocational training only to those who had secured pupillage. To do so would narrow the “funnel” of candidates coming into the profession at a much earlier stage, which could have a disproportionate impact on under-represented groups. The Education and Training Committee felt, however, there was value in encouraging those who provide the vocational stage of training to offer a more transferable qualification (such as a Masters level award, for example).
74. Hand in hand with this new flexibility, a greater degree of responsibility for managing work-based training will fall on the training organisation, rather than the pupil supervisor. We also propose to review the systems of quality assurance for training organisations, aligning it with our other chambers supervision methods, in order to address important gaps in our current oversight of this period of training.
75. This work has started now and we will be looking to work closely with the profession to trial and implement changes on an ongoing basis.

Next steps*Rule change application to the LSB and review*

76. Subject to Board approval, we anticipate consulting on Rules changes this summer with a view to having an application to the LSB by Q4 of the 17/18 business year.
77. The application to the LSB will need to include more detail on, for example, the proposed Authorisation Framework. We will come back to the Board with more detail and further policy recommendations in due course.
78. The FBT programme and all training pathways will, as a matter of course, be subject to review. A robust evaluation framework is being put in place to ensure that learning is shared and that, where necessary, we are able make adjustments to meet any future needs. As part of this process a review of available evidence has been undertaken. A summary of this is attached at Annex D.

Further stakeholder engagement

79. Over the next few months, we be holding further discussions with current BPTC providers and the profession’s representative bodies to give them a clearer picture of timescales for implementing the changes.
80. As the content of the Authorisation Framework becomes clearer, we will discuss the process in more detail with potential providers. This will provide them with a further opportunity to prepare for any changes they are looking to introduce.

Transitional arrangements

81. As we have said in the consultation, we will ensure that there are adequate transitional arrangements for students studying on the current system for this pathway to remain in place during any period of change. Current provider contracts for provision of the BPTC come to an end in 2018 /19 and so those institutions which wish to continue to play a role in Bar training will need to come forward with proposals in that time frame.

Equality impact assessment

82. A **draft** equality impact assessment is attached at Annex B. Actions arising from the impact assessment are being developed as we plan for implementing the Board's decision.

Resources

83. This work is being managed through the Future Bar Training Programme Board. Input from all relevant BSB departments and external input as appropriate has been factored into the business plan and budget for 2017-18.

Annexes

Annex A – Summary of consultation responses
Annex B – Draft Equality Impact Assessment
Annex C – LSB statutory guidance
Annex D – Evidence review: summary

Lead responsibility

Chris Young, Policy Manager

Future Bar Training

Consultation on the Future of Training for the Bar: Future Routes to Authorisation

Summary of Responses

March 2017

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 Future Bar Training (FBT) programme was launched in 2014 in response to the LETR. In parallel with the FBT consultation, the Solicitors Regulatory Authority (SRA) are also conducting a consultation about their own proposals for the future training of solicitors.

Amongst other findings, the LETR encouraged the respective regulators to take **a more outcomes-focused, flexible and innovative approach to education and training**. These have been guiding principles throughout our FBT programme to date.

In responding to the LETR recommendations, the LSB published its own statutory guidance on legal education and training for relevant regulators. The guidance highlights several key requirements, including:

- education and training requirements focusing on what an individual must know,
- understand and be able to do at the point of authorisation;
- providers of education and training having the flexibility to determine how to deliver training, education and experience that meets the outcomes required;
- standards being set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements;
- regulators successfully balancing obligations for education and training between the individual and the entity both at the point of entry and ongoing; and
- regulators placing no inappropriate direct or indirect restrictions on the numbers entering the profession.

The Future Bar Training Programme

Informed by the Legal Education and Training Review and the LSB's statutory guidance above, the BSB began work to address the issues raised in the review by initiating a wide range of policy activities under one programme, Future Bar Training (FBT). The FBT programme was launched in 2014 to focus on:

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

Our FBT consultations

In February 2015, we published our vision for the future of training for the Bar. In that paper, we set out our proposal for standards on entry to the profession to be set by reference to a Professional Statement, which was first published in October 2015. This

has now been supported by the development of the Threshold Standard and Competences, which outline the standards and competences that must be achieved for authorisation.

Last summer we launched our first Future Bar Training consultation. This consultation explored many of the issues raised by LETR and what changes might be made to improve the current system. It examined in detail the relative strengths and weaknesses of the current three-stage system as well as any possible approaches to reform and any regulatory requirements. This consultation received responses from members of the profession (individuals and representative bodies) and other stakeholders, such as those involved with legal education and training, voluntary sector organisations and members of the public. A full summary of the responses to the consultation was published in February 2016.

Future routes to authorisation

Building on the 2015 FBT consultation, the *Future Routes to Authorisation* consultation explores the cross-cutting policy issues which might apply to any regulatory framework. It also considered three Options, assessing the relative strengths and weaknesses of each in pursuit of our stated principles and policy objectives.

Methodology

The Bar Standards Board ran a consultation on the Future Bar Training programme between October 2016 and 31 January 2017. The consultation was open to anyone with a view on the way in which barristers should be educated and trained. This followed an earlier consultation in July 2015, which examined the strengths and weaknesses of the current system, and sought to gather views on the changes that may be made to improve it. A [full summary](#) of these responses was published in January 2016. This consultation hoped to build on the findings of the former, and further explore future authorised routes to training.

There were 1,109 responses to the consultation.

- 529 barristers signed an open letter, in support of the COIC/Bar Council model
- 206 barristers sent emails in support of responses from the Commercial (COMBAR) and Chancery Bar Associations which also supported the COIC/Bar Council model.
- 374 individuals and organisations also offered individual substantive responses which were received from the following:
 - 250 Barristers;
 - Ten Academics;
 - Two academics who also practised as barristers;
 - Sixteen special interest groups
 - Eleven Specialist Bar Associations;
 - Twenty-one students;
 - Nine pupils;
 - Nine Academic Institutions (not offering the BPTC);
 - Eight (all) institutions offering the BPTC;
 - Ten Judges;
 - Eleven Chambers; and
 - Seventeen “other” respondents.

In October and November 2016, the BSB hosted a number of roadshows open to all interested parties, including barristers, students, academics and providers in London, Manchester, Newcastle; Leeds, Birmingham, Nottingham, Cardiff and Bristol.

A total of 148 delegates attended these events and the evidence gathered from these has been summarised and included in our analysis. Chatham House rules were applied to these meetings, thus respondents are not identified.

Respondents to the consultation were asked a set of twenty-six questions, based on the three proposed options for future bar training. They were also invited to propose alternative routes to authorisation, and provide a preliminary evaluation of the proposal. Respondents were not required to answer every question: the number of responses to each question therefore differs and this is indicated throughout. Some responses also did not respond in line with the set questions, instead providing a more general response to the consultation proposals and offering opinion on related issues, for example: the role of the Inns of Court, the three-stage system and the role of the BSB as an outcomes-focused regulator. To ensure that respondents' views on all issues are accurately captured, we have summarised the responses to each set question, but have also set out more generally themed responses at the beginning of the analysis.

A significant amount of narrative content was generated and this was analysed thematically, allowing key findings to emerge from the responses. Quotes have been included throughout the analysis to illustrate and highlight these findings. We have endeavoured to present this in a balanced way, without assumption; whilst giving due weight to organisations representing a large number of individuals, such as specialist Bar Associations and the representative body. We have, however, closely analysed and accounted for the views of the range of respondents by identifying emerging themes and apportioning weight to each based on the number of responses they received.

The alternative proposal submitted by the Bar Council and COIC has been analysed separately at the end of the report to ensure that it was given equal consideration within similar themes to the other proposals.

Whilst there are inevitably limitations to the findings, the BSB is confident that this analysis provides a comprehensive and useful summary of the range of opinions from a variety of stakeholders on the future of bar training.

The three proposed FBT approaches

Below we describe the **three possible approaches** for the future of Bar training which we are considering. Here is an overview of the three options:

Option A is an “Evolutionary” approach

- This approach would retain the three sequential stages in the current system: the academic legal education (law degree or Graduate Diploma in Law), the vocational training (currently the Bar Professional Training Course) and work-based learning.
- The changes already being undertaken to improve the current system would continue. These are explained fully in this consultation paper.

Option B is a “managed Pathways approach

- This approach would establish a number of different training pathways alongside each other.
- This would allow providers to offer courses that are more flexible and fit with the requirements of students.
- Option B provides for several routes which the BSB might authorise, including:
 - Option B(i): Academic legal education followed by the vocational training, followed by work-based learning (as in Option A above);
 - Option B(ii): Combined academic and vocational learning followed by work-based learning;
 - Option B(iii): Academic legal education followed by combined vocational and work-based learning requirements; and
 - Option B(iv): Modular format, in which components of qualification can be acquired separately over time (may also include an apprenticeship pathway).

Option C is the “Bar Specialist” approach

- A degree or equivalent would still be required before taking the Bar Course Aptitude Test (BCAT) to test intellectual ability.
- Students would then be required to pass a new qualifying examination – the Bar Entrance Exam (BEE). This examination would cover knowledge and understanding of academic and vocational learning. Students may prepare for this exam in any way they choose.
- A three month approved skills course would need to be taken which would be followed by a period of work-based learning. We would hope to be able to make this more flexible and believe that the short skills course could be integrated in the work-based learning.

Under all of these options students would need to meet the requirements of the Professional Statement to be authorised. Training providers would need to demonstrate that their courses provide training which would enable students to do so.

Summary of key findings**Part 1 – Summary of responses to the consultation**

Some respondents submitted responses outside of the questions posed within the consultation. We have summarised these responses here.

Question 1: Do you agree with the BSB’s proposal not to see changes to s207(1) of the LSA (2007)

The vast majority of respondents supported the proposal not to alter section 207(1) of the Legal Services Act 2007, regarding the definition of ‘barrister’ as a person who has been

called to the Bar by an Inn of Court. The majority of respondents highlighted the high ethical standards and the important role of the Inns in promoting professional principles. However, some of the academic respondents argued that, if the Inns were to enter the training market, then the BSB would need to reconsider this issue. *Question 2: Do you agree with the BSB's proposal to maintain the principle the Bar remain a graduate profession? If not please state why.*

The vast majority of respondents agreed with the proposal that the Bar remain a graduate profession. Respondents in favour mostly cited the necessity of skills demonstrated by completing a degree to practice as a barrister and the confidence that the QLD currently commands amongst the public and the international community. Some respondents also encouraged the BSB to retain the core modules and not to replace their requirement with a general requirement.

Question 3: Do you agree with the BSB's proposal to maintain the normal expectation of a minimum degree classification of 2:2? If not, please state why.

The clear majority of respondents supported the proposal to maintain the normal expectation of a minimum degree classification of 2:2. This represented the majority opinion of barristers and academic respondents. The majority of respondents argued that the 2:2 requirement should be maintained because it is normal for most commercial organisations to have this as the minimum requirement. However, it was also argued that raising the degree requirement would negatively affect diversity and would overvalue academic success as measured by examinations.

Option A

Question 4: Do you agree with our analysis of this option's capability to meet the requirements of the Professional Statement? If not, please state why not.

There was a mixed response to this question but the majority of respondents agreed with the analysis of Option A. A number agreed that, as Option A was essentially already operating, it was capable of meeting the Professional Statement. A number of respondents agreed only in part with our analysis. There were concerns raised around the current model regarding a lack of flexibility and high costs. A minority of respondents felt that there was insufficient analysis to enable them to unequivocally agree or to understand how training providers may interpret the training syllabus more creatively than at present, which could result in more cost-effective programmes of study.

Question 5: Do you agree with our analysis of this option's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.

A number of respondents agreed with our analysis of Option A's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular. A number of respondents commented that Option A could restrict access to the Bar. Concerns were raised with Option A's lack of flexibility and high cost of training.

Question 6: Do you agree with our analysis of this option's capability to meet the LSB's statutory guidance? If not, please state why not.

The overwhelming majority of respondents agreed with our analysis of Option A's capability to meet the LSB's statutory guidance, including a number of barristers, academic institutions

and Bar Associations. A number of respondents agreed in part with the analysis but wanted to be able to see the Authorisation Framework before fully agreeing. In their view there is a lack of clarity as to when various outcomes/ competencies are to be tested or met. Some respondents felt that more flexibility is required to meet the LSB statutory guidance, which could improve the number of employed pupillages. Some respondents did not agree that Option A could meet the LSB's statutory guidance particularly in regards to providers having the flexibility to determine how to deliver training, education and experience that meets the outcomes required.

Question 7: Do you agree with how ethics is taught and assessed under Option A? If not, please state why not.

The majority of respondents did not agree with how ethics is taught and assessed under Option A. In general respondents reflect that ethics should be explicitly taught and should be incorporated into both the vocational and work-based learning assessments. It was felt that ethics should be integrated into all topics and there should be a separate exam on the principles and rules of ethics. A number of students argued that ethics should be integrated with other modules, including more practical exercises in advocacy and conferencing. A number of respondents agreed that the current assessment was too focused on the rules and did not apply effectively.

Question 8: Do you agree with the cost analysis we have set out above for Option A? If not, please state why not.

The number of respondents agreed with our cost analysis for Option A and many felt that enabling flexibility could lead to cost reductions. Some respondents highlighted the argument that the high cost can reduce accessibility to the Bar for some of those from lower socio-economic backgrounds but that a strong international market stabilises the cost, as without this the market would be very small and unaffordable. A number of chambers and barristers agreed in part with our cost analysis but did not consider that any meaningful savings could be achieved under Option A. Some respondents felt that the changes within Option A do not address the issue of costs to student and may make them worse.

Question 9: Do you agree with the higher education implications we have set out for Option A? If not, please state why not.

The overwhelming majority of respondents agreed with the higher education implications we had set out for Option A. It was felt the academic status of the BPTC should be communicated both to the students and to those outside the legal profession so it could be recognised. A number of respondents agreed the BPTC could be incorporated into the postgraduate diploma or MLaw but it depended on whether the changes to the vocational stage impacted sufficiently on the viability of the existing providers. A minority of respondents did not necessarily agree with the higher education implications we set out as they doubted the value of the LLM obtained via the BPTC and dissertation route.

Question 10: Do you agree with the equality and diversity implication we have set out above for Option A? If not, please state why not.

A number of respondents agreed with the equality and implications we set out regarding Option A, with a number stating that they believe cost to be a major barrier to accessibility when there is such a competitive market for pupillage. A number of respondents agreed that improving accessibility could mitigate the equality and diversity implications, the importance of maintaining high standards was also emphasised. A number of respondents agreed that

Option A would do little to improve access to the profession from under-represented groups. Some respondents argued that chambers selection needed to be dealt with alongside any other reform, to ensure equality and diversity.

Option B

Question 11: Do you agree with our analysis of Option B's ability to meet the requirements of the Professional Statement? If not, please state why not.

The majority of respondents agreed that some of the proposed pathways under Option B could meet the requirements of the professional Statement, however, it was felt that some of the routes presented a risk that students would not meet the requirements of the Professional Statement. Many respondents argued that an increase in the number of pathways would lead to an increase in regulatory costs. The majority of barristers did not agree that the Professional Statement could be met by all the pathways under Option B.

Question 12: Do you agree with our analysis of Option B's ability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If no, please state why not.

The majority of respondents disagreed that this Option would meet the regulatory objectives. The BSB were advised to conduct extensive research. The majority of barristers and Specialist Bar Associations felt that option B could not meet the regulatory objectives because of the confusion that this route would be likely to cause due to the number of potential pathways and the market was too small to sustain a number of routes. Generally academic institutions argued that this Option could meet the regulatory objectives.

Question 13: Do you agree with our analysis of Option B's ability to meet the LSB's statutory guidance? If not, please state why not.

The majority of respondents agreed that Option B would be able to meet the statutory guidance. Some respondents felt that their view could change depending on the pathways adopted under this option. It was also felt that this is a small market and it is important to hold in mind that only a small number of routes can be sustained. The majority of barristers who answered this question disagreed that Option B could meet the statutory guidance. This was generally because of duplicity of routes and too many hurdles being in place for students to qualify.

Question 14: Do you agree with our view of how professional ethics is taught and assessed, and how ethical behaviour and professional integrity are fostered, under Option B? If not, please state why not.

The majority of respondents agreed with the BSB's views as to how professional ethics is taught and assessed, and how ethical behaviour and professional integrity are fostered under Option B. It was generally agreed that there are significant problems with the current system as there is a lack of pervasive teaching and testing of professional ethics. There were a lot of concerns raised about the lack of integration of ethics with other subjects.

Question 15: Do you agree with the cost implications we have set out above for Option B? If not, please state why not.

The vast majority of respondents disagreed with the BSB's cost analysis. The most common concerns raised by respondents were the diversification of the market which could lead to increased regulatory costs. It was argued that Oxbridge and Russell Group universities

would not offer B(ii) and this will disadvantage students. Concerns were also raised about the uncertainty of the number and types of routes and that an increase or continuation of centralised assessments will not reduce costs.

Question 16: Do you agree with the higher education implications we have set out above for Option B? If not, please state why not.

The majority of respondents broadly agreed with the Higher Education implications set out for the BSB for Option B. Some respondents felt there was a lot of merit for B(ii) as it already fits within the higher education framework in Northumbria. A number of respondents also broadly agreed that the increased flexibility under Option B would allow pathways to adapt to changes to the higher education framework over time. A number of respondents felt that there would be potential for apprenticeship style training to be developed.

Question 17: Do you agree with the market risk analysis we have set out above for Option B? If not, please state why not.

The majority of respondents agreed that the BSB had identified the correct market risks for Option B. Some respondents felt that flexibility could lead to more innovation but other respondents felt that flexibility could lead to lower standards. A majority of respondents felt that there would be significant market risks, particularly due to the size of the profession and training market. Many respondents held strong doubts that the market would be able to sustain numerous routes and were concerned about the detrimental effect that this may have on geographic diversity. Many respondents also agreed with the BSB analysis that a two tiered system could develop. Serious concerns were also raised by academic institutions that if the Inns were to enter the market this would cause serious problems.

Question 18: Do you agree with the equality and diversity implications we have set out above for Option B? If not, please state why not.

The majority of respondents disagreed with the equality and diversity implications set out for Option B. The majority argued that greater flexibility would not improve diversity. This was because students from less advantaged backgrounds are more likely to access to less popular or acceptable routes. Concerns were raised that those from Oxbridge and the First class degrees will be prioritised. A number of respondents raised concerns that unless Chambers changed their recruitment policies the introduction of numerous routes will not assist those from disadvantaged backgrounds.

Option C

Question 19: Do you agree with our analysis of this option's ability to meet the requirements of the Professional Statement? If not, please state why not.

The majority of respondents agreed with our analysis of Option C's ability to meet the requirements of the professional statement. The majority of those in agreement were keen to stress that whilst Option C may be capable of meeting the professional statement, it is not a desirable option. Some respondents felt that the segregation of the knowledge elements of the course from the skills would be undesirable and cause a false divide. The respondents who disagreed with our analysis did not believe Option C was at all viable or desirable.

Question 20: Do you agree with our analysis of this option's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests and consumers in particular? If not, please state why not.

The majority of respondents disagreed or neither agreed or disagreed with our analysis of Option C's capability to meet our regulatory objectives. A number of respondents felt that although this Option could reduce the cost of the course it would not deal with the other issues relating to access and diversity. Several respondents felt that there are already flexible learning arrangements and this proposal would not increase accessibility or diversity. Many respondents questioned the ability of a three month vocational course to adequately cover what is required to equip students with the necessary skills and knowledge. Concerns were raised that this would impact on consumers.

Question 21: Do you agree with our analysis of Option C's ability to meet the LSB's statutory guidance? If not, please state why not.

A small majority of respondents disagreed with our analysis of Option C's ability to meet the LSB's statutory guidance. Amongst those who agreed with our analysis the reasoning included the fact that Option C would increase innovation in training, it would reduce excessive regulation and a shorter course would increase access. Some respondents agreed with our analysis but emphasised that Option C only met the guidance in a minimal sense. The minority of respondents who opposed our analysis of Option C's ability to meet the guidance did so for a variety of reasons including the fact that a shortened course will have a big impact on the validity of qualification and training.

Question 22: Do you agree or disagree with our understanding of how Option C promotes the professional principles, ethical behaviour and integrity? If not, please state why not.

Half the respondents agreed with our analysis as to how Option C promoted the professional principles, ethical behaviour and integrity, including a majority of barristers and educational institutions. A number of those who agreed with our analysis highlighted an additional concern that a short skills course would not have enough time to cover the relevant rules and duties in sufficient detail. A sizeable minority of respondents disagreed with our analysis, citing reasons such as the difficulty of students learning pervasively on a short course and concerns about how little exposure students will have prior to pupillage.

Question 23: Do you agree with the cost implications we have set out above for Option C? If not, please state why.

A slim majority of respondents to this question agreed with our analysis of the cost implications for Option C, including a majority of barristers. A number of respondents who agreed with the analysis felt that the lack of a QLD or GDL will make students less attractive to potential employers or training providers. Several respondents also highlighted that any costs students save may be off-set by costs for preparatory courses. A large minority of respondents disagreed with the cost implications outlined in the consultation document arguing that it will become London-centric, those who progress no further than Part 1 will have no tangible degree, the cost of regulation would be prohibitive and the costs proposed are unconvincing.

Question 24: Do you agree with our analysis of Option C's impact on the higher education training market for the Bar? If not, please state why not.

The majority of respondents agreed with our analysis of Option C's impact on the higher education training market for the Bar. Respondents generally felt that Option C would mean that the higher education training market would dwindle leading to a concentration in London and students with law degrees would be preferred by Chambers. Some respondents raised converse concerns that the market would become too diverse and the BSB would struggle to

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regulate it. A minority of respondents, mostly barristers disagreed with our analysis. In their view Option C would lead to a larger number of students having qualifications with little or no value, the small market would deter providers and it would duplicate the knowledge on the degree.

Question 25: Do you agree with the equality and diversity implications we have set out above for Option C? If not, please state why not.

There was no clear consensus between respondents on this questions. A significant number of respondents were unclear whether they agreed with the implications outlined or not. The respondents who broadly agreed with the implications did so on the basis of reduced costs allowing for greater diversity, the potential for students with more money being able to get an advantage through paying for training and the idea that centralised assessments could be a leveller. A number of respondents felt that to allow multiple retakes would assist with equality and diversity. A large minority of respondents disagreed with the implications arguing that because international students would not be attracted, it would lead to crammer courses and the BEE would be an additional cost for students.

Question 26: After having given thought to the three options above, please tell which options is most appropriate and why you think this is the case.

The great majority of respondents wrote in favour of the COIC and Bar Council proposal. Of those many respondents argued that if the COIC and Bar Council proposal could not be adopted then Option A should be adopted as it retains the status quo. The respondents in favour of Option A felt that it was fit for purpose and could be improved by 'deregulation'. Option C was supported by the majority of respondents who did not agree with the COIC and Bar Council proposal. Option B was described as the worst option by many respondents on the grounds that it would lead to too many pathways to qualification which would create confusions and real disadvantage for those choosing less effective pathways. Respondents also argued that Chambers would find it hard to manage pupils who were following different pathways and that this would lead to a reduction in the number of pupillages being offered. Other respondents agreed with some but not all of the proposed pathways under Option B, however, and in particular pathway B(i) and B(ii) were generally agreed to be practical.. A small minority of respondents supported Option C due to the potential reduction in costs but the majority of respondents rejected this Option.

Question 27: If you have any proposals for another route(s) to authorisation, please use this question number to give us a preliminary evaluation of the proposed model against the criteria used above in order for us to be able to give the proposal serious consideration.

The majority of respondents who answer this question did so to outline their support for the COIC and Bar Council proposal. Some respondents offered alternative options or strategies to deal with the issues with the current system. Including: alternative qualification routes to ensure it is not just the rich who succeed, merger between the solicitors and barristers training and more focus on research and analysis skills. A significant number of respondents stated that they lacked confidence in the proposals but did not offer any alternate pathways.

COIC and Bar Council Addendum

The greatest number of responses were in support of the COIC and Bar Council proposal including the Open Letter and the members of COMBAR and the Chancery Bar Association who wrote in support. Concerns were raised about the high cost of training and the low chance of success for many candidates, leading to large amounts of money being wasted.

Some respondents wrote in favour of this becoming the only route to qualification whilst others felt that it should exist as one route alongside other courses including a course which might be similar to the current BPTC.

Advantages

The great majority of respondents who wrote to the BSB concerning the COIC proposal did so in support. A large number of advantages were outlined by respondents with a particular focus on reducing the cost to students which would consequentially increase accessibility to the profession, maintaining high standards by reducing the number of 'weaker students' able to take the Part 2 course and increasing flexibility. It was agreed by most respondents that the current centralised assessments should be retained and administered by the BSB as the Part 1 exam. Positive support was also raised for online training and exams. Many respondents felt that private providers should be removed from the training market.

Disadvantages

A minority of respondents expressed concerns about this proposal. Those that did stated concerns that: combined skills and knowledge teaching is beneficial to students, the short skills course will not be sufficient for learning, international students will find it difficult to get visa's, students will find it difficult to self-teach and any tutoring they need for Part 1 will increase costs. Respondents also raised concerns about the equality and diversity issues surrounding this proposal.

Meeting the Professional Statement

Respondents felt that this could meet the Professional Statement because it was based on the current syllabus which met those requirements. It was also argued that the flexibility would mean that courses could be focused on what students really need to learn and to meet the Professional Statement. It was argued that combined teaching of knowledge and skills was not necessary to meet the competences set out by the BSB.

Meeting the regulatory objectives

The majority of respondents, including barristers and SBA's agreed that this could meet the BSB's regulatory objectives. This was because it would lead to highly skilled and knowledgeable barristers at all stages of development and would ensure they were able to represent the best interests of consumers and commercial organisations. A small minority of respondents disagreed and felt that this would lead to a lack of robust teaching and a fall in standards.

LSB's statutory guidance

The majority of respondents felt that this proposal would meet the LSB's statutory guidance. A particular note was raised that the restriction on students taking Part 2 until they have completed Part 1 would not be an indirect restriction so would be allowable by the LSB. One respondent went further and stated that even if this were seen as an indirect restriction it should be allowable because it is reasonable and necessary.

Ethics

Few comments were raised on ethics but it was argued that it should be incorporated at every stage of training. One respondent felt that it could be adequately taught and assessed at stage 2 under this proposal. One respondent raised concerns that separating the

acquisition of the knowledge of the rules of conduct and their application would have a negative impact on a student's understanding of ethical principles and their application.

Cost

Cost was an area in which a number of respondents commented. The majority of respondents agreed that the current system was too expensive and this restricted access for students. There was wide agreement that the Bar Council/COIC proposal would reduce the cost of training and allow students to self-teach, work full or part time and fulfil caring responsibilities, whilst preparing for Part 1. It was felt that any cost of the BSB of regulating the Part 1 exam would be minimal in comparison to any more radical change. The respondents who wrote against the COIC proposal argued that most students would need to pay for tuition for Part 1 which would reduce the cost benefit of this model. Some respondents also felt that there would be a shrinkage in the geographic spread of training which would mean students would need to pay more for accommodation in London during Part 2 of the course.

Higher Education Implications

It was felt by some respondents that the HE implications of this proposal would be minimal. Others argued that the issues of credit rating these courses for providers would mean that there may not be a qualification achieved by some students at the end of their course. One respondent argued that there could be two cycles of the course per year but this could lead to its own problems including one course being seen as more prestigious due to the time of the year it is offered.

Market risks

The majority of academic institutions and BPTC providers raised the issue that this proposal would lead to a London centric market with provincial providers unable to support small sizes of the Part 2 course. In the view of the COIC and Bar Council this would not be an issue because students could take the Part 1 exam anywhere and prepare in any way they choose. Many respondents raised concerns with the reduction in the market. However, some respondents felt this was a good thing and the BSB should be assisting COIC in reducing the number of private providers. A number of other concerns were raised with the accessibility for international students and the consequential destabilisation of the international market under this proposal.

Equality & Diversity

The majority of respondents agreed with COIC and the Bar Council that this proposal would have a positive impact on equality and diversity. It was felt that because the cost and possibly the length of vocational training would reduce this would increase accessibility as more students could afford to study and would be able to study in a flexible way. The majority of barristers and SBAs agreed with this analysis and felt that the increased flexibility would attract those from disadvantaged backgrounds. A number of respondents felt that equality and diversity would be negatively affected due to undue weight on passing procedural exams, which are not a good test of ability, reduction in face to face learning and wealthier students being able to pay for more tutoring and assistance. The majority of BPTC providers felt that this proposal would have a negative impact on equality and diversity, in particular for those from under-represented backgrounds.

Summary of responses to the consultation

LSB Statutory guidance

- 1.1 Two respondents remarked on the compatibility of our proposals with LSB statutory guidance for education and training.
- 1.2 The Government Legal Service noted the principle that regulatory requirements should be consistent with one another insofar as possible as a matter of key concern for their work, as the GLS currently offers the same training to all its legal trainees whether pupils or trainee solicitors.
- 1.3 The Government Legal Service felt that the BSB should ensure consistency with the SRA in the development of its proposals, otherwise the cost of running a training scheme that caters for both trainee solicitors and barristers would increase.

Legal Education and Training Review

- 2.1 Two respondents made comments relating to the Legal Education and Training Review (LETR) undertaken by the SRA, BSB and IPS.
- 2.2 The Family Law Bar Association stated that the BSB should reveal whether options other than those outlined in the consultation document were considered at pre-consultation stage and, if so, why they were rejected.
- 2.3 One academic respondent noted that the number of required modules on the QLD has expanded significantly in past decades and emphasised that increasing coverage of knowledge has reduced emphasis on understanding, context and intellectual skills, as reflected in the LETR.

Our Objectives

- 3.1 Thirty respondents made comments related to the objectives of the consultation, which were stated as being “flexibility, accessibility, affordability and sustaining high standards”.
- 3.2 Regarding flexibility, respondents remarked that:
 - Increasing flexibility could increase the diversity of the Bar, the quality of training and decrease the cost of the vocational stage;
 - Conversely, that flexibility could damage equality if existing support structures are absent from any new system, or if there are multiple pathways and disadvantaged students lack knowledge as to which is more prestigious;
 - Pursuit of flexibility should not be allowed to compromise high standards of training.
- 3.3 Regarding accessibility, respondents remarked that:
 - The high risk of students failing to obtain pupillage and the debts involved in legal training contribute to poor accessibility; and
 - There is a need to address the disparity in numbers between BPTC students and available pupillages;
 - There needs to be regional provision of training;
 - Further opportunities for funding would be useful;
 - Costs are a key barrier to accessibility; and

- The Inns of Court are better placed than the BPTC to improve accessibility.
- 3.4 Comments on affordability were linked with their impact on accessibility, as noted above.
- 3.5 Regarding sustaining high standards, respondents remarked that it is important that this principle is not viewed as subordinate to the other three – indeed, a number of respondents highlighted this as the most important principle.
- 3.6 Additional to these comments, the Government Legal Service emphasised that whatever stages of qualification are required, they should be regulated or approved by the BSB to ensure quality assurance.
- 3.7 One barrister respondent felt that the BSB should be less interested in the issues of equality, diversity and fairness as it is not the BSB's role to be an agent of redistributive justice. In their view it was unavoidable that people from certain socio-economic backgrounds will pursue this career.
- 3.8 Within the open letter it was stated that the consultation paper:

“It is not guided by a proper understanding of the BSB’s statutory objectives of promoting and protecting the public interest. There are just 430 pupillages available every year, but over 1,500 people commencing the BPTC. The BSB’s focus should be on ensuring that those with a realistic prospect of obtaining pupillage receive high quality training, at the most efficient cost, in order to equip them to serve the public.”

BSB as an outcomes focused regulator of education

- 4.1 Fourteen respondents lodged comments related to the BSB's role as an outcomes-focused regulator of education. These remarks included commentary that:
- The 5-year rule on applying for pupillage should be lifted, being particularly discriminatory to women who may have children or caring responsibilities;
 - The BSB should exercise minimal regulation over the academic part of the qualification process;
 - The BSB should engage more with the profession, as they are uniquely placed to judge what training is required for entrants;
 - The Bar Council/COIC proposal will not necessarily impact on the BSB's obligation not to limit the numbers of entrants to the profession, either directly or indirectly;
 - The BSB should ensure that it does not exclude QLDs elsewhere in the UK by referring to the mechanisms in England and Wales alone;
 - There must be clear rules on the recognition of overseas degrees as fulfilling the academic portion of training;
 - There is too much learning of evidence and procedure 'by rote'; and
 - The cost of training is excessive.
- 4.2 Additional to these points, one anonymous respondent queried whether the options proposed under the consultation aligned with the recommendations of the Competition and Markets Authority report on legal services.
- 4.3 One barrister suggested that in order to meet its regulatory objectives, the BSB ought to focus its attention on revising the work-based learning stage of training to provide more options for pupillage.

- 4.4 The Winston Centre for Risk & Evidence Communication expressed concern that current training lacks content on forensic and probabilistic evidence in court and suggested that this should be included in future education. Another respondent suggested that students should be compulsorily trained in electronic evidence.
- 4.5 In the Open letter from the profession it was stated that the consultation paper fails to deal with essential issues, in particular:

“It fails to identify the underlying cause of the current problems, namely the fact that BPTC provision has become a self-serving industry that has vastly outgrown its raison d’être of training people in preparation for their becoming one of the people who commence providing legal services every year as members of the Bar of England and Wales. As a result of that fundamental mismatch between purpose and reality, a small profession is faced with an impossible challenge of trying to secure the provision of high quality, financially supported training for people with a realistic prospect of entering the profession, in order to both (i) protect and promote the public interest, and (ii) ensure that the Bar remains open to people without wealthy parents.”

Role of the Inns of Court

- 5.1 Twelve respondents made comments related to the role of the Inns of Court.
- 5.2 Respondents raised the issue of qualifying sessions, with one barrister noting the considerable time and money they expended to return to attend sessions in Wales and stating that this did not improve their skills or knowledge.
- 5.3 A student respondent felt that dinners are an antiquated practice, which exclude female and Muslim students. Young Legal Aid Lawyers also argued that required attendance at dinners ran counter to the principles of accessibility and affordability.

Three components of training

- 6.1 Seventy-nine respondents, mostly barristers, submitted comments related to the three components of training. Concerning the academic legal education, respondents commented that:
- Students needs to be supported at the undergraduate stage to ensure that those from less affluent backgrounds have access to the best teachers and thus are better able to access postgraduate opportunities;
 - A QLD/GDL is necessary to ensure students have a solid foundation in the law;
 - There should be collaboration between the regulatory bodies to ensure there is one academic route to qualification; and
 - The academic stage is overloaded with required subjects for its length.

6.2 Concerning vocational learning respondents commented that:

- There are too many students taking the BPTC who are unlikely to gain pupillage;
- The course admits a number of students with insufficient English language skills, which impacts negatively on other students' ability to learn;
- The course is excessively expensive and burdens students with significant debt;
- The course is not necessarily a 'waste' if pupillage is not obtained, as it gives experience that may be useful in other careers;
- Course content is basic or leaves gaps in procedural knowledge;
- Teaching quality is variable;
- Teaching of ethics is focused on criminal trial advocacy;
- Providers are incentivised to recruit people who have little or no chance of success;
- Online learning would support people from a disadvantaged background;
- The course ought to be shorter;
- The course content is excessively academic with limited practical application;
- There is inadequate access to research materials needed for the course;
- There is a lack of ICT administration assistance;
- The mandatory attendance requirement is excessive;
- Marking of examinations is excessively narrow; and
- Knowledge components of the course need not be classroom-based.

6.3 A number of barrister respondents argued that the only component of training that needs to be changed is the vocational stage and the BSB should not change anything within the academic or professional stage of training.

6.4 The Bar Council raised a particular concern that the BPTC does not prepare students for pupillage as there are gaps in knowledge and the standard of teaching is low.

6.5 One academic and barrister respondent raised a serious concern with the view promoted by some members of the Bar that the BPTC harms the profession and that the BSB only listens to the providers and not barristers. This respondent argued that this is not the case and most evidence used to support these views is anecdotal.

6.6 One student respondent suggested that recruitment for pupillage should be moved to before the application for the BPTC.

- 6.7 Nottingham Law School emphasised that reducing the length of the course would not in and of itself reduce cost and could have adverse consequences for students in terms of funding opportunities, accommodation and exposure to practice.
- 6.8 Concerning Pupillage, respondents commented that:
- Pupillage income is low and training can be variable in quality;
 - The difficulty in obtaining pupillage could be mitigated by offering alternative routes to qualifying;
 - There ought to be greater flexibility in delivering pupillage (including a greater role for commercial organisations in training barristers and an increased availability of employed pupillages);
 - Students should be required to obtain a pupillage before being permitted to study the BPTC;
 - Pupillage is successful because it allows the pupil to share the working life of their supervisor and the role of pupil supervisor is a voluntary one;
 - An excessive proportion of pupils come from Oxbridge or Russell Group universities;
 - Pupillage awards need to be of sufficient size to allow international students to meet the threshold for a visa;
 - Pupils ought not to be paid, as their work is often amended by their supervisor. Compulsory payment of pupils has also resulted in the number of available pupillages falling;
 - Any system needs to recognise that most students will have pupillage in Chambers;
 - A looser system whereby supervisors supervising more than one pupil at a time becomes the norm would be useful; and
 - Students should not do their pupillage at academic institutions, because students may have to pay for it.
- 6.9 One barrister respondent suggested that a qualification could be offered subsequent to the BPTC that would allow students to become legal executives, thus preventing their education from being 'wasted'.

Degree core subjects

- 7.1 Eleven respondents made comments related to the degree core subjects; mostly barristers and educational institutions.
- 7.2 Almost all of these respondents supported retaining the core subjects, with their reasons for doing so including that:
- The core subjects are the most effective way of teaching lawyers to think critically and analytically, as well as how to understand the historic and policy context of the law;
 - The core subjects represent the foundational aspects of law that barristers must have knowledge of to enable competent practice; and
 - Without the core subjects, barristers may not have rights of audience in all courts.

- 7.3 The Professional Negligence Bar Association suggested that the BSB consult specifically on this aspect of educational reform before changing the existing requirement.
- 7.4 One academic respondent supported the proposal in paragraph 39 of the consultation document to replace the core subject modules with a general requirement. This respondent highlighted the increasing number of required subjects over the past number of decades and the consequential reduction in focus on understanding, context and intellectual skills as reasons for change.

Bar Course Aptitude Test (BCAT)

- 8.1 Thirteen respondents, mostly barristers, made comments on the BCAT. These varied in content and included the points that:
- The BCAT is not a good predictor of success;
 - People's performance on the BCAT may be affected by their cultural background;
 - That the BCAT is a fair screening of candidates regardless of their background; and
 - The BCAT ought to have a higher pass mark to restrict the number of students passing the course.
- 8.2 One student respondent queried whether the BCAT could be integrated into the undergraduate course as an optional test in final year, as a means of preventing students from 'floundering between the degree course and the external obstacles' to accessing the profession.

Summary of responses to the questions

Question 1: Do you agree with the BSB's proposal not to see changes to s207(1) of the LSA 2007? If you do not agree, please state why not.

- 9.1 There were eighty five responses to this question, of which the vast majority supported the proposal not to alter Section 207(1) of the Legal Services Act 2007, regarding the definition of 'barrister' as a person who has been called to the Bar by an Inn of Court. This includes the majority of barristers, students and academic institutions responding to this question.
- 9.2 The reasoning behind this varied:
- Support for the reasoning under paragraph 34 of the consultation document, which highlighted the important role of Inns in promoting the professional principles;
 - The Inns foster a culture of high ethical standards and give members exposure to senior practitioners and members of the judiciary;
 - The Inns perform a lot of pro bono training activity.

9.3 The Inner Temple Bar Liaison Committee explained:

“From personal experience, we believe that the Inns play a crucial role in fostering and ensuring a culture of high ethical standards and integrity in the profession. Students, pupils and members of the Bar are exposed to senior practitioners and members of the judiciary through the Inn. This contact takes place both during mentoring, formal teaching in qualifying sessions and advocacy training and during less formal events that the Inn hosts.”

9.4 However, a significant proportion of respondent academic institutions, alongside the Committee of Heads of University Law Schools, raised concerns about whether Inns should be able to enter into the market as providers of education. These respondents foresaw how a potential conflict of interest could arise between the Inns’ role in validating barristers’ education through call to the Bar, and their role as providers of education were they to enter the market as part of a split BPTC model. BPP suggested that the Inns’ role in calling people to the Bar would need to be reviewed and this function potentially removed from the Inns were this situation to arise.

9.5 A small number of respondents – mostly barristers – did not support the proposal, advocating that the definition under Section 207(1) needs to be changed. The arguments presented by these respondents included:

- Consumers may not understand the difference between a barrister who has been called to the Bar and a barrister who has completed pupillage and is authorised to practice;
- The role of Inns in calling barristers to the Bar is antiquated;
- The system of call to the Bar is dated and risks deterring ‘non-traditional’ students, with mandatory attendance at dinners providing no function and running counter to principles of accessibility and affordability.

9.6 The last point was somewhat supported by other respondents who, while not expressly supporting the idea that Section 207(1) should be changed, felt that the requirements for attendance and qualifying sessions could be disadvantageous for students outside London.

9.7 One Chambers suggested that if the Inns’ role is to focus on ensuring the integrity of those called to the Bar, then Inns should be required to provide a Code of Practice to proposers, which would include checking at least two references for each candidate.

Question 2: Do you agree with the BSB’s proposal to maintain the principle the Bar remain a graduate profession? If not, please state why.

10.1 One hundred respondents answered question two; of which the vast majority supported the proposal that the Bar remain a graduate profession. This included the majority of barristers, as well as all responding students and academic institutions.

10.2 Respondents in favour of the proposal mainly cited the necessity of skills demonstrated by completing a degree to practise as a barrister, and the confidence that the QLD currently commands amongst the public and the international community. The University of Exeter suggested that abolition of the QLD would cause confusion for prospective international students, and damage the international status of law schools in England and Wales. In addition, the Bar Association for Local Government

and the Public Service noted that most commercial organisations recruiting for in-house legal roles require applicants to be educated to degree level or higher.

- 10.3 The need for barristers to be able to both critically analyse and effectively communicate, orally and in writing, was highlighted in a number of responses – in which it was suggested that a QLD ensures students acquire these skills.
- 10.4 The Bar Council, Chancery Bar Association, the Commercial Bar Association and the University of Exeter Law School – alongside a small number of individual barristers – were of the opinion that the core modules should be retained and not replaced with a general requirement, as outlined in the consultation document. The Bar Council suggested that the general requirement proposed within the consultation document is too vague and the removal of the core modules could result in degree subject-matter not being covered as rigorously as is currently the case.
- 10.5 The Chancery Bar Association, whilst agreeing, nonetheless expressed concern around proposals to ‘water down’ the mandatory content requirements of a QLD, indicating that this would entail ‘hazards’ for equality and diversity. They said:
- “If content is largely deregulated, then the reality is that at least someone (probably Oxbridge and others primarily in the Russell Group) will continue to offer academically rigorous training in the law... The candidates who have the best academic credentials and presentational polish immediately post-sixth form will be best equipped to get onto such courses... The rigorous training will become the gold standard.”*
- 10.6 Dundee Law School urged that it would be important for the BSB to manage any frictions between the paths to qualification for barristers and for solicitors in the event that the Solicitors’ Regulation Authority abolishes the QLD and the BSB does not.
- 10.7 One respondent agreeing with the proposals did so with the caveat that further consideration should be given to the apprenticeship route currently being considered by the Solicitors’ Regulation Authority, which would offer equivalence to a 2:2 degree.
- 10.8 Young Legal Aid Lawyers suggested that the retention of the principle that the Bar is a graduate profession could be achieved by recognising the graduate attributes individuals obtain through various routes, such as through taking a combined academic-vocational course or through prior work experience.
- 10.9 A small number of respondents (all barristers) disagreed with the proposal that the Bar remain a graduate profession. The arguments offered by these respondents included that the graduate requirement restricts the diversity of intake into the Bar, hinders the core objective of flexibility and would be unnecessary if entrance examinations are sufficiently robust.

Question 3: Do you agree with the BSB’s proposal to maintain the normal expectation of a minimum degree classification of 2:2? If not, please state why.

- 11.1 One hundred and six respondents answered this question, including the respondents who wrote in support of COMBAR and adopted their response. The clear majority supporting the proposal to maintain the normal expectation of a minimum degree classification of 2:2. This represented the majority opinion of barristers and academic respondents. Supporting arguments for this position included:

- Most commercial organisations employing barristers require a 2:2 or higher;
 - Changing the classification could negatively affect diversity within the Bar;
 - Different institutions award certain classifications more regularly rendering it meaningless to differentiate between a student with a 2:2 from a very good provider and a student with a 2:1 from another provider;
 - Raising the degree classification requirement would be overvaluing academic success as measured by examinations; and
 - Raising the requirement could prevent international students who intend to obtain pupillage in their home country from training, despite a 2:2 being satisfactory for that purpose.
- 11.2 A number of responses qualified their agreement with the proposal by suggesting that the BSB ensure that students entering the BPTC with a 2:2 degree classification are made aware of the unlikelihood of their obtaining pupillage.
- 11.3 The Dundee Law School highlighted that accommodation should be made for Scottish students, who have the choice of finishing university education after three years rather than four for the equivalent of a second class honours degree. The school emphasised that the decision whether to finish after three years or four was often on the basis of personal circumstance rather than ability, suggesting that the rule on degree classification should be adapted to accept students who attained a distinction or merit on the three-year degree.
- 11.4 Some responses that agreed with the proposal did so with the proviso that waivers to the minimum for extenuating circumstances were available, particularly for those with disabilities.
- 11.5 One barrister commented that they agreed with the proposal, but only if the BCAT is made more difficult to pass, as they believe the BCAT to be the reason why so many students are entering the BPTC with little chance of becoming a barrister.
- 11.6 Further comment on the BCAT was provided by the Nottingham Law School, who suggested that – as the BCAT was initially intended to filter students entering training - there was little point in retaining the BCAT in circumstances where students have already embarked upon an integrated programme of training, other than to add to their costs.
- 11.8 A notable minority of responses – including barristers, some chambers and the majority of student respondents – disagreed with the proposal to maintain the requirement for a 2:2 degree classification.
- 11.9 These responses were divided between those who felt that the degree classification requirement should be raised to a 2:1 classification and those who felt that the degree classification requirement should be abolished altogether.
- 11.10 The Bar Council argued in favour of a 2:2 but expressing the view that students should be meeting higher levels of attainment by the end of training. Noting that:
- “...we do not think that it is appropriate to assess candidates as having a minimum of a 2:2 at the end of training. While it is acceptable and understandable that a 2:2 should be the minimum requirement at the current place in the training and education*

of barristers (i.e. between the academic and vocational stages), this is because of the appropriateness of this as a level of knowledge and training at that stage.”

11.11 Amongst those who felt that the degree classification requirement should be raised to a 2:1, the view was expressed that:

- Maintaining a 2:2 requirement leads to many students taking on debt with little chance of obtaining pupillage; and
- A higher threshold better reflects the level of performance expected from the profession.

11.12 Amongst those who felt that the degree classification requirement should be abolished, a variety of reasoning was provided, including that:

- A degree classification is not a good indicator of suitability for the profession;
- Requiring a degree inhibits flexibility within the profession;
- A ‘good’ degree does not necessarily reflect one’s abilities as a barrister; and
- The boundary is arbitrary, particularly for those who fall just shy of the threshold

Part III

Option A: The Evolutionary Approach

Question 4: Do you agree with our analysis of this option’s capability to meet the requirements of the Professional Statement? If not, please state why not.

12.1 A total of seventy two people responded to this question.

12.2 Although responses to this question were mixed, the majority agreed with our analysis of Option A, including the Bar Council and the Society of Legal Scholars. A number felt that as this is already working under the current route that there was no reason to disagree that it is capable of meeting the Professional Statement.

12.3 One respondent broadly agreed with our analysis but argued that if the SRA implements the SQE regime, thereby withdrawing from any regulation in the content of law degrees and GDL programmes, then the BSB may find it challenging to provide minimum regulation in this area.

12.4 A number of respondents agreed only in part with our analysis. There were concerns raised around the current model regarding a lack of flexibility and high costs, and some respondents felt that the Bar Council/COIC proposal is better designed to meet the requirements of the Professional Statement, although detail was not provided as to the reasons why.

- 12.5 Only a small minority did not agree that Option A has the capability to meet the requirements of the Professional Statement. They felt the vocational stage does not effectively prepare students for day to day practice at the Bar, including the nature of some assessments that were considered to place emphasis was on learning to pass the exam rather than preparing for practice.
- 12.6 A minority of respondents felt that there was insufficient analysis to enable them to unequivocally agree or to understand how training providers may interpret the training syllabus more creatively than at present, which could result in more cost-effective programmes of study. One respondent stated they did not understand the question and another felt that the question was not relevant.
- 12.7 A number of respondents provided additional comments, outside the scope of the question, regarding their concerns with the current system of training. This included that it is expensive - which can impact on accessibility - that it is inflexible, requiring students to take a large risk by investing in the BPTC when they may not pass or get pupillage, and that chambers recruit from a narrow range of universities.
- 12.8 Some respondents felt that pupillage is an important stage for providing pupils with the competencies within the Professional Statement, as they can practically apply their learning.

Question 5: Do you agree with our analysis of this option's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.

- 13.1 A total of seventy people responded to this question.
- 13.2 A number of respondents agreed with our analysis of Option A's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular.
- 13.3 Numerous respondents commented that Option A could restrict access to the Bar, and a summary of these responses have been listed below:
- One respondent noted that the lack of flexibility, in that pupillage is usually untaken following the academic and vocational stages, ignores the prohibitive costs of these stages, and the impact this has on accessibility and
 - Monckton Chambers and One Essex Court felt that the design of the BPTC, in that the modules are detached from daily practice, coupled with the high cost, inhibits entry to the profession from individuals from lower socio-economic backgrounds. This, it was felt, has made the Bar dependent on income rather than ability.
 - A number of respondents felt that Option A does not enhance access to the profession, with cost being a considerable risk without the guarantee of pupillage.
 - Some respondents agreed that the current system constrains flexibility, but does provide good geographical spread of training among the regions.

- The Bar Council felt that the high cost of training acts as a barrier to access to the profession, but that this is not due to the sequential nature of the current system, but rather the upfront investment that it requires.
 - One respondent felt that changes under Option A will increase the need for regulation which in turn will increase costs.
 - One respondent noted that by retaining a single route, those with less social capital will not be disadvantaged as they have taken the same pathway as other applicants.
 - The Inner Temple Bar Liaison Committee felt that the costs associated with the academic stage are not specific to the Bar and that many graduates will not be seeking to qualify as barristers. Therefore, associating high costs with the academic stage, and attributing this to lack of access, is not necessarily fair.
- 13.4 One Essex Court Chambers stated, as regards the potential of Option A to restrict access to the Bar, that:
- “It is not in the interests of the profession, consumers or the public generally to make access to the Bar dependent on income rather than ability.”*
- 13.5 Additionally, some barristers felt that Option A does not provide an effective filter for those students who would not be able to pass the course or meet the Professional Statement, thus threatening the quality of service to consumers.
- 13.6 Several respondents stated that they did not have a view.

Question 6: Do you agree with our analysis of this option’s capability to meet the LSB’s statutory guidance? If not, please state why not.

- 14.1 A total of sixty eight people responded to this question.
- 14.2 The overwhelming majority agreed with our analysis of Option A’s capability to meet the LSB’s statutory guidance, including a number of barristers, academic institutions and the Commercial Bar Association.
- 14.3 A number of respondents agreed in part with our analysis, but provided additional comments that they would like to have more information without which they are unable to fully agree. This included comments stating that without viewing the Authorisation Framework there remains a lack of clarity as to when various outcomes/competencies are to be tested/met, that the opportunities for increasing flexibility are insufficiently developed and that it is unclear what value is gained from allowing providers to innovate with taught modules and syllabus requirements.
- 14.4 There were respondents who felt that more flexibility is required to meet the LSB statutory guidance, which could improve the availability of employed pupillages and enable trainee barristers to gain experience within a commercial organisation during training.
- 14.5 A number of respondents, including COIC, did not agree that Option A is capable of meeting the LSB’s statutory guidance, particularly in regards to providers having the flexibility to determine how to deliver training, education and experience that meets the outcomes required.

14.6 In their response, the Bar Council noted that too many candidates are admitted onto the BPTC when they either fail or have little chance of getting pupillage, which can reduce the standard of students and prevent the attainment of the required outcomes. They stated that:

“The current model therefore serves both student cohorts badly: those who stand little chance of entering the profession fail at high cost; while those who may well succeed have their tuition dragged down by poorly performing colleagues.”

14.7 One respondent felt that providers do not have an incentive to make courses more rigorous and that by enabling more flexibility, it is likely that providers will lower standards to increase the pass rates.

14.8 Some chambers felt that to retain Option A would not enable us to meet the LSB statutory guidance because this approach does not enable access to the profession due to high costs and thus contravene the guidance’s prohibition on placing inappropriate restrictions on the numbers entering the profession.

14.9 One chambers highlighted that the high debt that students acquire is causing some junior practitioners to abandon areas of practice, including crime and family, which could also constitute a restriction on the numbers entering the profession.

14.10 Some respondents commented that they did not have a view and another did not consider that this question was relevant.

Question 7: Do you agree with how ethics is taught and assessed under Option A? If not, please state why not.

15.1 A total of seventy-five people responded to this question.

15.2 The number of respondents agreed with how ethics is taught and assessed under Option A and that teaching and assessing ethics as a centralised assessment should be retained.

15.3 However, the majority of respondents did not agree and these responses have been summarised as follows:

15.4 A number of barristers argued that ethics should be explicitly taught and should be incorporated into both the vocational and work-based learning assessments. In several respondent barristers’ view ethical issues should be integrated into all topics and there should be a separate exam on the principles and rules of ethics. It was argued that:

- Centralised assessments are not sufficient in isolation;
- A more philosophical approach could be beneficial, in which students are assisted to use different forms of moral reasoning in different circumstances.

15.5 The Bar Council argued that the current ethics training on the BPTC is insufficient. They stated that:

“The 2016 Report by Professor Moorhead and others “The Ethical Capacities of New Advocates” concluded that ethics training before and after qualification was “insufficiently robust or frequent to enable confident ethical practice amongst new advocates”. While the new practitioner programmes may have to take their share of

the blame for this, we think it apparent that the current ethics training provided at the BPTC stage is unfit for purpose.”

- 15.6 BACFI suggested that an exploration of the ethical issues affecting both the self-employed and employed Bar can be beneficial and noted that:
- “...that working in-house (whether in a law firm or a commercial organisation) presents a set of ethical challenges different from those that might be experienced by a self-employed barrister practising from chambers. BACFI believes that commercial organisations and law firms themselves are in the best position to provide training and experience in relation to these matters and any approach to training should therefore be flexible enough to enable barristers to spend at least part of their training in-house.”*
- 15.7 The Family Law Bar Association believe that ethics should not form part of the undergraduate syllabus.
- 15.8 A number of students argued that ethics should be integrated with other modules, including more practical exercises in advocacy and conferencing. In their view the current assessment may be too focused on the rules. One student respondent argued that there should be an ethics refresher course before starting pupillage.
- 15.9 BPP and Nottingham Law School felt that a closed book assessment of ethics is not realistic or relevant to practice because if barristers are faced with an ethical issue, they are able to access resources for guidance. Northumbria Law School agreed with this and felt that the teaching and assessment of ethics should be a blend of classroom based analysis of the Code together with exploration of the application of the Code in skills-based sessions. A number of academic institutions felt it would be beneficial to utilise a more pervasive teaching style, so students are not necessarily warned that there is an ethical issue due to its not being explicitly tested through short answer questions
- 15.10 Some respondents, including the University of Law, felt that a teaching of ethics on the LLB/GDL would embed learning to improve the students' approach to ethics.
- 15.11 One respondent felt that the existing centralised assessment in ethics might also widen to consider jurisprudential issues and so take a deeper investigation of this part of training.
- 15.12 Other respondents argued that:
- The teaching of ethics must be aligned with the wider philosophical and moral underpinning of ethics. The assessment should be incorporated into exercises in which the student is required to identify ethical issues as they arise;
 - Ethics should be taught in a similar way to the approach taken by the staff on the Bar Council Ethical Enquiries line;
 - More information about the proposed changes to the exams from 2017 would enhance analysis; and
 - There was concern expressed by one respondent that if ethics is reduced to a component of other modules or a learning outcome, then the importance of ethics may not be realised by some students. This, it was suggested, creates a risk that if the teaching of ethics is not implemented properly, then public confidence in the profession may decrease.

Question 8: Do you agree with the cost analysis we have set out above for Option A? If not, please state why not.

- 16.1 A total of seventy five people responded to this question.
- 16.2 A number of respondents agreed with our cost analysis for Option A and some believed that by enabling flexibility, then this may lead to cost reductions. Some respondents highlighted that the high costs can reduce accessibility to the Bar for those from lower socio-economic backgrounds and that a strong international market stabilises the cost, as without this the market would otherwise be very small and more unaffordable.
- 16.3 The Committee of Heads of University Law Schools raised that value for money must also be a consideration and we should compare the cost of training to other professions, as well as internationally.
- 16.4 City Law School felt that the current course does provide value for money as it not only prepares students for pupillage but also equips them with transferrable skills if they are unsuccessful in pupillage applications.
- 16.5 A number of barristers and chambers agreed in part with our cost analysis but did not consider that any meaningful savings could be achieved under Option A.
- 16.6 The Wales and Chester Circuit suggested that our focus should be on the cost implications to UK-based students, rather than a on those for international students.
- 16.7 Additionally, one respondent did not consider that the availability of further public funding is a material consideration in choosing the best option and another identified the potential of combining the existing content of the BPTC with other modules to create a bespoke LLM that could benefit from public funding.
- 16.8 Some respondents generally agreed with the removal of prescription regarding the elective modules, as a student may not know where their pupillage will be and therefore specialising may result in inconsistencies with the areas of practice during pupillage. Others, however, disagreed and felt these modules develop a student's understanding of the areas they wish to practise and also provides pro bono opportunities, which should be encouraged.
- 16.9 A number of respondents did not agree fully with our cost analysis.
- 16.10 A number of respondents, including the Bar Council, Chancery Bar Association and the Family Law Bar Association, noted that a reduction in prescription is unlikely to lead to a reduction in costs. Nottingham Law School argued that certain costs for delivering the course are fixed and therefore a removal of prescription will not necessarily mean a reduction in the costs.
- 16.11 Some felt that the institutions want to make a profit and rather than passing savings onto students, these savings will be absorbed and the problems are likely to persist.
- 16.12 Others felt that the removal of prescription regarding class size will not result in savings, because there may be educational value in having the size of classes that currently exist. Alternatively, it was suggested that a two-tier system may develop whereby some providers continue with the current, expensive model, whilst others may increase class sizes, resulting in lower fees but also a reduced standard – or perceived

reduced standard - of learning. This will, some suggested, have an adverse impact on equality of opportunity and the diversity of the profession.

- 16.13 Some respondents, therefore, felt that the changes within Option A do not address the issue of costs to students and may make them worse. One barrister respondent stated that increasing the minimum award for pupillage as a means of reducing the student debt would reward the BPTC providers who have benefitted from increasing the student's debt burden in the first place.
- 16.14 Nottingham Law School did not agree that Option A will be the least likely to draw on public funding developments, as the LLM BPTC that is implemented at Nottingham means students are eligible for Government loans.
- 16.15 The Chancery Bar Association highlighted the unstable nature of public funding and that this is liable to change, as too are the costs of undergraduate degrees. The Inner Temple Bar Liaison Committee highlighted that the costs associated with the academic stage are not specific to the Bar and are a feature of any graduate profession.
- 16.16 One respondent felt that the majority of funding is within control of the Inns of Court and that there is no rule preventing the Inns from funding those with their own wealth.
- 16.17 Monckton Chambers did not consider that the charitable funds from the Inns of Court should be used to support the vocational stage when the content of such is not consistent with the needs of practice.
- 16.18 The Association of Graduate Careers Advisors did agree that it would be beneficial to have greater transparency regarding the award of Inn scholarships.
- 16.19 A minority of respondents did not express a view, could not agree or disagree with our analysis or commented that the BPTC is too expensive.
- 16.20 Other respondents felt that there was insufficient information to enable them to provide commentary. Some would welcome further information about the areas against which the additional costs of centralised assessments will be offset, examples of the public funding considerations mentioned and whether consideration was given, in regards to pupillage awards, of the cost of living in areas other than London.

Question 9: Do you agree with the higher education implications we have set out above for Option A? If not, please state why not.

- 17.1 A total of seventy three people responded to this question.
- 17.2 The overwhelming majority agreed with the higher education implications we have set out for Option A.
- 17.3 Specifically, the Inner Temple Bar Liaison Committee felt that the academic status of the BPTC should be communicated both to prospective students and outside the legal profession so that it is recognised by employers as a valuable qualification.
- 17.4 A number of respondents agreed that the BPTC could be incorporated into a postgraduate diploma, or an integrated MLaw, but the impact on the market would be dependent on whether the changes to the vocational stage impacted sufficiently on the viability of the existing providers who compete for a finite pool of students.

- 17.5 One respondent felt that the priority should not be the alignment with other higher education qualifications, but on ensuring that barristers are ready to practise when qualified. Similarly, a number of respondents felt that the alignment with higher education qualifications would not be of such importance in a reformed system of Bar training wherein only an appropriate number of people would be qualifying and at a proportionate cost; they considered the recognition of the qualification outside the Bar only matters when many training will never practise as a barrister.
- 17.6 A minority of respondents did not necessarily agree with the higher education implications we set out as they doubted the value of an LLM obtained via the BPTC and dissertation route, as this could be poorly regarded compared with the traditional LLM.
- 17.7 A minority of respondents stated that they either had no view on the higher education implications we set out or that they had no comment.

Question 10: Do you agree with the equality and diversity implications we have set out above for Option A? If not, please state why not.

- 18.1 A total of seventy three people responded to this question.
- 18.2 A number of respondents agreed with the equality and diversity implications we set out regarding Option A, with a number stating that they believe cost to be a major barrier to accessibility when there is such a competitive market for pupillage. Whilst respondents generally agreed that improving accessibility could mitigate the equality and diversity implications, the importance of maintaining high standards was also emphasised.
- 18.3 One respondent highlighted that improving the information available to under-represented groups could be beneficial in developing career options and opportunities for work experience.
- 18.4 A number of respondents agreed that Option A would do little to improve access to the profession from under-represented groups. Some suggested that for a significant improvement in accessibility, more radical change would be required than is proposed.
- 18.5 One barrister felt that it is not the structure of training that significantly impacts BAME students, but rather the content of the course. Northumbria Law School disagreed, stating that they were not convinced that the difficulties faced by BAME students can be accounted for by the structure and content of the BPTC.
- 18.7 A number of respondents felt that the participation of women and BAME students is more concerning at pupillage and that this should be an area of focus when considering accessibility from an equality and diversity perspective.
- 18.8 Nottingham Law School highlighted that Option A provides the best opportunity for achieving high standards, reducing costs (by accessing public funding) and greater accessibility from a geographical perspective.
- 18.9 Respondents highlighted the complicated nature of under-represented groups entering the profession, which are not limited to the model of vocational training. Some respondents felt that without details as to why we think some groups are under-represented, it is difficult to conclude whether they agree with the implications we outlined.

- 18.10 A minority of respondents did not agree with the equality and diversity implications we set out and argued that chambers selection needed to be dealt with alongside any other reform, to ensure equality and diversity.
- 18.11 One barrister took an alternative view and noted that they consider that it is regulation that can hamper equality of access and diversity in the profession, rather than the recruitment policies of providers. This respondent highlighted the fact that their chambers has structured a timetable to reduce care and travel costs, increasing access to those from under-represented groups. Similarly, another barrister considered the attendance requirement on the BPTC to hamper equality and diversity.
- 18.12 A minority of respondents stated that they either had no view on the equality and diversity implications we set out or that they had no comment. One barrister felt that the main concern should be the improvement of standards, rather than equality and diversity issues. Outer Temple Chambers highlighted that the proposals to increase flexibility in the BPTC under Option A are insufficiently developed to know whether they will lead to increased access.

Option B: Managed Pathways

Question 11: Do you agree with our analysis of Option B's ability to meet the requirements of the Professional Statement? If not, please state why not.

- 19.1 Seventy-five people responded to this question.
- 19.2 The majority of respondents agreed that *some* of the proposed pathways under Option B could meet the requirements of the Professional Statement, however, it was felt that some of the routes presented a risk that students could not meet the requirements of the Professional Statement
- 19.3 The majority of respondents agreed that B(i) could meet the requirements of the Professional Statement as it is similar to the present training pathway.
- 19.4 It was generally agreed that B(ii) could meet the requirements of the Professional Statement.
- 19.5 The majority of academic institutions felt that this Option was suitable to meet the requirements of the Professional Statement. The School of Law at Reading University raised concerns about the low number of pupillages available and how few students are able to qualify. Northumbria Law School and the School of Law at Reading University also expressed concern about the market, including issues of sustainability and how certain pathways may be regulated.
- 19.6 Many respondents argued that if a large number of routes were developed, this would lead to an increase in regulatory costs. Respondents felt it would be necessary for the BSB to introduce greater regulatory oversight to ensure that the requirements of the Professional Statement were met. Dundee Law School agreed that with careful oversight, a number of the pathways suggested under Option B could satisfy the Professional Statement. However, they suggested the BSB would need to introduce clear outcomes for each element and information for students to be able to identify, in advance, how the various pathways would fulfil the requirements.

- 19.7 The majority of barristers who responded did not agree that the Professional Statement could be met by the pathways under Option B. The biggest concern was that a number of routes would arise and this would lead to an expansion in the market beyond what was sustainable. As the profession is so small and there are only a small number of pupillages, it is felt that this would exacerbate the perceived problem of the number of students qualifying. It was also argued that there is a risk that standards will be lowered as more routes develop, which would prevent students from meeting the Professional Statement.
- 19.8 The Family Law Bar Association felt strongly that Option B is overly complex and confusing and would lead to less accessibility and a proliferation of less than optimum, or cheaper providers. They felt that those students with less access to funds would gravitate towards the less reputable providers, damaging their chances of success.

Question 12: Do you agree with our analysis of Option B's ability to meet our regulatory objective in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If no, please state why not.

- 20.1 Sixty-nine people responded to this question.
- 20.2 The majority of respondents disagreed that this Option would meet the regulatory objectives. COIC argued that none of the pathways under B, except for B(i), could meet the regulatory objectives. Before the introduction of either B(iii) or B(iv), COIC advises the BSB to conduct extensive market research.
- 20.3 The majority of barristers felt that Option B would be unable to meet the regulatory objectives. This was generally on the grounds of the confusion that this route would be likely to cause due to the number of potential pathways and that the market was too small to sustain a number of routes. A significant concern was also raised that chambers would be unlikely to recruit students from different routes as essential knowledge, such as ethics, may not have been taught.
- 20.4 The majority of the Specialist Bar Associations felt that Option B could not meet the regulatory objectives, for the same reasons put forward by members of the Bar. BACFI supported the idea of a more flexible approach to work-based learning, which could allow more commercial organisations to offer pupillage.
- 20.5 The majority of academic institutions and BPTC providers agreed that Option B could meet the requirements of the Professional Statement. In particular, there was agreement that Option B(i) and B(ii) could meet the regulatory objectives as they currently exist.
- 20.6 Some issues were raised by academic institutions and BPTC providers. City Law School and BPP raised concerns about the continued use of centralised assessments and how this may work against meeting the regulatory objectives. This was because centralised assessments are inflexible and inhibit innovation as the providers teach students so they can pass the test. Concerns were also raised by academic institutions about the effect the reforms may have on international students.
- 20.7 The academics that responded to this question generally agreed that this Option could meet the regulatory requirements. However, they raised concerns about B(iv), and any

pathway which could allow students to complete pupillage prior to their vocational or academic training, as it was considered unworkable. One academic suggested, that if B(iv) were to be introduced then introductory modules on ethics, court visits and legal systems, similar to the first term of an undergraduate degree, should be introduced.

Question 13: Do you agree with our analysis of Option B's ability to meet the LSB's statutory guidance? If not, please state why not.

21.1 Sixty-eight people answered this question.

21.2 Some respondents agreed that Option B would be able to meet the statutory guidance.

21.3 The University of Law agreed that the option would greatly improve flexibility for students by allowing them to train in a number of different ways to meet the requirements of the Professional Statement. All of the academic institutions and BPTC providers who answered this question agreed that it could meet the statutory guidance.

21.4 The following comments were raised by a number of respondents:

- Despite agreeing in principle, this view could change depending on the pathways adopted under this option;
- This is a small market and it is important to remember that only a small number of pathways could be sustained under this Option; and
- That one pathway would become known as the superior route and this could lead to a tiered system of training, which favours students with social capital.

21.5 The majority of barristers who answered this question disagreed that Option B could meet the statutory guidance. This was generally for the same concerns outlined above. One Chambers raised a concern that Option B would place inappropriate hurdles for many students relating to cost and risk. Many barristers agreed with the principles outlined by the Bar Council that this Option does not find the right balance between regulatory controls and over-prescription.

21.6 The Bar Council pointed to the fact that Option B is in substance little more than a policy decision that the BSB will, in the future, consider the authorisation of unspecified routes. They raise concerns about the likelihood that providers would be able to introduce new pathways within a short timeframe.

Question 14: Do you agree with our view of how professional ethics is taught and assessed, and how ethical behaviour and professional integrity are fostered, under Option B? If not, please state why not.

22.1 Sixty-five people responded to this question.

22.2 The majority of respondents agreed with the BSB views on how professional ethics is taught and assessed, and how ethical behaviour and professional integrity are fostered under Option B. It was generally agreed that there are significant problems with the current system as there is a lack of pervasive teaching and testing of professional ethics.

22.3 The Inner Temple Bar Liaison Committee agreed that attention needed to be paid to the good teaching of ethics and that ethical considerations may be brought into a

number of subjects. They agreed that there ought to be an ethics module with a central exam, as at present. However, they raised concerns that under B(iii) and (iv) ethics teaching could fall between the cracks and this concern would need to be met by an exam. This concern was also raised by a number of other respondents who also felt that the ethical requirements of the Professional Statement may not be met if B(iii) or (iv) were introduced. One Chambers queried how a student on B(iv) would be equipped to deal with ethical issues if they had no vocational training prior to their work-based learning. They noted that for Chambers and other training organisations, this would cause significant issues relating to client confidentiality.

- 22.4 The European Circuit argued that the potential flexibility under Option B would not necessarily tackle the problems raised by the BSB in the consultation. The main issue they identified was a quality issue in the formulation of the vocational courses and delivery of training. Anecdotal evidence had indicated to them that little or no thought is put into integrating ethical issues into skills subjects and the subject was often taught with little or no enthusiasm by tutors, who have never had to face such problems themselves. Their concern was that Option B would lead to long term negative implications for consumers.
- 22.5 Concerns about the lack of integration of ethics within other subjects was raised by a number of other respondents. Many agreed that any change to the structure of training should remove the requirement for an assessment in the current format. Instead ethics should be tested pervasively throughout skills and other assessments. Many supported the assessment structure that had been used during the Bar Vocational Course.
- 22.6 The University of Law supported the BSB's view on this. They noted that the active and practical involvement in the course by members of the Bar and judiciary can add considerable value to a student's learning experience. They welcomed opportunities for new interactions for their students with the wider profession.
- 22.7 Despite many respondents agreeing with the BSB's analysis regarding this issue, many still felt that there were better ways to address the inadequacies in the teaching and assessment of ethics but did not say how this could be achieved.

Question 15: Do you agree with the cost implications we have set out above for Option B? If not, please state why not.

- 23.1 Seventy people responded to this question.
- 23.2 The vast majority of respondents disagreed with the BSB's cost analysis. The most common concerns raised by respondents were:
- The diversification of the market would increase the regulatory cost for the BSB and this in turn would also increase costs for students;
 - Russell Group and Oxbridge universities will not offer B(ii) and this will mean that a large number of students will be unable to access any costs savings;
 - Due to the uncertainty about the number and types of routes that may occur under Option B, no opinion can be given on the cost implications; and
 - Any increase or continuation of centralised assessments will not reduce costs.

- 23.3 Both COIC and COMBAR agree that the consultation analysis is inadequate to anticipate the potential implications of introducing Option B. COMBAR raised concerns echoed by a number of other respondents that an independent analysis will need to be undertaken prior to any authorisation for pathways B(iii) and (iv).
- 23.4 A number of respondents felt that although B(ii) could reduce costs for some students this would be unlikely to have a significant impact on the training market. This was because no Russell Group or Oxbridge university would offer this pathway and the chance of students from other universities getting pupillage is very low. One student respondent felt the undergraduate background of a student is their prime detriment to getting pupillage. This was also supported by Outer Temple Chambers who have concerns that the MLaw may provide lower costs but this may come in at an unacceptable cost in terms of academic quality or other benefits. QEB Hollis Whiteman Chambers also discussed the possibility of the financial viability of the MLaw being removed by a future government's policy decisions.
- 23.5 The Faculty of Law at the University of Oxford argued that a Law degree was the best way to qualify for the Bar and students who study law should receive credit for this, rather than be on the same track as GDL students. Oxford could not offer vocational training so their students would not be able to take advantage of this pathway. In their view, a law degree is to provide students with skills for other careers, not just the Bar. The BSB should be focusing on reducing the cost of the BPTC.
- 23.6 Manchester Law School cautioned the BSB from the idea that any pathway could offer the rigorous amount of training currently offered, but for a lower cost, arguing that vocational training is expensive and it will be difficult to introduce any significant costs savings. They argue that a bigger risk factor for students is that they are unable to get work-based learning and any widening of the availability of this would be welcomed. This view is supported by a number of academics who also note the high quality of vocational training.
- 23.7 Nottingham Law School raised concerns that Option B would increase the regulatory cost if we continue with our policy of full economic cost recovery. This was also raised by the School of Law and Politics at Cardiff University who could not see a way in which this would not increase the costs of regulation. Although the MLaw was a good example of a route which could offer students cost reduction, they did not consider the analysis to have evidence strong enough that costs would be reduced overall. They also felt it was important to take into account the potential cost increase to students for travel and accommodation if the number of regional providers were reduced.
- 23.8 The Western Circuit also noted that multiplicity in pathways would potentially reduce the number of providers in provincial centres and cause the market to become London centric. This would be detrimental to diversity and equality of opportunity to those wishing to train for to the Bar. Regional providers may close if the multiplication of routes led them to believe that the courses were no longer cost effective.
- 23.9 The Wales and Chester circuit disagreed with the analysis in so far as it applied to B(i), but felt there was some merit in considering this if the COIC/Bar Council model were adopted.

Question 16: Do you agree with the higher education implications we have set out above for Option B? If not, please state why not.

- 24.1 Fifty three people responded to this question.
- 24.2 The majority of respondents broadly agreed with the higher education implications set out for the BSB for Option B. Many respondents felt that there is merit for B(ii) as it already fits within the higher education framework at Northumbria. A number of respondents also felt that the increased flexibility evident within Option B would allow for pathways to adapt to changes in the provision of higher education. The University of Law agreed that the implications were correct and noted that from 2017 they were offering a combined BPTC and Masters Route, which in addition to providing students with clinical experience also allows them to access Government postgraduate funding. One respondent was sceptical as to the level of government interest in such a small profession.
- 24.3 BPP agreed that some routes would lend themselves to combining with a master's level award, although they noted that the BPTC currently lends itself to this. Dundee Law School argued that in a more modular system, providers should still be encouraged to align their courses with the broader qualifications framework. City Law School emphasised that only courses that contain structured academic or vocational education would fit within the higher education structure for credit-rating, thus leaving the risk that students would not have a recognised qualification in the way that the BPTC currently provides. The Committee of the Heads of University Law Schools agreed and noted that flexibility will be limited by the higher education structure for credit-rating and that providers will be guided by the impact on international students.
- 24.4 A number of non-barrister respondents expressed interest in the potential opportunity for apprenticeship style training as outlined under B(iv). The University of Law explained that they are currently involved in similar training with paralegals and solicitors and this could be developed for barristers. The Association of Law Teachers also agreed that larger organisations such as the Government Legal Service and the Crown Prosecution Service could have an interest in exploring apprenticeships. However, they warned that self-employed barristers would be unlikely to have any interest in B(iv), preferring instead to recruit pupils who have undergone a conventional legal education. The respondents who considered B(iv) agreed that only larger organisations that employed barristers could realistically offer apprenticeships. The Inner Temple Bar Liaison Committee expressed concerns that students who undertook training under B(iv) may not be considered to be at the same academic standard as those who have taken other routes.
- 24.5 It was noted by the Inner Temple Bar liaison Committee that most academic institutions, particularly the best-rated universities, would be unlikely to adapt their training to encompass any of the pathways outlined under Option B. Many universities would continue to offer the traditional academic orientated law degree and would not be open to different options.
- 24.6 COIC argued that higher education implications are not an appropriate basis for determining Bar training. This is also set out by COMBAR who note that the ability for students to engage in government funding is not a reason for selecting an inappropriate training structure; instead the BSB should be focusing on reducing the cost of training. The European circuit also argued that the cost of training should be

reduced to ensure that the Bar and the Inns of Court can direct sponsorship and scholarships more appropriately, specifically to students with adequate competency for the Bar.

- 24.7 The School of Politics and Law, Cardiff University highlighted that the consultation focuses upon a rather limited scope specifically focusing on funding issues. They identified two further problems that should be considered, namely; any approved model under Option B would need to take into account the SRA's changes and the uncertain consequences for MLaw students who fail to obtain access to the BPTC pathway.

Question 17: Do you agree with the market risk analysis we have set out above for Option B? If not, please state why not.

- 25.1 Fifty nine people responded to this question.
- 25.2 The majority of respondents agreed that the BSB had identified the correct market risks for Option B. A number of respondents agreed that flexibility and relaxation of the rules could encourage greater innovation and improve Bar training. Some respondents argued that this flexibility would inevitably lead to lower standard providers entering the market and this would have a negative impact on students. The University of Law argued that the standards set by the BSB would mitigate the risk of variable or lower standards in the market; although, they urged continual assessment of this risk.
- 25.3 The majority of respondents agreed that there were significant market risks, particularly due to the size of the profession and training market. A number of respondents urged the BSB to consider how the risks can be mitigated by adequate planning and management, and not to implement Option B without consulting on how to reduce these risks. Dundee Law School urged the BSB to consider:
- “The long period from making the choice of higher education (or equivalent) to final qualification...transitional arrangements should cater for those who for external reasons are not able to proceed on the standard timescale (e.g. having to take a ‘year out’ because of illness).”*
- 25.4 The Inner Temple Bar Liaison Committee note that there will be significant problems if B(iii) is implemented as Chambers are small and will not be able to accommodate combined vocational and work-based training. The Committee emphasised that Chambers are not “training centres” and self-employed practice will not be able to accommodate new routes without significant assistance and management. BPP agreed with this position although they noted that they would be open to offering training provision in partnership with interested Chambers. One Essex Court warned that placing more responsibility for training on Chambers could reduce the number of available pupillages. One respondent disagreed and argued that B(iii) would be the best option as it would remove any market for the BPTC providers and ensure that training was adequate and fair.
- 25.5 Many respondents held strong doubts that the market would be able to sustain numerous routes and expressed the detrimental effect this may have on the geographic diversity of providers. Manchester Law School strongly felt that it was important for diversity that courses be available throughout the country and the Bar

does not return to the pre-1998 position of London-centric training. Cardiff University requested substantial further evidence to show how the risk of smaller regional providers being unable to compete would be handled and mitigated. This is also discussed by the Western Circuit, who did not agree that the BSB had explained how this risk would be mitigated. The Society of Legal Scholars also noted concerns about the risk of new routes failing early and affecting the students on them. The Bar Council argued that if online learning were introduced then a loss of regional providers would have a limited impact on students. They urged the BSB to introduce their route as soon as possible.

- 25.6 The Association of Law Teachers noted that the size of the market is significant but that the flexibility and range of options could allow for more innovative provisions to develop, which could encourage new providers into the market. The Association explained that we needed to consider the fact that the market trains both those destined for the English Bar, as well as international students whose qualification entitles them to practise in their home jurisdiction. One respondent explained that the needs of international students must be considered and the international recognition of training must be maintained. Provision could become more expensive without international students and there is enormous value in exporting skills, values and traditions of the English Bar to the development of other jurisdictions and the maintenance of the rule of law.
- 25.7 Many respondents also agreed with the BSB analysis that a two-tiered system could develop. The Association of Graduate Careers Advisors warned that even if all routes are identical in standard, students or employers may regard one route as the “gold standard” and favour this over others. They gave the example of the employed Bar as sometimes perceived by students as second best to the self-employed Bar. Outer Temple Chambers explained that most academically strong universities would not want to offer B(ii) or (iii) and this would mean that B(i) would develop as the gold standard. The University of the West of England argued that the upper half of any two-tier system would most likely charge higher fees than at present.
- 25.8 The University of Law agreed with the risks as stated, but asserted that most universities and providers would continue to offer the same course as at present except with more innovations - such as masters’ degrees - added to the course over time. The University of Exeter also supported the relaxation of rules to recognise supervised pro bono activities in law school clinics as being equivalent to pupillage.
- 25.9 BPP expressed serious concern that the Inns may enter the market. If this were the case then they felt the BSB would need to ensure students were protected against unfair competitive practices and monopolies in the same way that would apply to any other business sector. They argued that benefit is derived from the current clear delimitation between the two functions.
- 25.10 Some respondents, including COIC, argued that the risk analysis was too tentative and speculative. The following comments were raised by these respondents:
- We cannot speculate what Chambers will do when extra burdens are put upon them;
 - The analysis shows a lack of understanding about how Chambers work;
 - The primary objective of providers is to make money and it is naïve to imagine they will willingly reduce their fees;

- The BSB analysis underestimates the potential for a stark reduction in pupillages offered and this could disproportionately affect regional providers; and
- The BSB does not quantify the risks they identify.

Question 18: Do you agree with the equality and diversity implications we have set out above for Option B? If not, please state why not.

26.1 Sixty four people responded to this question.

26.2 The majority of respondents disagreed with the equality and diversity implications set out for Option B. The majority argued that greater flexibility would not improve diversity. This was for a number of reasons:

- Students from less advantaged backgrounds are more likely to access the less popular or acceptable routes and consequently less likely to gain pupillage;
- Increasing numbers of students will train for the Bar and those from Oxbridge and with First class degrees will be prioritised;
- The true root of lack of diversification is the lack of transparency with chambers recruitment of pupils;
- Option B will have a materially negative impact on access because of the high cost of qualifying and the creation of a two-tier system. COMBAR stated that no Chambers within their Association would hire a student who has completed any route that does not involve completing all aspects of education prior to pupillage;
- A two-tier system could develop, whereby some routes are considered to be materially better or worse than others;
- Reducing the cost of training will not bring down the socio-economic barriers within chambers; and
- Whilst agreeing that the Northumbria model does provide an opportunity to draw on public funding and increase access for those from lower socio-economic backgrounds, some barristers raised concerns that students are required to opt for the BPTC too early.

26.3 One academic argued that the BSB needs to give careful consideration to the research conducted by the Sutton Trust, which concluded that complex qualification routes worked against students from disadvantaged backgrounds. Students with more privileged backgrounds would be better able to navigate complex systems and may be better placed to use provisions intended for those from disadvantaged backgrounds. This is echoed by the response from the Chancery Bar Association who cite anecdotal evidence that the current system is already considered highly complicated and further complication could discourage those from non-traditional backgrounds.

26.4 The South Eastern Circuit suggested that the BSB would need to look further into the disproportionate effect Option B would have on those outside of London. It was suggested that the provinces should be offered incentives to ensure that they continue to provide quality education and routes into the profession. This view was also set out by the University of Law, which suggested that the BSB try and mitigate the risk of

some non-London providers dying out and ensure pathways are not all London-centric. They also stated that pathways that would allow students to attend training whilst living at home would potentially increase access to the profession.

- 26.5 One respondent argued that the BSB should not introduce any pathway that relies too heavily on examinations, as this will have a negative impact on equality and diversity. They stated that those with more resources will pay for tutoring and be more likely to pass. Furthermore, they stated that such systems favour those who are better at exams, a skill that does not necessarily make them a good barrister.
- 26.6 BACFI supported greater flexibility within pupillage. They argued that making it easier for commercial organisations to apply for and provide pupillage would increase access to the profession.
- 26.7 Dundee Law School noted that this model could offer “wider opportunity”, but only if Chambers were persuaded that the pathways were equal. The University of the West of England noted that the BPTC can already be studied as a full-time or part-time course, which enables flexibility of learning based on applicants’ needs. They felt that the profession itself should be trying to attract students from more diverse backgrounds and that this will not be achieved through training. They further expressed their view that there are greater influences on diversity than Bar Training - such as economic/social factors, and primary/secondary/degree education- and that these have a greater material consequence than the BPTC.

Option C: “The Bar Specialist” approach

Question 19: Do you agree with our analysis of this option’s ability to meet the requirements of the Professional Statement? If not, please state why not.

- 27.1 Sixty nine responses to this question were received. Of these the majority agreed with our analysis of Option C’s ability to meet the requirements of the professional statement, fourteen did not and seventeen neither agreed nor disagreed.
- 27.2 The majority of those in agreement (or broadly so) with our analysis were keen to stress that, whilst Option C may be capable of meeting the professional statement, it is not a desirable option. Many highlighted the challenges that Option C presents, including for the BSB in formulating an examination which would sufficiently cover the knowledge requirements of a QLD. Others asserted that the segregation of the knowledge and skills components of the current programme would be undesirable and would create a ‘false’ divide.

“... we share what appear to be the BSB’s concerns about this aspect of Option C, in particular the extent to which it is necessary or desirable to invent from scratch a new and comprehensive qualifying exam. We are also worried in particular by the proposal to “loosen” the knowledge requirements... which we do not regard as being consistent with the maintenance of the bar as an intellectually rigorous profession.” (ComBar)

“A complete segregation of knowledge and skills takes away the very real benefits of dual learning... The parallel learning that we have at present underlines the fact that this is not simply a knowledge-based course like any other examination but requires proper application of the law to the evidence. Knowledge and skills have a

symbiotic relationship which is clearly demonstrated when students use, in the same week, the knowledge they have gained in their skills session.” (Manchester Law School)

- 27.3 Several respondents agreed with our analysis that it would be complex and costly to formulate and deliver a qualifying examination, and many were concerned that the rigour of the current system would be compromised or ‘*diluted*.’ As one set of Chambers stated:

“We doubt that such an exam could be developed to test all the knowledge and contextual knowledge that students typically learn in a law degree and/or GDL, as well as vocational knowledge from the BPTC. We are also rather worried by the proposal to “loosen” the knowledge requirements...which may jeopardise the high intellectual standards required to be a barrister.” (Outer Temple Chambers)

- 27.4 Of those respondents who disagreed with our analysis, it was clear that they did not feel Option C was viable or desirable. Some did not consider it appropriate to remove the requirement for a QLD (or the GDL), arguing that this would place students without a QLD (or GDL) at a disadvantage compared to those who had. Several responses also indicated that this option would be likely to have a disproportionate impact on those from ‘*underrepresented backgrounds*.’

“Our pupils are expected to have a wide spectrum of legal knowledge in their early years. The removal of the requirement of a law degree (or conversion equivalent) would leave them ill equipped for practice with us. Such students would struggle to compete with those students who had competed law degrees both in terms of their prospects of securing pupillage and in practice thereafter.” (9 Park Place Chambers)

- 27.5 Cardiff University, amongst other universities, did not feel that a three-month course would be sufficiently robust to equip students with the required advocacy and skills training, nor did they agree with a separation of skills and knowledge learning. However, they also raised the issue of the impact such an arrangement could have on international students:

“It is also our understanding that reducing the duration of the BPTC to 3 months will prohibit international students from obtaining Tier 4 student visas necessary to study on such courses (if it is suggested that a Tier 4 visa could be obtained for a course of such a short duration, it is respectfully suggested that how that course would have to be offered and whether that is achievable has not been adequately considered). To enact a change that effectively extinguishes such a valued export would, in our view, be a retrograde step.” (Cardiff University)

Question 20: Do you agree with our analysis of this option’s capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.

- 28.1 There were sixty six responses to this question: the minority of respondents broadly agreed with our analysis of Option C’s capability to meet our regulatory objectives and the majority disagreed.

28.2 In the Consultation document, we described how Option C could increase access to the profession, particularly from those who currently find costs prohibitive, due to the flexibility allowed in how students could prepare for the Bar Entrance Exam (BEE). The reduced duration could also increase access, since those who currently struggle to attend structured, lengthy courses could better engage with a short skills course. The majority of respondents, however, did not feel this was a realistic assessment. Some respondents felt that this underestimated the difficulties that students such as those with caring responsibilities may have in attending even a three-month course, and others said that whilst Option C may improve access in relation to cost, it would not address the broader issues around access to the profession. The Inner Temple Liaison Committee stated:

“We agree that the advantages of such a course would be a decreased cost and therefore decreased barriers to the profession, however we do not consider that the diversity implications would be sufficient to outweigh the potential harm that such an approach could cause the standing of the profession.”

28.3 Several respondents, including universities, also pointed out that flexible study arrangements are already available to students and, therefore, they did not feel that the proposal would increase accessibility or diversity within the profession.

“The argument that certain students would find this more accessible largely ignores the fact that there are already many options for study at degree level by part-time, blended or distance learning, and also the potential for greater flexibility in delivery of the vocational stage under Option B. Option C adds relatively little in this context, and creates significant dangers in relation to inadequate knowledge.” (Association of Law Teachers)

28.4 The University of Exeter, among others, expressed concern that the option would lead to a ‘two tier system,’ whereby students who are financially better off would likely attend ‘premium’ preparation courses, while those with less financial resources would prepare on a ‘DIY basis.’ The University of the West of England were equally sceptical:

“Those that can afford to pay for Part 1 tuition will do so. Mature students, students with caring responsibilities and those with disabilities will need to find a way of learning the Part 1 syllabus before engaging with the skills element. We do not believe that a 2 step entry requirement will reduce actual time spent in study or indeed the cost of study for those that can afford to pay or for those who may not be able to afford to pay but nonetheless are keen to succeed.” (UWE)

28.5 Many respondents questioned the ability of a three-month vocational course to adequately cover what is required to equip students with the necessary skills and knowledge, and the potential impact of this on consumers when they commence practice. On the other hand, some respondents felt that the year of work-based learning would help mitigate against this, and ensure consumer protection. One respondent recognised that whilst the year of work-based learning might mitigate against the risk that students are not fully equipped, they felt this would impose a significant burden on chambers to ensure pupils are adequately prepared when, six months into the year, they are able to exercise rights of audience.

“BACFI is concerned that a shorter period of vocational training will mean students are ill-equipped for the pupillage stage and that the quality of newly qualified barristers will be reduced overall.” (BACFI)

28.6 BPP were similarly sceptical that the course could adequately prepare students for pupillage, and did not feel that any gaps in knowledge or skill would be addressed during pupillage; indicating that the quality of supervision is highly variable. The majority of universities disagreed with our analysis for this reason: they did not feel a three-month course was sufficient. Nottingham Law School stated that the approach encouraged a superficial study of ethics, and that students would have a reduced opportunity to observe the ethical behaviour of others. Concerns around unregulated providers were also apparent from responses.

Question 21: Do you agree with our analysis of Option C's ability to meet the LSB's statutory guidance? If not, please state why not.

29.1 A total of sixty four respondents answered this question. Just under half of respondents agreed with our analysis of Option C's ability to meet the LSB's statutory guidance, a significant minority disagreed with our analysis and a smaller number were unclear as to whether they agreed or disagreed with our analysis.

29.2 Amongst those who agreed with our analysis, the reasoning for doing so included:

- Option C would promote innovation through training provision;
- Option C would reduce the excessive regulation of providers;
- Not requiring students to take a year to study the BPTC full time would likely increase access for those who cannot currently afford to take this risk.

29.3 Some respondents, although agreeing with our analysis, emphasised that Option C only met the LSB's statutory guidance in a minimal sense. Several other respondents who agreed with our analysis did so with reservations, concerning whether Option C would adequately:

- Protect and promote the interests of consumers, particularly if a student has had insufficient training or has gaps in their knowledge or skills that are missed by the assessment process;
- Increase access to the profession or achieve the diversity required by the profession.

"It is a proposal that favours the rich and discriminates against the less well off. These qualifying exams (BPTC at present) are extremely hard. They are difficult to pass even with dedicated, well-qualified, educationally trained and astute tutors. The idea that they will be simple to pass on a self-taught basis is flawed. A lack of direction and focus based teaching will simply result in those that are self-taught lacking discipline and being under prepared. This will become apparent within the first twelve months and will result in students then reaching out to any one of the unregulated and expensive providers that will spring up. Inevitably, only the well-off will be able to afford such courses. It would not take very long before the Bar fell back into a class driven stereotype." (Manchester Law School)

29.4 One respondent, in agreeing with our analysis, suggested that there could be a system with multiple pathways, with a two-stage BPTC programme for those able to take an entire year for study and another for students who choose to study for the Bar Entrance Exam and join the course afterwards.

29.5 A sizeable minority of individuals opposed our analysis of Option C's ability to meet the LSB's statutory guidance, for a variety of reasons. These included:

- Individuals who have only taken the Bar Entrance Exam may be inadequately trained;
- Individuals that qualify through this pathway may not be regarded as fully qualified lawyers in an international context, thus risking reputational damage to the profession;
- The option could result in a reduction in the number of institutions providing training for the Bar, thus limiting access to the profession;
- Educational innovation may be stifled due to the knowledge aspects of training focusing on ensuring students pass a centralised exam.

Question 22: Do you agree or disagree with our understanding of how Option C promotes the professional principles, ethical behaviour and integrity? If not, please state why not.

30.1 Sixty three respondents answered this question. Half of respondents agreed with our analysis under of how Option C promotes the professional principles, ethical behaviour and integrity, including a majority of barristers and educational institutions. Of those who supported our analysis, a significant proportion highlighted agreement with the arguments under paragraph 182 of the consultation document, concerning the reduced potential for exposure to other practitioners as role models.

"We agree that there would be a significant reduction in the potential for exposure to practitioner as role models and for experiential learning which would reduce the opportunity for the development of an understanding of the importance of integrity and an understanding of the ethical considerations as a barrister." (BPP)

30.2 A number of those who agreed with our analysis highlighted the additional concern that a short skills course would not have enough time to cover the relevant rules and duties in sufficient depth. One respondent suggested that increasing the length of work-based learning could address any concerns about the adequate assessment of ethics under Option C, whilst a pupil respondent suggested that top-up ethics training could be possible as part of the option.

30.3 A sizeable minority of respondents disagreed with our analysis under this question, for a number of reasons. A tutor, amongst others, felt that the assessment of ethics through the Bar Entrance Examination risks being schematic, and BACFI (as reported by the Bar Association for Local Government and the Public Service) believed it instead should be incorporated into every stage of training and Continuing Professional Development. Others noted that the assessment of ethics would come at a time when students have had little exposure to how professional ethics operates and that splitting the knowledge and skill aspects of learning around ethics would fail to give students a meaningful understanding of ethical dilemmas in practice. COIC were not confident that the BEE and shortened skill course would serve the regulatory objectives but, rather, would compromise them. Monckton Chambers, in agreeing with our analysis, expressed the view that it would be incompatible with the professional principles and ethical standards for an individual to practice as a barrister without

having acquired grounding in the seven core areas of law. Northumbria Law School summarised the view of a significant number of respondents:

“We agree that this option has the real potential for significantly undermining professional principles, professional ethics, ethical behaviour and integrity because of the significantly reduced exposure to practitioners as role models along with the tandem reduction of the development of understanding in these central areas to practice. Assessing knowledge of the code of conduct simply by way of an exam is significantly less effective as a measure of ensuring standards, ethical behaviour and integrity than the hybrid which exists under current models which provide the opportunity to guide, re-inforce and monitor ethical behaviour.”

Question 23: Do you agree with the cost implications we have set out above for Option C? If not, please state why.

31.1 There were sixty six respondents to question 23. Of these, a slim majority agreed with our analysis of the cost implications for Option C, including a majority of barristers. In agreeing with this analysis, respondents emphasised:

- The significant upfront cost that Option C could present to the regulator;
- That some of this cost could be off-set by cooperation with the Solicitors’ Regulation Authority;
- That the scale down to a three-month skills course would likely lead to a reduction in costs for training providers;
- That the reduction in costs for students may not be as drastic as some might assume;
- That the greater commitment to data scrutiny associated with a more widely available examination could raise regulatory costs.

31.2 A number of respondents who agreed with the cost implications made the additional argument that candidates who lacked a QLD or GDL would be less attractive to potential employers or training providers.

31.3 Several respondents also highlighted that any costs students save via Option C may be off-set by the costs incurred by emergent preparatory courses. Further concerning this issue, the Association of Graduate Careers Advisors suggested that the cost of preparatory courses in the USA could be informative in determining what costs students may incur here, with one US provider charging fees of \$2795 (around £2229). One barrister respondent suggested that the costs associated with centralised examination could be off-set by issuing a training levy across all chambers.

31.4 As regards the potential for Option C to reduce costs for students, the Commercial Bar Association remarked that:

“...we welcome any reform that results in a material reduction in the cost of the vocational stage, which Option C...is likely to provide.”

31.5 A sizeable minority of respondents disagreed with the cost implications outlined in the consultation document. The broad reasoning offered for this disagreement was that:

- A premium, London-centric market for exam preparation will emerge, with a detrimental impact on equal access for international students, students from less wealthy socioeconomic backgrounds and students outside of London;

- Those who progress no further than the skills course under Option C will not have a recognised qualification to show for their expenditure;
- The cost of regulating the entrance examination is likely to be prohibitive;
- The potential costs for students proposed by the BSB are unconvincing.

31.6 Some barrister respondents felt that the upfront costs of establishing this system would not be as high as the BSB predicts, with one respondent suggesting that the exam could draw upon existing standards in relation to the law conversion course and the knowledge-based aspects of the BPTC. Furthermore, this respondent suggested that the ability of providers to run three shorter courses per year, rather than one longer one, would reduce costs even further.

Question 24: Do you agree with our analysis of Option C's impact on the higher education training market for the Bar? If not, please state why not.

32.1 Sixty eight respondents answered this question, with the majority agreeing with our analysis of Option C's impact on the higher education training market for the Bar. This includes a majority of barristers, educational institutions and students.

32.2 The reasons given for supporting the analysis included that:

- The provider market would dwindle, resulting in a concentration of providers in London to the detriment of regional and economically disadvantaged students;
- The market for the law degree would likely persist, with students who have obtained such a qualification being preferred by Chambers.

32.3 Some respondents, in agreeing with our analysis, expressed the additional concern that the market of providers would become so diverse that the BSB would have difficulty regulating it. A number of respondents who agreed with our analysis also raised the concern that a premium market would emerge surrounding preparation for the exam, which would be damaging for economically disadvantaged students.

32.4 City Law School highlighted that regard would need to be paid to the credit-rating system for the award of certificates, diplomas and degrees to determine whether the Bar course could be recognised. The School of Law and Politics at Cardiff University noted the particular detrimental impact that a market shrinkage could have on Welsh students:

"Those studying the BPTC at Cardiff are provided the opportunity to study Welsh Advocacy (through the medium of Welsh). Connections to and knowledge of the local profession assist those home students wishing to practise law in the South Wales area."

32.5 This was viewed as particularly important in light of the fact that 'one is permitted to request that a trial proceeds in Welsh and in view of the increasing differences that may arise within the devolved areas of law.'

32.6 A minority of respondents, largely barristers, disagreed with our analysis. This was most prominently on that basis that:

- Option C could lead to a proliferation of training providers and a fall in quality of training. This could expose students to a poor standard of training, particularly in an unregulated marketplace;

- Universities may actually find it attractive to offer Bar Entrance Examination subjects as final options or as an LLM;
- Option C would result in a surfeit of students receiving an unrecognised qualification;
- There would not be a large take-up from Bar specialist providers and private organisations;
- The small student market and the Bar Entrance Exam's academic status will deter providers from building their degree courses around the Bar Entrance Exam;
- Option C would duplicate the assessment of legal knowledge that is already assessed.

32.7 One respondent, in disagreeing with our analysis, suggested that Option C ought to be implemented to provide a single route, rather than a 'prestige' route and 'non-prestige' route in the form of those who follow the traditional degree route and those who do not.

Question 25: Do you agree with the equality and diversity implications we have set out above for Option C? If not, please state why not.

- 33.1 Sixty five individuals responded to this question, with no strict majority agreeing or disagreeing with the equality and diversity implications set out in Option C. A significant number were unclear whether they agreed with the implications outlined or not.
- 33.2 However, the largest number of respondents broadly agreed with the implications, including a significant number of barristers and academic institutions. Amongst those who agreed, the key reasons for supporting the implications set out in the consultation document included:
- Reduced costs could potentially provide for greater diversity;
 - There is potential for students from a socioeconomically advantaged background to gain an advantage by paying for better training for the entrance examination;
 - The impact of this on socioeconomically disadvantaged students could be mitigated by allowing re-takes of the exam, as long as costs for students are kept to a minimum;
 - A centralised examination could constitute a 'leveller' for candidates from all backgrounds.
- 33.3 The Association of Graduate Careers Advisors also commented that the intensive nature of a three-month course could, in fact, act as a barrier for those with caring responsibilities and some disabilities, rather than facilitating access. Some respondents, although agreeing with the implications outlined in the consultation document, questioned the BSB's conclusion that Black and Minority Ethnic candidates are less likely to pass centralised examinations and wished to see more evidence to support the assumption.
- 33.4 Several responses addressed the possibility of allowing multiple re-takes of the BEE: The Inner Temple Bar Liaison Committee stated that allowing multiple re-takes could have the negative consequence of reducing the efficacy of the examination as a filter against those who do not meet the standards of the Professional Statement. However, the University of Oxford, Faculty of Law noted that the reality of Chambers selecting pupils from particular universities would render the efforts of students retaking the Bar Entrance Examination multiple times redundant.

33.5 A large minority of respondents disagreed with the equality and diversity implications set out regarding Option C; amongst those who disagreed, the key reasons included that:

- International students would not be attracted by this option, as the short length of the skills course would prevent them from obtaining a Tier 4 visa;
- Option C would likely lead to the development of examination preparation courses to the detriment of access for socioeconomically disadvantaged students;
- The Bar Entrance Examination could constitute an additional cost on top of a degree, thus negatively impacting diversity.

33.6 Manchester Law School submitted that there would be no ‘*enhanced opportunity for cheaper loan funding*’ under this option. Northumbria Law School added, in disagreeing with the implications outlined, that Option C could damage the established links between the Bar and judiciaries overseas.

Question 26: After having given to the three options above, please tell us which options is most appropriate and why you think this is the case.

34.1 Eighty two people responded specifically to this question.

34.2 The majority of these respondents expressed support for the COIC proposal and rejected all Options proposed by the BSB. Further analysis of the COIC proposal is set out below. A greater number of respondents expressed views on the best option but did not specifically answer this question. Due to the high number of respondents in favour of the COIC and Bar Council response this has been set out separately below to ensure it can be analysed effectively.

Option A

34.3 Some respondents favoured the current system and did not feel a radical change is necessary. BPP and others contended that the current approach is fit for purpose, and could be improved by ‘*deregulation.*’ Outer Temple Chambers focused on the cost implications of the three options:

“Option A is preferable to options B and C, both of which are not desirable. Although the status quo is imperfect, Options B and C would result in significant cost to the BSB (then passed on to students or barristers) with scant benefits.”

34.4 A number of respondents suggested that if the BSB were not to adopt the COIC proposal, then Option A should be adopted in lieu of the other Options, including the Chancery Bar Association, COMBAR and a number of barrister respondents.

34.5 The University of the West of England supported this Option for a number of reasons:

“...it allows for access to the profession for a diverse range of students both home and internationally [sic]... It enables students to access the BPTC route either with a law degree or without and it offers students a holistic approach to their studies, enabling those with aptitude to flourish... The part time route offers flexibility for those that may be carers or are mature or have disability related concerns.

As stated in paragraph 193 of the consultation, it is likely that employers will continue to prefer high achieving graduates and therefore route A is likely to be the most favoured for high performing students.

The concern in relation to Option A is the cost of the provision. We do not believe however that options B or C will significantly reduce cost or accessibility... It is accepted that Option A can be accommodated within Option B and that Option B is the most flexible.”

Option B

34.6 Of the three proposed BSB options, the majority of respondents supported the adoption of Option B. However, the vast majority of respondents did not support any of the BSB’s proposed options and they generally rejected the adoption of Option B. COMBAR called Option B “*by far the worst of all the options*”. The comments on the COIC and Bar Council proposal are set out below in full.

34.7 The Association of Law Teachers and others encouraged the BSB to introduce an authorisation framework to set out certain expected characteristics, such as the degree to which learning should be integrated (e.g. of knowledge and skills), and elements of education and training should be sequential. However, they also recognised that there are a number of risks associated with creating several different pathways, including that it may be confusing for applicants, and certain routes are likely to attract small cohorts.

34.8 The Committee of Heads of University Law Schools preferred Option B; advocating outcomes focused regulation, greater freedom for providers to be able to innovate and increased access to the profession, recognising the duty to promote equality and diversity. In addition, they felt that centralised assessments are disproportionate to the BSB’s regulatory objectives.

34.9 City Law School supported an approach ‘*in the spirit of Option B,*’ but argued that it would be better to preserve sequential training, subject to the possibility of combining the academic and vocational stages. Instead, they asserted that providers should be afforded the flexibility to design their own courses to meet the objectives set by the BSB, and:

“...providers would prefer to make incremental changes to their existing models, taking advantage of the removal of restrictions which inhibit innovation... Put another way, the most effective approach seems to be to allow the existing training to evolve with greater scope for innovation than is envisaged by Option A...”

34.10 Northumbria Law School similarly favoured Option B due to the potential for flexibility, but urged the BSB to consider the needs of each pathway to meet the regulatory objectives. They raised concerns about the problems that could arise if the COIC proposal were to be adopted as a managed pathway under Option B. Further views put forward in support of Option B included:

- A relaxation of the rules will mean that in time other models could emerge in response to changing needs and newer access requirements;
- New routes and different pricing of courses will increase competition, which will create a need to contain costs in order to remain competitive and viable; and
- It promotes wider access to the profession.

- 34.11 BPP did not object to this option but felt that, in reality, the majority of students would pursue a traditional route to qualification.
- 34.12 A minority of respondents supported the adoption of only one of the pathways under Option B. A BPTC student preferred Option B(ii) for financial reasons: she said that combined academic and vocational training would amount to a substantial cost saving for students. Three respondents argued that B(iii) alone should be the sole training option; one of whom, a pupil, argued that the BPTC is *'often of little value, devoid of practical context,'* and supported the proposal for *'on the job learning.'* One respondent proposed that the BPTC and pupillage be replaced with a two year pupillage, paid for by Chambers and the Inns, with assessment after 18 months. Concerns were raised by many that B(iii) and B(iv) were particularly problematic, especially for the self-employed Bar – and the Inner Temple Bar Liaison Committee felt that the Consultation Paper underestimated the likely regulatory costs associated with these routes.
- 34.13 Some respondents were also seriously concerned about the potential of Option B to create hierarchies, and that Chambers would not hire effectively should students be completing different routes. Others, including the University of Exeter, suggested that the Option could be successfully combined with the COIC proposal.

Option C

- 34.14 A small minority of respondents supported Option C; most of whom cited a reduction in costs – and therefore increased access – as the basis for preferring this option. One barrister commented:
- "A simple first stage at a much lower cost, but to a proper standard, will increase access to the profession, reducing the off-putting costs to people who may not know how they will fare, whilst simultaneously... reducing the number of people wasting huge amounts of money on the [BPTC]."*
- 34.15 A student felt that it is a desirable route, being the most similar to the US Bar examinations, which he felt is a model we should be following; and subject to further evidence on cost and diversity, one barrister considered Option C could work well as a parallel route alongside something similar to Option A.
- 34.16 BPP strongly objected to this option on grounds that they did not feel it would cut costs or adequately prepare students for practice, would have negative consequences on diversity within the profession and were concerned that this would prevent international students from acquiring the necessary visa. Some also felt this would result in a London-centric model. In respect of Option C, Outer Temple Chambers stated:
- "...we consider the BEE to be unnecessary and complex, and in no way advantageous over the COIC option."*

If you have any proposals for another route(s) to authorisation, please use this question number to give us a preliminary evaluation of the proposed model against the criteria used above in order for us to be able to give the proposal serious consideration.

- 35.1 The great majority of respondents to this question supported the COIC proposal and; this is dealt with separately below. This section sets out the small number of additional proposals or suggestions regarding routes to authorisation made by respondents.
- 35.2 A barrister respondent strongly considered that more focus should be given to legal research and analysis skills (and less to knowledge) in training. Aspiring barristers, she insisted, must have adequate research skills to ensure they are up-to-date, and analysis skills to ensure understanding. To this end, she believed that the vocational course can and should be shortened and offered on full-time, part-time and modular bases, to increase access and reduce costs. This should then be combined with a longer period of work based training, with further short courses during this training.
- 35.3 A respondent who had completed the BPTC and was attempting to now secure pupillage expressed frustration with the current pupillage system, *‘especially when you see that the individuals who do make it come from a privileged background (despite the rhetoric that the Bar is changing).’* This, he asserted, highlights the need for alternative qualification routes than those currently available. He did not, however, provide further comment on what those routes should be.
- 35.4 The School of Law, Reading University considered that a merger between the two legal professions would be both in the public’s interest, and would allow for a more *‘flexible, transparent and satisfactory solution.’*
- 35.5 A significant number of respondents lacked confidence in all the proposals, but did not offer a comprehensive suggestion for alternatives.

COIC Proposal – Addendum

- 36.1 Two hundred and ninety four responses (of which the Open Letter and the COMBAR and Chancery BAR Association responses were collectively signed by 735 respondents) supported the introduction of the COIC proposal.
- 36.2 A large amount of argument was offered by respondents regarding the advantages of this proposal over the current system. Many respondents expressed concern over the high cost of training for students and the high risk that they will not secure pupillage or tenancy. In COIC’s response it was put forward that their main objection to the current BPTC is that:
- “too many students are recruited on the course; that there is an unacceptably high failure rate; that the prospects of obtaining pupillage among many of those who pass is remote and the cost of the course is unacceptably high.”*
- 36.3 In their response, COIC set out that this leads to many students deciding not to pursue a career at the Bar due to the economic stress it will place upon them, particularly combined with the low chance of success. They also raise concerns about those who will be unable to achieve pupillage but take the course anyway, racking up large debts along the way. This view is echoed by the Bar Council who note that:

“If one were to regard money spent on a BPTC course as being wasted by those who do not obtain pupillage, the sum wasted, just on course fees, is in the order of £25m each year. These statistics should surely compel the conclusion that reform, but not major disruption, is vital.”

- 36.4 The views of the Bar Council and COIC are supported by many respondents and the specialist bar associations. COMBAR agrees that the main problems with the current system are the high cost of the BPTC and the excessive number of students studying for the course who have little or no prospect of success. These views are echoed by the majority of respondents who gave detailed and substantive answers to the consultation.
- 36.5 A number of respondents who wrote in support of the COIC proposal also expressed support for vocational training to continue in a similar way as at present alongside this course. The argument for this was that it would allow students who prefer traditional training and international students to continue learning in a familiar way. This view was not supported by other respondents including COMBAR and the Chancery Bar Association. Many argued that they would prefer the COIC proposal to become the sole route to qualification. The argument in support of this view was that to have more than one route would disadvantage some students and would allow private BPTC providers to continue to make money from students with extortionate fees.
- 36.6 A number of different views were expressed with regards to this proposal. A number of barrister respondents felt that it would be more appropriate if only students who already held a pupillage should be allowed to take the Part 1 exam.
- 36.7 A significant minority of respondents to the COIC proposal expressed serious concerns that the BSB did not include the addendum in the original consultation. One respondent argued that it demonstrated that the regulator was closed to the views of the profession and incompetent in determining the best education for the Bar.

Advantages

- 37.1 The advantages put forward in support of this option are:
- Fees will be reduced as students can prepare for the Part One exam in any way they choose and the shorter skills course (Part Two) will be much cheaper to run;
 - It is flexible as students can decide how to prepare for the Part One exam;
 - The flexibility would ensure that students could work or study other courses at the same time as preparing for Part One;
 - It has an academic advantage as the litigation process is mapped out before the Part Two course is taken;
 - Retaining the QLD will ensure that the GDL can be maintained, allowing non—law students to continue to be able to train;
 - It would increase the accessibility of the course as students could prepare for Part One from any place and in any way;
 - It does not change the academic or pupillage stages of training, which are both fine in their current format;

- This proposal does not attempt to change too much about the system all at once;
- Part One will “weed out” those students who will not be able to secure pupillage or tenancy;
- If fewer poor quality students are on the Part Two course then the quality of training will improve as currently, it was suggested, the low quality students bring down the quality of training for all students;
- This will reduce the number of students taking the vocational training;
- Fewer students passing vocational training will have an advantage to Chambers as there are too many applications for pupillage and this causes a very high administrative burden;
- The “pinch-point” for training would come earlier and before students have committed too much time or money to a course;
- Reduced cost of training would mean that practitioners have less debt in their early years of practice;
- Students who have an undergraduate degree should be able to self-study for the Part One exam;
- The Part Two course could be offered by the Inns or developed by the Bar which would mean it was of better quality; and
- It is not uncommon for students to learn knowledge subjects before skills on vocational training.

37.2 The Specialist Bar Associations unanimously supported the COIC and Bar Council proposal as did a large number of individual barristers and very distinguished judges.

37.3 The respondents generally supported the premise that the current centralised assessments should continue to be administered by the BSB and should form the Part One exam. It was argued that this would ensure that there was no further cost to the BSB because they already administer the centralised assessments. Particular difference was drawn between this and Option C, where it was argued that the BEE would be a high cost to the regulator, which would in turn be passed onto the profession or students.

37.3 A lot of support was expressed for the Part One exam to be offered online. It was argued that this would allow freedom and flexibility to students from disadvantaged backgrounds and those less able to travel.

37.4 Many respondents argued that online learning would have no significant disadvantages for any students and instead argued that it would improve diversity. One respondent went as far as to argue that online learning could improve blended learning and this would allow students to progress through material at their own rate rather than at the rate of the rest of the class, as at present.

37.5 Many respondents expressed serious concern about the private providers of vocational training and believed that the COIC proposal would remove them from the

market for training. It was also raised by a significant minority of respondents that the BSB should not be lobbied by the private providers and should ignore their pleas to reject this option as their views are purely self-interested. One respondent noted that the private providers offer an expensive course and allow too many students to take the course when they have a very low chance of success. They felt that the COIC proposal would encourage them to reduce costs and drive students away from their courses.

37.6 Middle Temple Young Barristers Association encouraged the BSB to give a warning to students with a 2:2 that they would have a very low chance of success and the relevant statistics about chances of pupillage.

Disadvantages

38.1 A minority of respondents expressed concerns about the COIC proposal. The disadvantages outlined by a number of respondents included:

- Removal of combined teaching of skills and knowledge subjects will mean that there is no base level of training for all students for the knowledge training;
- The proposal could destabilise training as students will be split into a number of streams;
- Students will need to access some training to pass Part One and this will mean that there will not be a significant cost reduction;
- It would not be substantially cheaper because the vast majority of students will pay to pass Part One;
- If the short skills course is too short then international students will find it difficult or impossible to get a visa to attend the course;
- The proposal artificially separates the knowledge and the skills when they are better taught as a blended topic;
- Some students struggle with the skills portion of the course and this is why they fail the BPTC, these students will pass the knowledge Part One and then fail the Part Two, leading to no reduction in training costs for them;
- This proposal is unfair to students who are not good at exams or may fail the procedural exams. Many students who later get pupillage fail the procedural exams;
- It has significant equality and diversity problems;
- Self-teaching of Part One could undermine the quality assurance which currently exists in relation to the clearly defined training pathways to the Bar;
- COIC have falsely identified the high failure rate as showing that the quality of students is too low when in fact it is the high standards maintained by the providers;
- It will be very isolating to learn the knowledge subjects alone;
- It is unclear what will happen to the specialist knowledge modules which are currently offered as options on the BPTC;

- This proposal is intended to fail as many students as possible in Part One so that Part Two is only for those who have already or are highly likely to get pupillage, which is contrary to the LSB approach and places too much importance on Part One;
- Concern was raised about how the test would be regulated;
- Students will be unable to self-teach as they are increasingly spoon fed at undergraduate level;
- The course is likely to become London centric because providers cannot sustain such a small course;
- Introducing the COIC proposal is simple but is missing the opportunity for deeper and more effective reform;
- As the subject matter of Part One is not engaging, students will be less likely to have a passion for the Bar and this will reduce the number of students who are attracted to this career;
- Students will have less opportunity to mix with other students; and
- Students will waste money if they fail Part One.

38.2 The University of Law argued that:

“A later option presented by COIC has been added to the consultation. It is not clear whether this is indeed a standalone option or just an additional option within B. Although the “qualifying exam” in this case merely replicates the current centralised assessments (rather than being similar in format to Option C and the SRA’s current plans) many of the same issues apply. Even if it were to be considered as an alternative pathway within Option B, there are many reasons why it should be approached with great caution. These include

- *a multiplicity of providers who prepare students for the test that some students can afford better than others,*
- *the separation of knowledge and skills,*
- *the shorter skills course which omits much of the value added of practitioner involvement and other key extra-curricular activities given the timescale,*
- *the potential difficulties in getting visas for overseas students,*
- *the difficulties for students with caring responsibilities and mature students in taking longer than 3 months out of their usual lives with no part time option,*
- *the issues with certain groups of students (eg BAME and overseas students) in passing the centralised assessments when taught now as part of a cohesive course,*
- *the risk of many Chambers continuing to use university attended as the basis for recruitment,*
- *students from less advantaged backgrounds spending longer trying to train themselves to pass the qualifying exam with the associated higher risks of failure and the cost and stress of resitting as opposed to those from more advantaged backgrounds being able to afford some assistance from the beginning,*

- *very small cohorts for the skills courses may mean that it is not viable for some of the smaller, out of London providers to continue to offer the course, leading to a London-centric and less diverse student body,*
- *failure to allow students to access government funding available for undergraduate and postgraduate degrees.*

For all these reasons Option D is not best placed to meet the Professional Statement or the BSB's regulatory obligations and Option B remains the most appropriate option."

- 38.3 Despite their support for the COIC proposal, the Family Law Bar Association raised a concern that some students may be able to access different quality training to pass Part One and this could maintain a two tier system. This was supported by Northumbria Law School who emphasised that those with greater social capital will have the best advantage and could pay for better training.
- 38.4 Great concern was expressed by a number of respondents that the advocacy and skills course will be too short to fully teach students. This was emphasised by Northumbria Law School. One respondent raised concerns that the Inns have little experience of teaching students advocacy from scratch and this is completely different from teaching students with prior advocacy skills.
- 38.5 A number of respondents strongly disagreed with the COIC proposal being the only route and supported a system where the current BPTC could continue and the Northumbria model could also be offered.

Meeting the Professional Statement

- 39.1 The Chancery Bar Association set out that this training proposal could meet the Professional Statement because it is based on the current syllabus of the BPTC, which meets the competencies. This view was also taken by COMBAR. BACFI also agreed that this proposal could meet the Professional Statement because training providers would be permitted to develop training that focused on the knowledge and skills which students require. BACFI noted that:
- "Dividing the vocational stage into two parts would allow students to focus on each part and gain important skills and knowledge before progressing to the next stage. This would maximise the benefit students obtained from the next stage of training."*
- 39.2 BACFI also expressed interest in greater flexibility in pupillage to enable more commercial organisations to offer professional training.
- 39.3 City Law School disagreed that this proposal could meet the Professional Statement. They explained that when the BVC was first being devised, detailed consideration was given to the knowledge subjects being separated from the skills. This approach was rejected in favour of integrated learning because divorcing the knowledge from the skills means that the knowledge lacks context which inhibits understanding.
- 39.4 In their response, COIC disagreed that combined teaching of skills and knowledge subjects was necessary and set out that it had drawbacks. They argued that learning subjects piecemeal would mean that students are unable to look at the landscape of the subject as a whole before applying it in practice. In their view their proposal will allow students to acquire overall knowledge and then apply it to practical exercises.

Meeting the Regulatory Objectives

40.1 One barrister respondent argued that the COIC proposal does not meet the regulatory objective set out by the BSB of maintaining high standards. This was because:

- Criminal and civil litigation are not subjects that can be properly learnt from a book;
- Benefits of face to face and discourse learning will be lost; and
- It is unclear how materials for students will be regulated and moderated.

40.2 Another barrister and academic argued that the proposal did not reflect the learning style of most lawyers and this could disadvantage students. In particular, it was noted that skills based learning takes time and learning too quickly does not give students enough time for reflection. He argued that this would undermine the regulatory objective of encouraging a strong, diverse and effective legal profession.

40.3 City Law School explained that they fundamentally disagreed with COIC regarding the centralised assessments being used to reduce the number of students on the course. They raised a particular concern that the shorter intensive skills-based course may not be enough for students to develop their skills. If students are not robustly taught at the vocational stage they cannot derive the most benefit from pupillage, which will put a greater burden on Chambers.

40.4 The great majority of barrister respondents and Specialist Bar Associations agreed that the COIC proposal would meet the regulatory objectives. BACFI noted that it would ensure a high standard of training for barristers at all stages of development. It would also lead to highly skilled and knowledgeable barristers who would be able to represent the best interests of consumers and commercial organisations. Outer Temple Chambers also felt that the COIC proposal could meet the regulatory objectives as the main change from the current position would be the splitting of the BPTC into two parts. They felt that flexibility and likely reduced cost, would aid access to the profession, promoting the interests of consumers in giving them access to barristers drawn from a more diverse pool of individuals.

40.5 Lord Neuberger wrote as follows:

“Of the various options proposed, in my considered judgment only the COIC Response constitutes a sensible and feasible way of attaining the stated objectives of the reform of Bar training in a way that will meet the necessary public interest involved. I wholeheartedly support its conclusions.”

40.6 One Essex Court set out that the COIC proposal would allow:

“candidates from less traditional backgrounds, such as those who have caring responsibilities or may need to support themselves by working full or part time, will have greater opportunities to work towards Part I, choosing a time and location which suits them.”

LSB's statutory guidance

- 41.1 COMBAR argued that the COIC proposal could meet the LSB's statutory guidance. They noted that:

"...one such requirement is "regulators placing no inappropriate direct or indirect restrictions on the numbers entering the profession". The imposition of a requirement to pass the Part 1 exam before proceeding to Part 2 would not be an indirect restriction, alternatively it would not be inappropriate in the circumstances."

- 41.2 Outer Temple Chambers also felt that this proposal would meet the statutory guidance. They referenced outcome 5b of the LSB guidance but like COMBAR, did not agree that the imposition of the requirement of Part One before Part Two would be an indirect restriction. They argued that even if it were to be seen like this, it was entirely appropriate.
- 41.3 City Law School raised concerns that this proposal may restrict, rather than increase, access to the profession by reducing the number of people eligible to complete the skills based part of training.

Ethics

- 42.1 BACFI supported the idea of Ethics being incorporated into every stage of training. COMBAR stated that ethics could continue to be taught and assessed in Part Two of the BPTC under the COIC proposal and this is not problematic.
- 42.2 City Law School expressed concern that separating the acquisition of knowledge of the rules of professional conduct and the application of those rules to common ethical dilemmas is not the best way of producing students with a deep understanding of the ethical principles applicable to barristers.

Cost

- 43.1 The majority of respondents pointed to cost as one of the main drawbacks of the current system and advantage of the proposal put forward by COIC and the Bar Council. BACFI agreed with the analysis and added that it would allow students to work full time and study in the evening and at weekends. They also felt that there was a great advantage to students not being committed to the cost of the full course if they are unsuccessful at Part One. They also argued that:

"If, in addition, greater flexibility was introduced to the pupillage stage of training, so that it was easier for commercial organisations to offer pupillage, trainees would be able to earn a salary during training that would be benchmarked against other professional trainees across the organisation and therefore likely to be in excess of the minimum remuneration requirements for pupil barristers."

- 43.2 COMBAR recognised that there could be a regulatory cost to the Part One exam but in their view this would be minimal in comparison with more radical change. One Essex Court agreed that this would be much cheaper to regulate than the BSB's Option B or C. The Chancery Bar Association also agreed with this, noting that this proposal would reduce the upfront cost. The Family Law Bar Association explained that they would only support this proposal if the total combined cost for Part One and Part Two were less than the present cost. One respondent felt that the cost for this proposal should not exceed £10,000.

- 43.3 One respondent disagreed with the COIC analysis that splitting the course would assist students with cost. They argued that it could diminish assistance with cost, because students will be unable to access student loans as it will no longer be able to be a full post-graduate LLM course. Another respondent agreed with this position and additionally added that many students will find they are unable to prepare for the Part One exam without a preparatory course, which will reduce any cost savings. Any providers offering a course for Part One would need to invest in substantial development, which will bring additional cost.
- 43.4 City Law School also felt that most students would need tuition and support to complete the exam. As this would be unregulated, those with the most amount of money would be able to pay for the best tuition. They felt that there was no guarantee that the cost of the tuition for Part One, and the cost for the skills course, would be less than the BPTC. This, it was argued, could leave students in a worse position than at present because they will not come out with a recognisable qualification. This view was supported by Northumbria Law School who felt that it would be a very small minority of students who could pass the centralised assessments with no or minimal educational support. In their view, the wealthiest students would pay for the best tutoring and would consequently be more likely to pass. They disagreed that this proposal would be more cost effective.
- 43.5 Cardiff University felt that the shrinkage of the market that this proposal would inevitably cause would have a significant impact on the international market. This would make the course less viable for providers and may mean that fees for the short skills course are inflated to deal with the shortfall in students.
- 43.6 Nottingham Law School raised the point that the lower the cost of training the more students that may complete training. If there is no consecutive increase in professional training then the problem of a large number of students completing vocational training and not securing pupillage will get worse rather than better.
- 43.7 Manchester Law School stated that:
- “It is reasonable to assume that students even if able to pay for tuition for the CEB assessments would attempt to study themselves for at least one attempt. Given that the BSB are not proposing to have more than 2 sits each year, a failed attempt at the CEB subjects would prevent students progressing to the skills course that academic year. Losing a year at this point, potentially represents not the loss of the first year of earnings at the Bar, but the loss of a year at the end of the entrant’s career – this loss will be significant – far in excess of the saving the COIC suggests may be possible.”*

HE Implications

- 44.1 The Chancery Bar Association did not think that there would be any significant impact on the Higher Education position as Part One and Part Two of this proposal would equate to a BPTC.
- 44.2 City Law School noted that care needs to be given to the credit rating of courses for the award of certificates, diplomas or degrees if students are able to obtain a recognised higher education qualification. They also felt that the needs of international students’ needs to be taken into account. Cardiff University raised that success or failure of a course should not rely on the amount of students who get pupillage, as so many international students return home.

- 44.3 The Family Law Bar Association felt that completing Part One should count as a qualification so students could use it to further career options if they are unable to complete Part Two or secure pupillage.
- 44.4 Nottingham Law School identified that there could be two cycles of the short skills course per year, with candidates favouring one of those two courses. They anticipate that if there was enough of a market for the training, then the latter course every year could be more heavily populated by students who have only passed Part One at their second attempt. This could lead to unfavourable conclusions being made about each cohort. They also raised the issue that shorter courses are more difficult to accredit for Masters and providers would need to add extra teaching, at a cost to students, to reach the threshold for an LLM. They argued that this could lead to the undesirable situation where richer students could pay for the shorter course and poorer students would have to do the LLM to access funding available for a Masters.

Market Risks

- 45.1 The majority of academic institutions and BPTC providers raised the issue that the introduction of this proposal would lead to a London centric training market with numerous providers in the provincial areas being unable to support small sizes of the Part Two skills course. The Bar Council and COIC's consultation responses point to the fact that the Part One exam can be completed anywhere and this should mitigate any damage that the loss of provincial providers would have to students. Manchester Law School said:
- "The COIC model would return entry to the profession to the situation that existed up until 1996, when the only option for students wanting to enter the profession was to study in London."*
- 45.2 A number of respondents raised concerns that there would be a great reduction in the number of providers offering the course due to the destabilisation of the market. Monckton Chambers outlined that they did not see the reduction in the number of providers, or a reduction in geographical spread, as an issue. In their view, the BSB should support the COIC proposal as it focuses on the reduction in the number of students, rather than providers. This, it was suggested, is fairer as the focus is reducing the students on the skills course who are unlikely to pass. In their view, it is better for students to have to spend three months in London than commute to a provider for a year.
- 45.3 One aspect raised by a number of respondents was the destabilisation of the international market for Bar training. Although Part One could potentially be completed anywhere, the Part Two course would require attendance by students and a number of issues were raised by respondents regarding the visa requirements for a short course. Cardiff University noted that they:
- "...continue to have significant concerns regarding the potential impact of any changes to the current training system on the availability of student loans (in respect of the academic stage of training) and on the eligibility criteria for the granting of Tier 4 (General) Student visas."*
- 45.4 Manchester Law School noted that even if the visa requirements were not an issue then renting accommodation for less than 6 months would be difficult for all students and would substantially raise the costs of studying.

Equality & Diversity

- 46.1 The majority of respondents agreed with the COIC and Bar Council analysis that their proposal would have a positive impact on equality and diversity. In their response, COIC explained that their proposal would reduce the cost of vocational training by allowing students to study in any way for Part I and reducing the length of time that students needed to attend a course for Part II. In their view, this would increase accessibility as more students would be able to afford to study and could flexibly fit the studying for Part I around their other commitments. Those students who at present are not likely to pass the BPTC or would fail to get pupillage or tenancy would, in their view, be unlikely to pass the Part I test. This would then save them time and money by not allowing them to take the Part II course.
- 46.2 The great majority of barristers and the Specialist Bar Associations supported the view of COIC and the Bar Council. BACFI noted that the increased flexibility would be more attractive to those from disadvantaged backgrounds, those in full or part-time work and candidates with limitations on their time. The Chancery Bar Association felt that a particular benefit of the COIC/Bar Council proposal would be that students would not need to take the significant risk of funding the BPTC before knowing if they could pass the central assessments. COMBAR also agreed and noted that the proposed system would be accessible to students with caring or other commitments.
- 46.3 Outer Temple Chambers supported the idea that the increased flexibility in how students could prepare for the Part I exam would promote equality and diversity. They particularly pointed to the fact that students could be based anywhere geographically and would not need to move to rented accommodation while studying. This, they suggested, would make it more affordable for students from disadvantaged backgrounds as well as those with caring responsibilities.
- 46.4 Lord Carlile stated that the COIC proposal would address issues of accessibility because:

“It is vital and above all just that we should provide an opportunity for people from non-elite backgrounds to join the profession. This means that the process and progress of study should be flexible, accessible and affordable. At the same time, it should provide academic quality proportionate to the demands of the profession as a whole.

I have witnessed how difficult it can be for even 1st Class Honours Law graduates to obtain entry into the profession if they have graduated from a university with lower entry standards.

The COIC proposal seems to me to be the only one that addresses these issues. There would be a flexible route to qualification, which would make the Bar accessible to those working full or part time in order to make ends meet. The overall costs of qualification would be reduced by the lower cost of the first part of study. I have no doubt that the diversity of those entering the profession would be enhanced only by the COIC model. The least challenging part of the issue is that of academic standards, which always can be addressed by the providers.

The argument contained in the COIC paper is wholly convincing.”

- 46.4 The London Common Law and Commercial Bar Association disagreed with the analysis that this proposal would have a negative impact on social mobility and diversity due to online and non-classroom learning. In their view, the benefit of a lower cost course would outweigh any negative impact that could be caused by online learning and a reduction in cost would inherently increase social mobility. They also felt that the reduction in regional providers, as these providers are largely supported by students for whom training to become a barrister is a “waste of money”. One Essex Court also supported the idea that the Part I exam could act as a filter to prevent students “wasting their money” on Part II.
- 46.5 Monkton Chambers strongly asserted that they disagreed with the BSB provisional view that online learning disadvantaged ethnic minority candidates. In particular they said:
- “We have seen no evidence to support this view, which seems to us to be intrinsically objectionable as being either (i) a form of negative stereotyping of ethnic minority people, or (ii) based on unwarranted assumptions that knowledge-based subjects are better learnt through ‘face-to-face’ tuition than by ‘distance learning’.”*
- 46.9 They argued that this proposal would allow for face-to-face learning if students needed it, as providers could teach the Part I course in any way and some providers would allow students to self-teach.
- 46.10 One barrister respondent strongly disagreed with the assertion that the COIC/Bar Council proposal would increase equality and diversity, suggesting that evidence is required as to what the costs would be to students, the Bar and the BSB. He felt that the proposal would encourage discrimination and places undue weight on passing the procedural exams as a good test as to whether someone will get pupillage. He set out that if this were in place when he qualified he would not have been able to secure pupillage. Further, he asserted that this instead seeks to promote students from Oxbridge and Russell Group Universities.
- 46.11 One respondent felt that particular care needed to be taken when considering the impact the COIC/Bar Council proposal could have on social mobility, noting that wealthier students would have the luxury of being able to sit at home and learn, whereas those who are working would need to fit learning alongside other commitments. In their view, a unified course has the benefit of giving all students a base level of learning. They also queried how those with learning difficulties such as dyslexia and dyspraxia would be catered for. Blackstone Chambers also raised concerns about the variability of training available for Part I and the impact this could have on those who must self-study technical subjects due to limited access to support or teaching structures.
- 46.12 The majority of BPTC providers and universities felt that this proposal would have a negative impact on equality and diversity and accessibility for those from non-traditional backgrounds. The University of Law set out the negative impact the COIC proposal could have on social mobility. They asserted that those from less advantaged backgrounds would spend more time training themselves for the Part 1 exam and would be affected by the associated high risk of failure and stress of resitting. Despite their support for the COIC proposal, the Family Law Bar Association raised a concern that some students may be able to access different quality training to pass Part 1 and this could create a two-tier system. This was supported by Northumbria Law School,

who emphasised that those with greater social capital will have the best advantage and could pay for better training. A number of other respondents echoed this and felt that this proposal would disproportionately affect students from non-traditional backgrounds.

- 46.13 City Law School felt that this route would be detrimental to the widening of access to the Bar. In their view, it would lead to crammer courses that would only teach students to pass the centralised assessments and would not produce the depth of understanding required. In their view and that of the Manchester Law School, a full equality impact assessment needs to be done before any progress is made towards developing this option.
- 46.14 Cardiff University raised serious concerns that not enough regard has been given to the viability of regional training providers, particularly with regard to the COIC/Bar Council proposal and Option C. As a small provider, Cardiff University relies on their ability to attract a strong international cohort of students to make viable its provision of the BPTC. Cardiff University outlined that this system is made possible by the prestige and recognition afforded for the BPTC in Malaysia and the sub-continent. Under the COIC/Bar Council proposal, this market would become far less accessible.
- 46.15 One barrister respondent disagreed that there would be a lack of geographic spread, as providers could just reduce staff numbers.

Annex 1

Summary of Consultation events

The Future Bar Training Debate

James Welsh

The evolutionary option retains the three stages but it is clear that it is not synonymous with the status quo. The degree of regulation is already changing and the evolutionary option will not be business as usual. Lord Neuberger implied consent to this approach in his Upjohn Lecture. First, he said that there were undoubtedly good qualities in the current system and second, he said that you must be very careful before you unpick what you have. It is important for change to be incremental targeted and focused. There is an argument that the overall cost of this pathway is too high. Providers are ready to bring costs down when regulation allows them to do so, for instance if the student staff ratio were to be abolished this could have an impact on fees. Providers already make it possible to upgrade the BPTC to an LLM, or offer free courses to those who do not attain pupillage. The current BPTC is a block of time of nine months in which to make a barrister. In pedagogic theory it is about progressing through levels of learning: from learning facts to understanding, analysing, criticising and assessing and finally to expressing analysis through the medium of a legal skill such as opinion writing. Fragmented training would break this down and destroy the essence of teaching. This option ensures that students combine all three levels of learning in a structured programme, spending as much time as possible at the highest level.

Derek Wood QC

The three-part structure is retained and the syllabus is retained but the current structure is changed to promote diversity. There are concerns about high cost, high failure rate and poor pupillage prospects.

The great majority are doomed to disappointment at great expense and this is little short of scandalous. The course will be split into two. For part one - knowledge - students will be free to prepare in whatever way they choose: studying alone, through blended learning or with private tuition. Part one will be examined by the BSB. Those who pass would be eligible to continue to Part two which will be attendance at a provider for skills training. This enables those without funds to embark for less expense. A requirement to pass part one will replace the BCAT. Will enable Inns to allocate scholarship funds to part two of the course only. The pedagogic argument for combining skills and knowledge learning is not accepted nor the argument that the current system promotes equality for all.

Emma Piasecki

The integrated MLaw offers the best experience for students with open access for those from more disadvantaged backgrounds. It should not and cannot be the only route but it must feature. It sits easily with the evolutionary option it also sits with other managed pathways but not with option C. The emphasis is on experiential learning. Students get a Masters level qualification as well as an undergraduate degree and BPTC. They can also elect to do an LLM. At Northumbria 15 to 25 students each year do this option. Admission to the programme is restricted in order to maintain high standards.

The MLaw integrates the academic and vocational stages in four years: graduates have an undergraduate degree, the BPTC or LPC, and a postgraduate degree. There is experiential and integrated learning, without the presumption that all students will want to practice. Substantive law and Ethics are taught from the first year. The clinical legal education involves students in real cases at all levels, reflective of practice. Students are also given access to various legal research groups, giving them a rich foundation. The course produces the high calibre individuals required by the profession.

The MLaw was not reported on separately in the BSB's key statistics report due to the small cohort number. Of the 16 students in graduating in 2014, 15 achieved Very Competent, and one student achieved Outstanding as their overall grades; 14 students passed all their exams on their first attempt; 15 students achieved First Class degrees; and 25% have got pupillage so far.

The fees for the MLaw are the same as for an undergraduate degree: £9,000 per year. Student loans are available. There have been instances of second year students electing to take the LPC, rather than the BPTC, due to expenses imposed by the BSB (such as the BCAT fee) and the Inns.

Penelope Reed QC

The Chancery Bar Association had set up a working party to respond to the consultation, focusing on its young members. The difficulty they had seen was that the BPTC does not prepare students for pupillage, although it is clear that the BPTC teaches important subjects, such as criminal and civil procedure, true learning takes place during pupillage. It is clear that many new pupils are ill-prepared. The CBA is of the view that the training undertaken during the BPTC should not take a year, nor cost upwards of £15K. The CBA supports the Inns in wanting an improved BCAT, but that alone is not enough.

The proposal is to combine pupillage and the BPTC so one can learn on the job (as in the training for the accountancy profession). Pupillage would be expanded to up to two years, with mandatory study leave; exams would be taken after nine months (to achieve practising status), and at 18 months. Pupils would be able to see their supervisors in court, before trying their hand at advocacy themselves. 'Soft skills' such as client handling would be

learned by experience, rather than taught. Skills would be acquired through real experience before being examined.

The ChBA is troubled by the oversupply of students who complete the current course but have no chance of successfully completing pupillage. This option would 'de-risk' the course for students, especially those who are dissuaded from a career at the Bar due to the cost and difficulty of obtaining pupillage. Costs would be lower, and would be picked up by chambers. They understand that this would be difficult for the publicly funded Bar, but Inns' scholarships could target this area. The benefits of this option are that trainee barristers can watch their supervisors in practice, and interact with solicitors, judges and clients; barristers are specialists – this option allows one to train in the area in which one intends to practice. The more general areas of training would be covered during the study leave period.

The CBA considers that the current system does not work and needs to be changed.

Daren Timson-Hunt

Modular learning will break down competency-based training course content (both theory and practice) into short, logical, self-contained units/modules. It is a type of training appropriate to law, and to the modern Bar. The three phases of learning – cognitive, practice fixation, and autonomous – will be employed and problem solving is a key focus. The greatest advantage of this option is its flexibility, both for students and employers. Modular learning is particularly well suited to law as it is unitary-based, the academic and vocational stages are easily modularized. The HMRC takes the modular approach with its legal apprentices, identifying and developing the talents of high calibre individuals, who gain academic qualifications and are able to put their skills into practice. The modular approach is perfect for teaching Ethics: students are able to apply ethical challenges to real situations in a supported environment.

Questions

1. Could one go a step further and have chambers delivering training, rather than providers, in order to reduce costs?

PR: The difficulty would be that chambers would in effect be 'marking their own work' and regulated qualifying tests are required to ensure a level playing field.

2. Are the managed pathways described today the only ones on offer? In either route, the point of call is at the last possible minute.

DT-H: We still support the current system but we see advantages in modularization. The 'journey' will not be completed by all, but all will have different stages which they can reach, and there will be stopping off points at where they will gain qualifications which will equip them to do something else.

PR: There is sense in doing it in one way, but it is not the only way. Regarding call dates, her personal view is that she is not convinced that being called to the Bar is useful.

It would be possible within a modular approach to take some of the modules outside the UK.

DW: combined vocational and pupillage pathway would reduce the numbers on training courses to the number of pupillages available, currently 400. The current

system allows people five years after graduating from the BPTC in which to obtain pupillage.

JW: Agrees with DW, as only a handful of students get pupillage before starting the BPTC. Diversity would disappear on the combined vocational and pupillage option as selection would be by A levels and undergraduate degree; this would exclude late bloomers and those from lower ranking universities. Also, Chambers generally want to see people after they have had some training.

3. The COIC/Bar Council option would mean that students from across the UK would have to come to London which would be a retrograde step, and one which would get rid of overseas students.

DW: This is a misapprehension as Part one of the option would allow students to study anywhere and Part two would be provided by the existing BPTC providers which are nationwide.

JW: At BPP, the current ratio of students is 50:50 home and overseas. Visas are not available for courses of less than nine months. The market will be killed if overseas students are lost – there would only be enough students for one London provider to be viable, and that would only be for 100 or so students.

PR: One could recruit from the GDL. Students do have to learn other areas of the law, and specialism already takes place.

4. Will there be consultation with current pupil supervisors, who already have considerable responsibility, before any changes take place? It is inevitable that for the COIC/Bar Council option, private tutors will charge for teaching Part one. How can this be moderated, or stopped?

DW: It cannot be stopped, nor would we want to do so. Some might want to be taught by a Provider. We want to make it possible to prepare for Part one by many means; bright students will be able to self-study.

DT-H: We need to look again at the entire process. The modular route will mean that a student could spend 3.5 days per week in chambers, possibly a few different ones, and the remainder of the week at a Provider. We should not be constrained within our current straightjacket.

EP: The issue remains that those who are already advantaged will be able to pay for training, to access the 'best' training. It will be catastrophic for those from disadvantaged backgrounds and international students will disappear. Not convinced that self-study is a viable option.

5. It does not seem as if the modular managed pathway would work for the standard undergraduate as one would be required to commit to a career in law very early on.

DT-H: It would be more flexible in ways of working and resources could be shared with chambers.

PR: One needs to think outside the box and start with a clean sheet of paper to design a new system capable of producing better barristers.

6. There has been discussion of cost reduction, of pupillage availability but what of improving legal effectiveness? One must consider the quality of outcomes, and the most vulnerable users of the legal system.

EP: Students are developed in the most rounded way on the MLaw – the integrated route gives students early access to users of the justice system, they can apply themselves to the way the law works while bearing wider social issues in mind.

DW: The Inns' view is that improving one's skills is a lifelong experience; the process of education continues throughout one's career. One cannot acquire everything one needs at one point on the educational spectrum. The Inns have an extensive programme of training which includes dealing with vulnerable witnesses but it is placed at the most appropriate point, which is later than the vocational stage.

JW: Since the introduction of tuition fees, universities have tried to cut costs and therefore teach differently; the students they produce are less ready for work, less able to think independently and have bigger debts. This pushes problems further down the line. There is an acute tension. Nine months between the academic stage and pupillage is barely enough.

DT-H: One cannot learn about victims from a text book, it is only at pupillage stage that one comes into contact with them. The modular approach would allow students opportunities to see the real world and real victims much earlier than they currently do.

PR: Agree – BPTC does not prepare students for this.

7. There will be greater burden on chambers with greater duration and higher incidence of failure will mean that chambers take on more people, increasing their costs. Not convinced of affordability to individual chambers.

DW: Agree.

PR: This might be an overestimation. It was suggested that there was an additional six months of supervision. The big chambers already offer significant pupillage awards. One should consider changing the way scholarships work and use the money to fund pupillage, not the course. This will not exclude people from pupillage, but will widen the net.

JW: Not every practitioner makes a great trainer and vice versa. As things stand the way in which one is assigned to a pupil supervisor is a lottery. There is a need for greater oversight and to assess who is fit to train. This is a BSB issue.

EP: Agree.

DW: BSB requires pupil supervisors to undergo training. One cannot take on pupils until one has completed the training.

DT-H: There will always be costs incurred by chambers, let us remember that they are businesses. We need not place all the burden one set; pupils could go to two to three sets, allowing for greater diversity.

8. How can one address the loss of talent in each model? And manage the expectations of students so they can get jobs? None of the options presented is perfect, so what is the possibility of having a blended version which takes the best aspects of each option?

DT-H: HMRC has approximately 3,500 applicants for 15 to 20 positions. They are whittled down and 60 are invited to a two-day interview exercise. HMRC brought in an apprentice scheme across the UK to address the loss of talent.

EP: The MLaw works with the evolutionary option. Students with a lower second class degree are more likely to be from a black or minority ethnic background. Less regulation of the current system would drive down cost, keep open access for all, and allow access to training for the Bar in students' localities.

DW: No one can claim to have the perfect solution. The COIC/Bar Council option cannot solve all the problems, but it will bring down the high failure rate. It will not increase the number of pupillages available. The blended options overlook the problems which exist. Law is not a market, but a profession. We do not want to erect barriers for those who wish to progress in our profession.

JW: Life without pupillage is not death; this is 'project fear.' The reality is that graduates are not ready for the world of work and during the BPTC they change out of all recognition, improving their logic and analysis. The recognized qualification makes them more employable. It is not true that money is burnt. The course holds good rewards for overseas students as well. The COIC/Bar Council option of self-study plus a Part one test is not portable as a recognized qualification; the Part two test is not portable. This route does not give students the opportunity to study for a master's degree or a LLM. It is not developing them for the world of work. Therefore, someone who studies by this route really will have nothing at the end of it if they do not get pupillage.

PR: One must try to stop the waste of talent. During paper sifts of pupillage applications, it is hard to distinguish between talented BPTC graduates. The BPTC exists to train barristers, who need pupillages which is why the managed pathways model combines both.

The issue about increasing the number of pupillages needs to be addressed, but it is not addressed by either DW's or PR's models.

9. The BPTC does not prepare students for pupillage. Private tutoring already exists for some BPTC students. A lot of the current course is just about learning facts, so why is face-to-face teaching needed? Why should the current exploitative course continue? What can be done about the bias towards Oxbridge candidates?

JW: If this is the case, it is the fault of the delivery of the course, not the model itself. One can learn civil procedure oneself but on the course one is challenged by practitioners, then one will have to write an opinion: learning is constantly reinforced. If students believe they have a chance, they have to have access.

PR: The selection processes of chambers are antiquated, people are recruiting in their own image and this ought to be addressed.

DT-H: HMRC selection process differs to that of chambers; it is more open.

DW: The BSB has rules for the selection of pupils. There must be equality and diversity training for selection committees in chambers.

10. There is a lack of social diversity at the Bar, in part due to course costs. What regulations could the BSB safely repeal in order to reduce costs by £10,000?

JW: One cannot run the BPTC at £10,000 less than current prices. Staff-student ratios can be removed, bigger Providers can use economies of scale, but the BPTC is not the cash cow some think; law schools run the BPTC to have the added advantage of running a full suite of law courses, not to make money as the margins are not big to begin with. It is fanciful to think one can create quality lawyers at a low cost.

EP: Agrees with JW. In order to keep the standards high, one has to keep a high quality of teaching which is expensive. If we lose overseas students, we will end up with a three month course in London with London prices.

JW: The COIC/Bar Council Part two course is likely to have fees of £12,000 for a three month course.

EP: This is not value for money; the current nine-month course is cheaper and gives students a significant amount of integrated training. Some students need to be taught the skills modules. The value of overseas students exceeds just maintaining the domestic market – there is great value in a multicultural, multi faith cohort – and the values of the England and Wales Bar are exported overseas.

DW: This is 'project fear'. The COIC/Bar Council option will continue to train overseas students. There are practical ways in which any problems can be overcome. The combined vocational and pupillage model is of more danger to overseas students.

Roadshow events

Key Themes

The following themes and comments were raised by delegates:

Degree classification requirement:

- Most chambers do not hire students with a 2:2 so it is unfair to have that as the degree requirement, it should be raised to 2:1;
- Chambers filter based on degree requirements and that is unfair because it is just one factor on an application;
- The degree classification requirement should be removed and instead replaced with the BPTC result;
- The degree classification is unfair on mature students who may have got their degree many years ago;
- A 2:2 works because it means that people are given the opportunity to progress; and
- Students should be able to do a test set by the BSB to prove what degree level they really are (even if they have achieved less than a 2:2).

BPTC:

- Students are not well enough prepared for pupillage;
- Some students felt the course was too long whereas others disagreed and argued that it could not easily be shortened;
- There needs to be more flexibility for students who have qualified abroad;
- Students should be able to complete the course abroad so they do not need to come to England & Wales;
- It would be good if foreign students could take an exam like the New York Bar Exams;
- There should be caps on students who can train;
- Geographical spread is necessary for access;
- There ought to be more opportunity for “earn as you learn”; and
- There is not enough competition in providers as they are just making a lot of money from students.

Centralised Assessments:

- There should be centralised assessments for advocacy;
- There should be an 11+ style centralised assessment to determine who gets pupillage and the chambers should not be able to pick their own pupils;
- Knowledge subjects should be taught online or through a crash course and skills should be taught separately;
- Centralised assessments are important and should remain; and
- BCAT score should be available for chambers as it is a good predictor of success.

Pupillage:

- There ought to be more flexibility in pupillage;
- Students should be allowed to self-manage their pupillage like chartered engineers (have an informal arrangement for supervision);
- Traditional pupillages should be maintained as there is a lot of value in pupillage;
- Too many students complete the BPTC without pupillage, there should be a limit on this;
- Students should be told if they have pupillage earlier as currently they are told after they have to accept their place on the BPTC;
- Specialist skills should only be taught during pupillage not the BPTC;
- Some Chambers are recruiting only from set universities but will not admit it;
- There needs to be better assessment of pupillage; and
- If there are more pupillages’ created then this will artificially move the bottleneck, currently at pupillage, to tenancy.

Cost of training:

- BPTC providers are not competing over price;
- Students wrongly think that some providers are better than others due to price, which leads to exploitation by providers;
- Pupillage pay should not be so much lower than BPTC costs;
- The Inns of Court should pay for all the criminal pupillages instead of giving scholarships;

Publically funded v Commercial Bar

- Publically funded sets cannot afford to pay money for training;
- There could be a two tiered system if some Chambers can afford to train in a certain way and others cannot; and
- It would be better to have a fused system.

Consideration of the Options

Delegates were asked to look at the Options and consider the different advantages and disadvantages of each.

Option B

Advantages:

- It would give greater flexibility;
- B(iii) gives you the opportunity to “earn while you learn” increasing accessibility;
- Could allow more people to come to the Bar; and
- Really good for students to have a range of options as some people learn in certain ways while others learn differently or would prefer linear training.

Disadvantages:

- If there are too many pathways this could get confusing for students and chambers;
- There would need to be clarity to the routes so those recruiting pupils understand them;
- A gold standard could arise which means some Chambers will only hire from one route
- There is no clear one way to train which is unfair on students without connections;
- B(iii) would be too much of a burden on Chambers;
- B(iii) would not work if only some chambers work with specific providers, leading to come routes being exclusive;
- Chambers are not like solicitors firms, they will not want to spend money on routes;
- Chancery Bar Association backing B(iii) is not convincing as it is not very diverse and has a bad track record of recruitment;
- Many prestigious universities will not offer the combined academic and professional training, reducing students options; and
- Could give too much power to providers and they cannot be trusted to do the right thing for the profession.

Option C

Advantages:

- Could address the issue with the cost of training;
- Would allow for more self-directed home study;

- Similar to the SRA model which will streamline training and could save the BSB money; and
- Feasible if covered knowledge and procedure but not in one exam.

Disadvantages:

- If anyone with a degree can do the BEE then too many people will pass;
- Concern that freedom to prepare however students wanted could be open to exploitation by providers;
- Students must be made to study law;
- You need more than a short course to understand advocacy
- This option is confusing because it is similar but not the same as the COIC proposal;
- May put some people off from lower socio economic groups as it is very intimidating;
- Must not over glamorise the New York Bar Exams;
- Students should not be made to take exams on legal knowledge twice; and
- Chambers will not take a student without a law degree.

King's College London Event

Key Themes

Law Courses:

- Law schools are successful at attracting students and law graduates are employable;
- Law courses are relatively cheap to teach;
- It would be challenging to develop a training pathway which focused on qualifying for the Bar (at an academic level) as there is only a small number of students wishing to qualify for the Bar;
- Only a third of students on law courses wish to qualify as a barrister or solicitor;
- There should be more of a focus on law as an academic subject, which includes problem solving, critical analysis and research;
- Building the bridge from academic to vocational learning requires huge resources which aren't necessarily available from universities. Requirements from the BSB and SRA protects budgets for courses e.g. for law libraries;
- The development of professional competencies should be focused on extra-curricular activities (e.g. mooting) at the academic stage and should not form part of the substantive degree;
- Some (contrary to above) felt that a compulsory practical element could form part of the academic study (e.g. mooting in criminal law, etc.). If it is extracurricular, then those working or from poorer backgrounds may not be able to participate;
- Most in society are unable to afford legal advice. We need more provision of legal help and it is therefore possible that universities could be used to help fill this gap. The students could engage in clinical legal education and have supervised experience in real cases. They may value this experience when it comes to applications;
- The students found law clinics empowering and would want it as part of the courses;
- Offering clinical legal education from universities is resource intensive because supervision is considerable and expensive, the cost of which will be passed to students;

- It was suggested that universities are not best placed to be meeting this unmet societal need of legal services;
- Some may not be able to engage in extracurricular activities due to other responsibilities. By mandating it on the curriculum then students would likely be able to complete this during the day, making it more accessible;
- Adopting this approach to clinical legal education is difficult if only a third of law students want to enter the profession. They may not be interested in pursuing clinical legal education;
- Some students are satisfied with reduced flexibility if they can access the course;
- Minimising regulatory involvement in academic legal education is good. The QLD elements take up more than half the LLB;
- A senior status LLB could be developed if not careful – one for academics and one for those with inside information to decide to take the foundation modules;
- There was support for the regulator's involvement in redesigning the content of the QLD;
- Particular grades in particular modules are favoured by recruiters;
- Institutions have competing pressures to meet the requirements of the SRA and BSB; and
- There is a question over whether increasing diversity will be reflected in quality.

The Core subjects and the QLD:

- Concern was raised that the foundation legal knowledge subjects should not be removed. They only account for a third of the degree and therefore offer sufficient flexibility;
- If there is not a sound foundation of legal knowledge then service to clients may be affected;
- If the QLD was removed, then there would be a need to set a different standard to assess whether the degree is sufficient. If this is absent, it could be confusing for students if they later apply for pupillage and their degree is not favoured by chambers;
- Students are paying and therefore want to gain skills. They would like the foundational knowledge to remain (e.g. contract) as this permeates into other areas of practice (e.g. construction);

The Vocational stage:

- Students would also ask for a vocational training to be incorporated into the LLB in Law to reduce cost. Would also like Northumbria model at other universities, like Kings if not part of LLB;
- The BCAT needs to be a better indicator of how students perform on the BPTC
- The vocational training can be added into clinics which may reduce costs; and
- A main concern is that covering the cost of the vocational stage, on top of a degree, is risky because pupillage is rarely obtained before committing to the BPTC. This occurs less regularly with solicitors as training contracts can be offered before starting the LPC. If this approach became accepted then the financial risks associated with the BPTC are mitigated.

The Bar:

- Demand outstrips supply as the number of students who wish to become barristers is much higher than the number of pupillages;
- To group solicitors and barristers together is unhelpful as they are such varied professions, both in their work and culture;
- If you have intellectual ability and research skills then you can be a barrister. This was viewed by some as being more important than having the core knowledge areas; and
- It would be difficult for a 17 year old to know which profession, if any, they want to pursue.

Option B:

- Need to explain to prospective students the route to qualification;
- Option B(ii) would increase affordability and understanding of law and could be adopted by more universities; and
- Some delegates questioned what demand there was among academics to teach the combined vocational and academic stages. There was little appetite for attendees wanting to teach the SQE.

Option C: This option misunderstands the nature of assessment

Annex 2

Analysis of the Options

Some respondents offered analysis of the advantages and disadvantages of the Options, outside of the consultation questions. To accurately capture these views and reflect the range of issues raised we have summarised them separately from the consultation questions below.

Option A

Option A is the 'evolutionary approach,' in which the current three-stage system is retained, and the changes that are already taking place to improve the current system will continue.

Advantages

Twenty four people commented on the perceived advantages of Option A; thirteen of whom were barristers.

Many respondents described the benefits of the current system, with one chambers stating that they believed the current BPTC is a '*substantial improvement on previous iterations of the BPTC and BVC.*' City Law School likewise described what they saw as the advantages of the system:

"Whilst we would not seek to argue that the present regime is necessarily the only way of providing effective training for would-be Barristers, we would argue that there is considerable merit in the sequential approach that is currently adopted, namely the study of law as an academic discipline (either through the LLB or GDL), then learning (through vocational training) how to use law in practical and ethical ways to help clients achieve their objectives and to serve the administration of justice, and then "on the job" / "work-based" training in the form of pupillage, putting the earlier learning into practice."

One barrister respondent also questioned the need to alter the BPTC in the absence of evidence that students have not been able to access training due to the structure, content, availability or delivery of the BPTC as it is. Others indicated that Option A has the advantage of being a 'tried and tested' model, which is well understood by the profession.

Many respondents welcomed the proposal to allow greater flexibility in the delivery of the academic stage of training, which would give providers a greater level of discretion in choosing and tailoring the delivery methods. Nottingham Law School endorsed the proposal for a less prescribed model, which they said could allow providers, '*more flexibility, creativity and efficient use of resources.*'

Several respondents – the majority of whom were barristers – explicitly stated that their preferred model was that presented by the Bar Council and COIC but, of the options presented in the consultation paper, they would recommend the adoption of Option A.

Disadvantages

Forty nine respondents commented on the perceived disadvantages of Option A – all but twelve were barristers.

The vast majority of respondents articulated the same perceived disadvantages of Option A, that is:

- It fails to address the current issues around the cost of the BPTC, and
- It fails to address the issue around students paying excessive costs for the course, without a realistic prospect of then gaining pupillage.

The majority of respondents agreed these two issues are key, and action must be taken to address them. One barrister summarised the point:

“Option A does nothing to address the problems which afflict the current system of training for the Bar. These problems are (i) the cost of the BPTC; and (ii) the risk of not securing pupillage following the BPTC. Taken together, the present levels of cost and risk serve to deter talented applicants and damage diversity at the Bar. This cannot be allowed to continue.”

Young Legal Aid Lawyers did not feel that Option A addressed concerns around costs and, for that reason, could not lend their support:

“We cannot support Option A because it suggests the continuation of the twelve-month BPTC course run by private providers for excessive fees. This does not address our concerns about the financial burden on students and, therefore, is not properly accessible to people from disadvantaged backgrounds.”

The Bar Council believed that in the costs of delivery of the BPTC to providers as a result of reduced regulatory requirements would be passed on to students. The Professional Negligence Bar Association was similarly sceptical of the current system, highlighting the length, cost and compulsory attendance of the BPTC, in particular. They also said:

“In our view, the main disadvantage of the current system is the cost of the vocational training stage rather than, as suggested in the Consultation Paper, the cost of having a three-stage route to authorisation: The cost of the academic stage is the same as for any other graduate profession and the cost of the pupillage stage is borne by chambers and employers. We are in favour of retaining the three-stage

sequence...but urge the BSB to implement targeted reforms designed to improve and reduce the cost of the vocational stage.”

The Association was supportive of allowing providers to develop ‘*innovative and cost-reducing ways*’ to deliver training, including removing the requirement for classroom-based delivery, and suggested this be similar to the COIC/BC option.

The second most common concern – and an extension of the first, discussed above – is that Option A does not amount to a reform but merely a continuation of the ‘*status quo*.’ Some felt that the current problems with the system are in urgent need of resolving, and that to pursue Option A would be a ‘*missed opportunity*’ to improve and reform an imperfect model. However, when considered together with comments on the advantages and disadvantages of all options, respondents were generally complimentary of the current system (although many of these indicated a need for certain improvements). Although less common, a general concern that the BPTC is not currently fit-for-purpose and is failing to achieve the ‘highest possible standards’ was also discernible from responses.

Option B

Option B is the ‘managed pathways’ approach, which provides for several different routes for students to be able to train in the way that suits them best, including:

- Option B(i): Academic legal education followed by vocational training and work-based learning (as in Option A)
- Option B(ii): Combined academic and vocational learning followed by work-based learning
- Option B(iii): Academic legal education followed by combined vocational and work-based learning
- Option B(iv): Modular format, in which components can be acquired separately, over time

Overall

Advantages

Sixteen respondents commented on the advantages of Option B overall (as opposed to the specific routes within it, which are discussed below).

Those who left comments as to the overall advantages mostly referred to the benefits of offering students flexible routes. Some thought that this would help increase access, including for those with childcare and/or caring responsibilities, and those from ‘*non-traditional backgrounds e.g. BME students facing more barriers to access.*’ The benefits of Option B from a provider’s perspective were also highlighted by respondents, including the University of the West of England:

“We envisage that the Managed Pathways approach:
a) would present significantly fewer challenges for providers to adapt existing BPTC provision in comparison to the previously preferred “Bar Specialist” option;
b) Would provide providers with opportunities to develop and enhance existing provision which appeals both to the Home/EU and International markets.”

The benefits of flexibility were recognised as self-evident by several respondents, including in terms of equality and career options. Some respondents, including the one quoted above, were keen to suggest additions to this Option, for example:

- A more flexible pupillage structure could be added or expanded;
- CILEX routes could be included;
- Online learning could be incorporated.

The Middle Temple Young Barristers' Association suggested that Option B(i) could run alongside the COIC/BC proposal, if it were reformed to (i) include practitioner input on the course, (ii) improve the standard of teaching, and (iii) reduce course cost. They also recommended that efforts be made to ensure students have sufficient understanding of their chance of obtaining pupillage. This was indeed a theme throughout the consultation responses: many highlighted the large numbers of students completing the BPTC when compared to the number of those who obtain pupillage.

Disadvantages

A total of ninety three respondents commented on the perceived disadvantages. However, this may be due to the fact that it encompasses several different routes – all of which will have differing advantages and disadvantages – and should not be taken on its own as evidence that this is the least preferred option.

The majority of respondents cited the same disadvantages of the multiple routes option, from both a chambers and student perspective. These included that:

- It would be difficult for chambers to assess students pursuing different routes in a fair way;
- Logistically, chambers would not be able to offer pupillage simultaneously to people on different routes. The Chancery Bar Association felt this was the worst of the three options, considering it to be 'unsuitable.' They also argued that it would be unlikely that chambers would offer pupillage simultaneously to students on different pathways, which would have a negative impact on diversity and access;
- If multiple routes were available, many respondents felt that some pathways would inevitably come to be seen as superior to others, establishing a 'gold standard' that would discriminate against those from non-traditional backgrounds who it is assumed would pursue the non-traditional routes. Many respondents insisted that chambers would only recruit from Option A (the 'traditional' approach), whilst others suggested that chambers might insist on a single pathway;
- It would not be possible to ensure and maintain high quality with multiple routes, which could, in turn, lead to falling standards. One respondent stated that this would risk a lack of uniformity in regulatory standards and learning outcomes. Another suggested that chambers, as a result of variable standards, might require students from some pathways to, for example, complete two years of pupillage instead of one. The regulatory cost associated with this was also raised by many respondents, some of whom considered it would be disproportionate.

"A mass of varying routes will not assist chambers in picking up the best candidates for pupillage regardless of background. Whether correctly or otherwise, some will inevitably become to be considered "better" those who follow the "lesser" routes will find them unable to get pupillage." (Barrister respondent)

The Bar Council agreed with this assertion, listing the following disadvantages:

- *“Multiplicity of route would lead to confusion for individuals and training organisations. Only those with contacts will be able to be guided through the profession*
- *Problems with E&D due to the interaction between different pathways*
- *Students have to make decisions at different times*
- *Different pathways arising at different times will mean that it is impossible to see interactions*
- *Danger of preferred route by some chambers.”*

Hardwick chambers said that it is ‘*wholly unrealistic*’ to ‘*expect [chambers] to efficiently train and support tenancy candidates at different stages.*’ It explained that it would have difficulties in assessing tenancy candidates fairly at different stages and proposed that an array of options creates an ‘*unfair guessing game*’ for students ‘*who do not know what chambers will prefer.*’ Others agreed that the option would cause both uncertainty and confusion.

In a joint letter to the Chairman of the BSB responding to the Consultation, three barristers laid out their objections to Option B, which included the concerns above, but additionally claimed that the Option ‘*incorrectly shifts the focus from reform of the BPTC to reform of pupillage and the academic stage*’ and risks increasing the cost to become a barrister as a consequence of increased regulatory costs. Monckton chambers agreed with much of this analysis and additionally stated:

“The principle of proportionality has consequences in relation to the appropriateness or otherwise of altering the framework for vocational training for the Bar so as to allow multiple “managed pathways”...It is difficult to see how the BSB could be justified in incurring the costs of developing, consulting on, and then applying, such frameworks and processes unless there are good reasons for expecting that there will be significant numbers of pupils who would utilise such new pathways.”

Several respondents believed that the priority of the BSB should be to reduce the cost of the BPTC in order to increase access to the profession and encourage diversity. Conversely, one University respondent was concerned that this Option would lead to limited providers and a London-centric model. A small number of respondents suggested that Option B would increase demand for pupillage, which would need to be matched by an increase in the availability of pupillages.

Option B(i) will not be considered separately here, since it is identical to Option A and would, therefore, amount to a duplication of the discussion above.

Option B(ii)

This option involves combining academic legal education and vocational learning, followed by work-based learning.

Advantages

Thirteen respondents commented on the advantages of Option B(ii).

Many highlighted the fact that this model is offered at present by one University, Northumbria University – and that this already exists as a model was noted as an advantage by some, who generally saw no harm in the provision of such courses. COIC recognised the merits of

the approach, in that it provides students both the shelter of a student loan during the BPTC and a Master's degree. Reading University also considered that it is an attractive option from a cost and convenience perspective. Two respondents thought this option would appeal to institutions specialising in vocational courses.

Disadvantages

Whilst some felt that the existence of such a course at present was an advantage, others questioned why the model had not been adopted by other providers if it were an attractive option. Additionally, some noted a lack of demand and the small size of the market. Indeed, the Bar Council and COIC did not feel the option had widespread support, although they did feel that providers should continue to have the option of delivering such a course if they chose. The University of Southampton offered insight into why this option may not be popular with providers:

“This model is likely to be unattractive to many Law Schools for it requires the provision of a separate and distinct programme combining academic and vocational modules, probably therefore requiring additional staffing resource, for what is likely to be a small number of students. It may appeal to institutions currently specialising in vocational provision.”

Some respondents expressed concern about the likelihood of securing pupillage for those who chose this option, and that it could lead to a two-tiered system whereby combined courses are seen as less desirable. Some respondents simply failed to see the additional benefit of combined academic and vocational learning over the current system.

Whilst Reading University felt the option was attractive from the perspective of both cost and convenience, it felt that the route ignores the fact that most students secure pupillage between the ages of twenty five and thirty four. Several other respondents did not feel it appropriate to ask students to choose a career at the age of seventeen/eighteen (the necessary age, assuming that students would enter higher education and thus the combined course immediately following secondary education).

Option B(iii)

This option involves academic legal education, followed by combined vocational and work-based learning.

Advantages

Ten respondents commented on the advantages of Option B(iii). The first set of advantages described by respondents related to the anticipation that this option would reduce both money and time spent for students in achieving a qualification. Some respondents were supportive of the idea that universities could deliver criminal, civil and other non-skills based subjects, thus leaving chambers and the Inns responsible for advocacy training and development. This, one respondent argued, would create a strong incentive for chambers to train pupils ‘*properly*,’ and could permit the relaxation of pupillage funding, thus increasing pupilages.

The majority of respondents recognised merit in linking vocational and work-based learning – and the Association of Law Teachers highlighted that a significant number of LPC students already do this. One barrister respondent put it simply:

“I can see the advantage of combining vocational training with practical experience, because many aspects of the law become much clearer when one actually sees them in action.”

Some respondents did not feel that the BPTC in its current format was particularly valuable or of use in a practical context, and felt a combined approach may be more beneficial by providing students with more ‘hands on’ learning. Additional advantages noted include the fact that pupillage would be gained following academic qualification, with the Western Circuit suggested that this option would be particularly attractive to the employed Bar. Reading University also surmised:

“Candidates could be paid for the work undertaken and this might identify those likely to succeed at the Bar. For the remainder (of which there may be a large number) this might also serve to indicate the risk before them. Thought should be given to creating a masters level qualification to reflect the additional experience obtained.”

Disadvantages

This option was thought by many to be unattractive to the self-employed Bar, given the administrative and financial burden that would be conferred on to chambers. Respondents felt that responsibility for training students would fall on self-employed barristers and pupil supervisors – a role which many stated was already burdensome. Some respondents indicated that this option would only be viable for large chambers, which receive privately paid work. The Inner Temple Bar Liaison Committee, whilst ‘open minded’ about Option B(iii), expressed serious reservations about the workability of this option in the self-employed, independent Bar, arguing it would be too burdensome to ‘turn chambers into training centres.’

COIC suggested a need to conduct market research to establish the appetite for such a route, but were similarly sceptical that it would be seen as either a viable or appealing option. COIC also questioned whether chambers would be required to fund the pupil for the whole two years and, if so, said this would have a significant impact on chambers’ budgets; which would result in a reduction in the number of pupillages.

Aside from these burdens, some respondents questioned chambers’ competence to be able to assess students prior to them having acquired the necessary skills. A significant number of responses expressed scepticism that chambers would opt for this model at all, including the London Common Law and Commercial Bar Association and the Professional Negligence Bar Association. This led some to the conclusion that Option B(iii) would be counterintuitive: requiring higher regulatory costs, yet achieving low take-up rates.

One barrister also suggested that this option would be problematic from a BPTC provider perspective, asserting that providers would be unable to offer modules with sufficient flexibility to fit in around the demands of pupillage. Several also noted the unpredictable nature of work at the Bar, which could adversely interfere with vocational study.

The Bar Council, along with other respondents, suggested that this option would reduce the number of work-based placements for those graduating from different routes under Option B. The Professional Negligence Bar Association likewise expressed concern about this and felt that both Option B(iii) and B(iv) would limit career options, arguing that from a student’s perspective, Option (B(i)) would be preferred.

A further concern evident from responses related to quality assurance: respondents were not confident that Option B(iii) could provide sufficiently high quality learning around advocacy skills, and highlighted the need for basic knowledge and skills before commencing work-based learning. Indeed, COIC felt that it would be seen as ‘high risk’ to recruit a pupil who had not yet started the BPTC, and that this would encourage ‘conservative’ recruitment practices, which would be unlikely to facilitate entry for students whose ‘full potential had not yet emerged.’

The potential disadvantages from an access and equality and diversity perspective were discussed by a large number of respondents. One barrister said that whilst the route – providing on the job training – was a good one ‘*in theory*,’ he further stated that work-based learning depends on the availability of ‘adequate placements’ to all students passing the academic stage; for which there is no guarantee. Consequently, access to the Bar could be limited. This barrister went on to suppose that recruitment would favour those from more traditional Higher Education Institutes.

Another barrister speculated that chambers would be more likely to show preference for students who were privately educated, since those from more disadvantaged backgrounds are less likely to have had capacity to engage in extracurricular activities to ‘balance their CVs.’

A small number of respondents, including Nottingham Law School, did not feel it appropriate to require students at the age of eighteen to decide to pursue a career at the Bar. It also asserted that the process of selecting students from university for a work-based placement favours those with existing connections to the Bar, which would likely negatively impact on diversity in the profession.

One barrister, who is also a pupil supervisor, explained:

“A balance needs to be struck between making recruitment decisions early enough that the students will be supported through their studies and allowing students to acquire sufficient experience that they will be able to demonstrate evidence of their potential. In particular, there is a real risk that by combining the vocational and apprenticeship stages, those with greater social advantage will be better able to demonstrate the skills and attributes that a recruiter is looking for. That would likely have an adverse impact on social mobility.”

Option B(iv)

This option offers a modular format, in which components of a qualification can be acquired separately, over time. This may include an apprenticeship pathway.

Advantages

Only four respondents commented on the advantages of this option..

The Association of Law Teachers did not feel that this was a viable model unless the student had a training provider that was ‘fully committed to facilitating the student’s progression through all three stages.’ They did not feel that chambers would be inclined to undertake such a commitment. However, they envisaged that the Government Legal Service and the Crown Prosecution service may consider this an attractive alternative, having a stronger incentive to take greater responsibility for the education and training of the barristers they wish to integrate into the organisation. They did, however, express reservations about the likelihood of this.

One Essex Court chambers said they would welcome a more flexible approach to the requirements of pupillage, which would enable a candidate who has passed the BPTC to demonstrate that they meet the requirements other than by a traditional pupillage in chambers. This, they said, would help increase the number of pupillages available.

One respondent barrister also saw the advantages of a modular route, providing there would be a '*minimum knowledge entry point*' for different parts of the course.

Disadvantages

Twenty eight responses were received that set out respondents' views of the disadvantages of the modular option.

It was clear that many respondents did not understand this option and felt they needed more information to be able to consider its advantages and disadvantages.

The Bar Council agreed that this may be an attractive option for some of the employed Bar, but felt it would be difficult for the self-employed Bar to administer. They also expressed concern about the quality of learning on vocational and work-based modules where students have not undertaken the entirety of the academic stage. COIC agreed, stating that it '*will be of no interest to the self-employed Bar, which represents 80% of the practising profession.*' In contrast to the Association of Law Teachers, they also disagreed with the idea that Government departments, the CPS or any other public bodies would either wish or have the resources to support trainees over a five-year period, considering the ease with which they are able to recruit '*ready-made*' graduates.

COIC and others, including City Law School, felt that retaining a sequential approach to training was imperative. Several respondents also expressed doubts about quality-assuring the modules that students would study. The University of Southampton considered that this option would be least likely to ensure high standards and would likely be seen as a secondary route, compared to others. Some respondents did not feel that this option was appropriate if applied to the pupillage stage in particular.

The Western Circuit were especially critical of this option:

"Option B(iv) is a nonsense...It would allow a prospective barrister to start with pupillage, then to take the BPTC, and finally to do a degree course. Such a progression would involve standing common sense on its head."

Comments on Option B(iv)'s advantages and disadvantages indicated that, overall, respondents did not consider this to be an attractive option.

Option C

This option is the 'Bar specialist approach.' The model requires a degree (or equivalent) before taking the Bar Course Aptitude Test (BCAT) to test intellectual ability. Students would then be required to pass a new qualifying examination (BEE), and able to prepare for this in any way they choose. Following this, a three-month approved skills course would be required, ending with a period of work-based learning.

Advantages

Seven respondents shared their views on the advantages of Option C.

Birmingham City University held a discussion group to get the views of their students. Two students at this focus group felt that this was the best of the three options presented in the Consultation, since they believed it would be more affordable and accessible than the current model. 5 Essex Court Chambers likewise believed Option C was the most cost-effective. One barrister respondent stated that this route would increase the ways in which prospective candidates are able to undertake aspects of the course, but did not feel it went far enough.

Disadvantage

Sixty respondents noted their views on the disadvantages of Option C.

Many respondents were concerned about the possibility of removing the requirement of a law degree or GDL. One barrister respondent considered this to be the best of the three options, but expressed '*serious reservations*' about the BEE, believing it would increase costs and should not replace a degree classification. 4 Pump Court chambers likewise opposed '*any move to replace the law degree or GDL requirement,*' and insisted that chambers would not recruit a student without those qualifications. They also believed the regulatory cost of devising the BEE would be '*very high*' and would save neither cost nor time for students.

The Bar Council did not support the proposal for the BSB to create a qualifying examination covering the knowledge requirements of a law degree, and one respondent did not believe the BSB was sufficiently equipped to mark an exam that covers all areas of foundational knowledge. The Chancery Bar Association, amongst other respondents, considered the option to be undesirable due to what they saw as duplication between the academic stage (i.e. QLD or GDL) and the proposed BEE. Respondents also agreed with the assessment in the consultation that it would be costly to deliver. Others agreed that the BEE should not be the only compulsory route and the short skills course would not be appropriate.

A significant number of respondents agreed with the disadvantages laid out in the joint letter to the Chairman of the Bar, namely that:

- A single exam cannot hope to adequately assess all topics;
- Students with a QLD/GDL will take a further test at additional cost;
- Cost to the BSB; and
- There are already a range of flexible options for enabling students without a law degree to acquire foundational legal knowledge.

Several respondents indicated that students without having studied the seven compulsory academic subjects would not have rights of audience in all courts. Unease around the impact on equality and diversity was also evident from responses, for example:

“Option C (by allowing any route for preparation for the proposed ‘BEE’) would simply replicate the problem with option B that richer students would have access to good training whilst others would not.” (Family Law Bar Association)

One respondent agreed with the recognition in the Consultation that Option C could have the unintended consequence of harming equal access to the Bar:

“[The] consultation paper does not acknowledge...the link between going to university and better access to the Bar. Universities provide a profound means of redressing some aspects of the systemic inequality that exists in our society.”
(Lecturer/Barrister)

Nottingham Law School highlighted another disadvantage in that it believed shorter courses favour private providers over university providers, as the structure of the course would be more challenging for universities to deliver. This, they said, would remove the quality assurance oversight of both the regulator and institution.

DRAFT

Future Bar Training**Future Routes to Authorisation: Equality Impact Analysis (EIA)**

Date of Assessment	January – March 2017
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Name of Policy	Future Bar Training – Future routes to authorisation

1. Introduction

The Bar Standards Board and Future Bar Training

The Bar Standards Board is the regulator of barristers in England and Wales.

Our Future Bar Training programme is aimed at improving how future students qualify as a barrister.

We have used four principles to guide our decision making. These are:

- Encouraging greater **flexibility** – so that the training system enables innovation in how education and training is delivered;
- Improving upon **affordability** – to bring down the cost of studying to students;
- Improving **accessibility** – so that the best candidates are able to training as barristers and that the Bar as a whole better reflects the communities it serves; and
- **Sustaining high standards** – to ensure that any new training pathway enhances current standards.

What are we proposing?

We are considering four possible future routes, which have been summarised below. More detail about the routes can be found on our [website](#).

Option A – Evolutionary approach

This approach would retain the three sequential stages in the current system: the academic legal education (law degree or Graduate Diploma in Law - GDL), the vocational training (the BPTC) and work-based learning (pupillage).

Option B – Managed Pathways approach

This regulatory approach would provide an opportunity for a small number of different training pathways alongside each other. This would allow providers to offer courses that are more flexible and fit with the requirements of students. It is important to note that until we are approached by training providers with their proposals, we do not have certainty as to how the pathways may look. Within our consultation, we provide *illustrative* examples of several routes which the BSB may authorise, including,

- Option B(i): Academic legal education followed by the vocational training, followed by work-based learning (as in Option A).
- Option B(ii): Combined academic and vocational learning followed by work-based learning;

- Option B(iii): Academic legal education followed by combined vocational and work-based learning; and
- Option B(iv): Modular format, in which components of qualification can be acquired separately over time and may be delivered as an apprenticeship pathway.

Option C – Bar Specialist approach

Students would be required to pass a new qualifying examination – the Bar Entrance Exam (BEE). This examination would cover knowledge and understanding of academic and vocational learning. Students may prepare for this exam in any way they choose but would still be required to have a degree, though not necessarily in law.

A subsequent three month approved skills course would then be taken, followed by a period of work-based learning. We believe that the short skills course could be integrated in the work-based learning.

Bar Council/COIC proposal

The Bar Council/COIC proposal retains the three sequential stages to qualification. However, the vocational training would be split into two parts; part one, the knowledge modules and part two, the skills modules.

Students could prepare for part one in a way that best suits their learning style and circumstances. Part two would only be offered to those who successfully pass part one and would require formal attendance.

This proposal is also considered as a managed pathway under Option B.

Changes we are already making

Changes to the BPTC

We have already started to make improvements to the current training pathway. From this year, we have reduced prescription on the BPTC, e.g. reducing some mandatory class sizes to enable providers more room to innovate, which may reduce costs. However, as outlined in our evidence report, data on the precise effect of BSB regulations on fees is lacking¹.

Throughout the impact analysis, when reference is made to the potential for positive impacts resulting from the reforms to the BPTC, it should be noted that these are our anticipated results and further research could be beneficial to support this.

¹ Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [para 6.13]

Changes to work-based learning

There is currently a disparity in the number of students completing the BPTC and the number who subsequently obtain pupillage².

The number of pupillages is determined by a number of factors, such as the amount of work available in chambers (or employed settings) and/or available funds to support pupils during their pupillage. Other factors, such as the availability of legal aid has also reduced the number of pupillages offered.

This is relevant because we have a regulatory objective to encourage a diverse legal profession³.

We are, therefore, developing some reforms to work-based learning, which will, once operational, apply to any training pathway. These include:

- Aligning the learning outcomes for work-based learning with our Professional Statement;
- Facilitating the possibility of other, non-traditional settings to offer work-based learning, e.g. university law clinics, community and pro bono law centres;
- Reducing prescription around the pupillage checklists to ensure greater focus on learning outcomes and attainment of competences;
- Shifting our regulatory focus to the work-based learning provider, thereby enabling greater flexibility in how training is delivered; and
- Encouraging more flexibility in how training supervisors oversee pupils.

With these changes, the market for work-based learning may increase as there is the possibility for a wider variety of organisations to offer training and also for chambers and other providers to provide a wider variety of experience during pupillage⁴. However, further market research could be beneficial in developing our knowledge of the likely impacts of these changes. Therefore, throughout the impact analysis, when reference is made to the potential for positive impacts from the reforms to work-based learning, this limitation should be considered.

This widening of the market has received support from the Bar Association for Commerce, Finance and Industry (BACFI), as well as a number of respondents during our consultation engagement activities. However, a number of respondents argued that if more is expected from chambers during pupillage, then fewer pupillages will be offered and that pupillages

² <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-publishes-new-figures-showing-success-rates-for-student-barristers/>

³ <https://www.barstandardsboard.org.uk/regulatory-requirements/changes-to-regulation/legal-services-act/>

⁴ Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [para 5.20] and BSB Future Bar Training - Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training Summary of responses (January 2016) [para 50.2]

may not be offered to students who have followed a less traditional route. This could have a negative impact on diversity and therefore, further research is required to understand the likelihood of this.

The Authorisation Framework

The current BSB Rules require most candidates to train and qualify on a single pathway. We anticipate adopting an approach in which:

- Candidates must meet the requirements of the Professional Statement in order to be authorised; and
- Candidates who are successful in an approved training pathway will be deemed to have met the requirements.

To achieve this regulatory approach, we are seeking to take a permissive approach in approving pathways which meet our requirements. This means that education and training providers, whether law schools, current BPTC providers, employers and chambers will be free to propose training routes covering all, or part, of a training pathway.

We are currently developing an Authorisation Framework, which will enable us to consistently assess whether training proposals meet the requirements set out in the Professional Statement. If we continue to specify centralised assessments, these will be clarified in the framework.

We anticipate that before a training route can be authorised, it will need to satisfy any requirements the BSB considers relevant, including the following:

- Degree awarding powers of the institution and any related quality assurance measures;
- A training market needs analysis;
- The ability of the new training system to meet our regulatory objectives and the Legal Services Board's (LSB) statutory guidance on education and training;
- The ability of the new training system to meet the Professional Statement as well as how and when assessments will take place; and
- The ability of the proposal to meet the principles on which we consulted, namely: Accessibility, Flexibility, Affordability and Sustaining High Standards.

We anticipate that potential risks associated with particular training proposals may be raised during the validation process in which we consider associated issues, as highlighted above. If, for example, a risk is identified that suggests that a particular proposal may be detrimental for access to the profession from currently under-represented groups, further work may be required of the provider to mitigate against these risks.

This approach of using the Authorisation Framework to consistently assess training proposals applies equally to all of the four options outlined above.

Our evidence base

Our research team has compiled an evidence report to support our FBT programme. **This will be available on our website.** We acknowledge that there is further research which could be done, including literature reviews and seeking qualitative responses on the experience of students with protected characteristics and training for the Bar. We anticipate this will be completed in time for our application to the LSB.

The research we have used in assessing the equality impact of each option on the protected characteristics, as well as socio-economic background and caring responsibilities, are referenced within the impact assessment sections below.

We are currently undertaking interviews with BPTC students with different protected characteristics to understand their experiences on the course which could develop our understanding of the challenges some students may face. The findings of this will be available in early April 2017 and the EIA will be updated at this time.

We have not consulted with groups or associations of individuals who share particular characteristics, e.g. the Association of Women Barristers. We recognise that this is an area for further work and within our action plan we have identified an engagement strategy with such organisations. As we would anticipate this being undertaken once our Board has made a decision on the chosen option, we will seek their views on particular challenges which the option could present and we would update the EIA if further challenges were identified than has been outlined below. This engagement would take place before our application to the LSB.

Within our consultation, we received responses from inter alia, students, academics, Specialist Bar Associations, judges, barristers and representative bodies. These responses have not been categorised in such a way to determine whether the protected characteristics relate to the respondent, but rather asked them to respond to the equality and diversity questions set out in the October 2016 consultation.

Any knowledge and research gaps which we have identified are listed in the action plan in section four. It is anticipated that these will be completed and included in the application to the LSB.

Reading this EIA

This EIA is intended to consider the possible impacts of our policy on each protected characteristic under the Equality Act 2010, as well as socio-economic background and caring responsibilities.

The document is set out as follows:

Section 2

The current position

This sets out the evidence we currently have about the impacts of the current training system on the protected characteristics.

The options

This section considers the potential impacts on the protected characteristics for each route. These impacts are considered against the current position to identify whether we anticipate a positive or adverse change from the current position.

A short summary is provided at the start of this consideration.

In discussions of Option B, we have analysed this as a regulatory approach, rather than a specific assessment of each illustrative pathway. We anticipate that the Authorisation Framework will consider the equality impacts of a proposal and this would therefore be a more appropriate time to consider the nuances of each pathway.

Section 3

This sections provides a summary of our impact analysis.

Section 4

This sets out the actions we have identified from section two.

2. Impact on Equality

<p>Race</p>	<p>The current position</p> <p><u>Ethnicity and the BPTC</u></p> <p>Our ‘Trends at the Bar’ report shows that for the students on the BPTC from 2011/12, 41.6% were BAME (including both home, EU and international students) and 45.8% were white⁵.</p> <p>Our research has shown that from 2011 until 2015, an average of 60% of BPTC students were domiciled in the UK. The figure for international students is lower, at 38%, and 2% were domiciled in the European Union. We also found that from 2011-15, a higher percentage of Black and Minority Ethnic students were UK domiciled, rather than the EU or overseas. Comparatively, a higher percentage of Asian and Other ethnic groups were domiciled overseas, rather than in the UK or EU⁶.</p> <p>Our research into ethnicity and BPTC attainment has shown:</p> <ul style="list-style-type: none"> • That ethnicity has a significant predictive effect on average module scores, even after variables, such as prior educational achievement, are controlled for⁷. • BAME students of all first degree classifications fail the BPTC in higher proportions than white students, and those that do graduate get proportionally fewer Outstanding and more Competent overall grades⁸. <p>We conducted a regression analysis to understand the relationship between ethnicity and attainment⁹ and in regards to centralised assessments, we found the following:</p> <ul style="list-style-type: none"> • Being Black, Asian, or being from the ‘Other Ethnic Group’ category have a larger predicted impact on average module scores than having a 2:1, or attending a Russell Group university¹⁰.
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⁵ Bar Standards Board (2014) Bar Barometer: Trends in the profile of the Bar [74]

⁶ [Approximately 10% of students did not disclose their ethnicity to us.](#)

⁷ Bar Standards Board. 2016. Regression Report Write up

⁸ Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016

⁹ Data used for the analysis of module marks is taken from key demographic data and previous educational achievement data provided to the BSB by the BPTC providers. There is missing data on ethnicity and disability for just under 10% of the sample. The analysis taken has addressed any potential issues with missing data by using six ethnicity categories – White, Asian, Black, mixed ethnicity, other ethnic group, and no ethnicity data – to ensure that missing ethnicity data does not skew the results.

¹⁰ Bar Standards Board. 2016. Regression Report Write up [para 13]

- Once the other variables are controlled for, overseas and EU students are predicted to score higher than the baseline (i.e. home students). However, the difference is very minor, at only 0.5% and only occurs in centralised assessments.
- BAME students from all domiciles are less likely to have attended an Oxbridge or Russell Group university, and less likely to have a 1st or a 2:1 degree, which are variables associated with higher average marks on centrally assessed modules¹¹.

Advocacy modules:

- Being Black or Asian has a similar (although negative) predicted impact on average module scores to obtaining a first or graduating from Oxbridge, and a considerably larger effect than having a 2:1, or attending a Russell Group university¹².
- The coefficients for EU domicile are not statistically significant once the other variables are controlled for¹³.
- Whether a student is overseas domiciled is significantly associated with average module scores for advocacy modules, with overseas students scoring lower than the baseline (i.e. home students) for advocacy modules, although the difference is smaller than that for ethnicity¹⁴.
- BAME students are more likely to be overseas students (which is associated with lower marks)¹⁵.
- BAME students are less likely to have attended an Oxbridge or Russell Group university, and less likely to have a 1st or a 2:1 degree, which are variables associated with higher average marks on advocacy modules¹⁶.

Other Compulsory Modules

- All non-white ethnicity categories (other than Mixed) have a larger predicted impact on average module scores than having a 2:1, or attending a Russell Group university¹⁷.

¹¹ Bar Standards Board. 2016. Regression Report Write up [para 14]

¹² Bar Standards Board. 2016. Regression Report Write up [para 21]

¹³ Bar Standards Board. 2016. Regression Report Write up [para 21]

¹⁴ Bar Standards Board. 2016. Regression Report Write up [para 22]

¹⁵ Bar Standards Board. 2016. Regression Report Write up [para 30]

¹⁶ Bar Standards Board. 2016. Regression Report Write up [para 22]

¹⁷ Bar Standards Board. 2016. Regression Report Write up [para 29]

- The coefficients for domicile (EU or Overseas) are not statistically significant once the other variables are controlled for¹⁸.
- BAME students are less likely to have attended an Oxbridge or Russell Group university, and less likely to have a 1st or a 2:1 degree, (both of which are variables associated with higher average marks for other compulsory modules)¹⁹.

We found that differences in attainment based on ethnicity may be explained due to cultural bias in assessment, differences in cultural context and social capital and differences in learning styles. However, this is a complex issue and one that permeates the education system more broadly²⁰ and is therefore not entirely attributable to the structure of the BPTC.

From 2017, we have changed the structure of the assessments for the centralised assessments, so that the Civil Litigation and Criminal Litigation modules will consist entirely of multiple choice questions and Professional Ethics will consist entirely of short answer questions. We will continue to conduct analysis of BPTC attainment on the basis of ethnicity in light of these reforms to identify whether there is any change in attainment.

We will also be reviewing our approach to the assessment of providers during the authorisation process, when we develop our Authorisation Framework. A section regarding the Authorisation Framework can be found in the opening section of the EIA.

We have also commissioned interviews with BPTC students to better understand their experiences. The results of this are anticipated in April 2017 and this EIA will then be updated.

Depending on the findings of these interviews, we may consider it necessary to have further engagement with BAME lawyers to enhance our evidence base²¹.

¹⁸ Bar Standards Board. 2016. Regression Report Write up [para 29]

¹⁹ Bar Standards Board. 2016. Regression Report Write up [para 30]

²⁰ Klein et al (1997) Gender and Racial/Ethnic Differences in Performance Assessments in Science and J Richardson (2008) The Attainment of Ethnic Minority Students in UK Higher Education and [Aiming Higher Race, Inequality and Diversity in the Academy, Participation of BME Students in UK Higher Education](#), Pam Tatlow [10]

²¹ By developing our understanding of the differential attainment, we hope to be able to take steps to mitigate the impact of the effect of race. However, we aim to retain the BPTC as it enables the attainment of one of our aims; to maintain the high standard of training, and also of our regulatory objective to protect and promote the public interest by having a system of training that produces barristers who are competent and have the right skills.

There is a good geographical spread of training among the regions which can have a positive impact on BAME students as they are more likely to prefer to study closer to home²².

A positive impact of the international popularity of the BPTC is that it stabilises costs for the BPTC as there are a high number of international students each year on the BPTC, approximately 38%²³.

However, we recognise that the challenges presented by the cost of the BPTC, as outlined in further detail within the socio-economic background section below, can be a barrier for some BAME students. This can be explained because our research has highlighted that BAME individuals are more likely to be in poverty than white individuals²⁴.

From the period of 2011-15, an average of 95.5% of pupillages were awarded to UK domiciled students. This compares with 2.5% domiciled in the European Union and 2% overseas. This can be explained as the majority of overseas students return to their home jurisdiction to qualify²⁵.

From the period between 2011-15 on average, 79.2% of pupillages were awarded to white candidates, compared with 4.8% Asian/Asian British, 2.2% Black/Black British, 3.5% Mixed ethnic groups, 9.2% not provided and Other ethnic group at 1.2%.

Our evidence report highlighted that a lower percentage of UK domiciled BAME BPTC graduates go on to gain pupillage than white UK domiciled BPTC graduates²⁶. Our regression analysis supports these findings, in that ethnicity does have a statistically significant predictive effect on pupillage attainment.

In developing our understanding of this disparity, we found that social capital can have an important role as BAME barristers have felt less

²² http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf. We do not currently have a breakdown of where BAME students who are domicile in the UK, EU and overseas prefer to study (London or regionally) but we anticipate that the impact of the good geographical spread will positively impact home BAME students as they are domicile in the UK. Further research could therefore be beneficial in understanding whether BAME students from each category of domicile prefer to study. We received a number of responses to our consultation which agreed of the importance for equality reasons that training is provided among the regions (see Manchester Law School and the School of Law at Cardiff University).

²³ BPTC Key Statistics 2016 An analysis of students over three academic years [20] and responses to our consultation from academic institutions, including City and Northumbria Law School

²⁴ BSB Risk Outlook (2016) [50]. Data available at: <http://www.irr.org.uk/research/statistics/poverty/> and http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf

²⁵ BSB Future Bar Training - Consultation on the Future of Training for the Bar: Future Routes to Authorisation (October 2016) [para 97]

²⁶ Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [7.16]

well-informed about the pupillage application process and the profession, including mentoring, than their white counterparts²⁷. It may also be a contributing factor that BAME students are underrepresented at the most prestigious institutions and may face disadvantage in being offered a place at such institutions²⁸. The reputation of the BPTC provider may also have a determining effect, as some may be seen as more prestigious than others. Our interviews with BAME students will provide more qualitative research to enhance our understanding of their experience of the pupillage application process.

When developing our stakeholder engagement strategy, we anticipate this would include reaching out to education institutions to explain the adopted approach so that their students fully understand how to train for a career at the Bar, reducing the disadvantage of a lack of social capital. We will also provide clear information on our website about how to train.

Further research could also be beneficial to develop our understanding of the profile of BAME students who are successful in obtaining pupillage. Are they from lower or higher socio-economic backgrounds? Did they take the traditional route of A levels and degree? Which universities did they attend? This will develop our understanding of the relationship between race and other characteristics. This would be beneficial as a study by the Elevations Networks Trust showed that almost 40% of black students believed they would encounter discrimination if they pursued a career in law²⁹. However, further research regarding this study would be beneficial to provide, for example, a comparison with other professions³⁰.

The Options

- *The good geographical spread of training will likely continue under Option A*
- *Further research is needed to understand the regional availability for Option C and Bar Council/COIC*

²⁷ The Legal Services Commission (2009) Quality Assurance for Advocates: Summary Report of the QAA Equality and Diversity and Law Society (2010b) *Ethnic Diversity in Law Firms* London: Law Society – note the reference to mentoring applies to BAME lawyers, and is not specific to pupils or barristers.

²⁸ *Aiming Higher Race, Inequality and Diversity in the Academy, Participation of BME Students in UK Higher Education*, Vikki Boliver [15]

²⁹ Elevations Networks Trust (2012) *Race to the Top – The Experience of Black Students in Higher Education*

³⁰ We anticipate that further research will be undertaken this year to consider the likelihood of gaining pupillage whilst controlling for different factors.

- *A significant change in the international popularity is unlikely under Option A and B but possible under Option C and Bar Council/COIC*
- *A significant change in pupillage attainment of BAME candidates is not anticipated under any option*

Option A

In regards to BPTC attainment we anticipate that:

- BAME students from all domiciles may continue to have lower attainment on the BPTC than their white counterparts³¹.
- Overseas students may continue to have lower attainment on advocacy modules than home and EU domiciled students.

See above for the steps we are taking to mitigate this impact.

We anticipate that the good geographical spread of training will continue and will likely have a positive impact on BAME students. We do not have evidence to suggest there will be a significant change to the current position.

We anticipate that international popularity will continue under Option A, bringing stability of costs which can have a positive impact on those from lower socio-economic backgrounds³².

We do not have evidence to suggest that the retention of Option A, or the reforms we are developing will result in a significant change on the accessibility for BAME applicants in gaining pupillage. As outlined above, an engagement strategy to reduce the effect of lower social capital may mitigate the disparity in BAME pupillage attainment, in comparison to white students.

As it is unlikely that our reforms to the BPTC under this option would result in a significant reduction in the fees charged, BAME students may continue to find the costs of the BPTC difficult to afford.

³¹ As shown above, the ethnicity of BAME students does result in varying attainment and we do not have evidence to suggest that this trend will change

³² Responses to our consultation from academic institutions, including City and Northumbria Law School confirm this. We do not have evidence to suggest that the reforms will have a significant impact on international popularity.

Option B

Option B could have a positive impact for BAME students as the cost of learning may be offset with earnings under the modular pathway, which could be desirable as they are more likely to be in poverty than white individuals³³.

An additional positive impact of Option B is that students may obtain a Masters qualification under certain pathways which is recognisable in the wider employment market which is important as they are less likely to gain pupillage than their white counterparts.

It is likely that the challenges faced by BAME students (regardless of domicile) in reference to BPTC attainment may persist. We do not yet know of the impact of the reforms to the centralised assessments and as above, further research will be done to assess the impact of these changes³⁴.

As there may be more training pathways, there is a risk that fewer students enrol on each course, which could adversely impact the viability of providers, with the potential to increase prices and reduce accessibility among the regions³⁵, with the courses becoming more London centric. This could adversely impact home domiciled BAME students as they are more likely to choose to study closer to home³⁶ due to potential cost savings and if they are not domiciled in London, then their accessibility could be reduced. Similarly, if the prices increase then this could have an adverse impact on BAME students as they are more likely to be in poverty than white students³⁷.

There is also a risk that if too many pathways under Option B are approved, that it may lead less well informed students to choose courses which are not respected by pupillage providers. This could result in a more adverse impact than at present. We do not have evidence to know that this will develop and our engagement activities and information on our website could mitigate this.

³³ BSB Risk Outlook (2016) [50]. Data available at: <http://www.irr.org.uk/research/statistics/poverty/> and http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf

³⁴ As shown above, the ethnicity of BAME students does result in varying attainment and we do not have evidence to suggest that this trend will change. *Whilst we are aware of this differential attainment, it has been retained as the BPTC pursues the aim of sustaining the high standards of training for the Bar which feeds into our regulatory objectives of protecting and promoting the public interest.*

³⁵ We received a number of responses to our consultation which agreed of the importance for equality reasons that training is provided among the regions (see Manchester Law School and the School of Law at Cardiff University).

³⁶ http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf

³⁷ BSB Risk Outlook (2016) [50]. Data available at: <http://www.irr.org.uk/research/statistics/poverty/> and http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf

In regards to work-based learning, an engagement strategy could mitigate the effect of lower social capital on BAME pupillage attainment. In addition, we anticipate that as Option B may provide greater flexibility for pupillage providers, that this has the potential to increase the number of pupillages offered which could result in a better position than at present.

International popularity may continue under Option B(i), mirroring the impacts set out in Option A. However, by changing the point of call under different pathways, those routes with Call after the completion of pupillage are unlikely to be attractive to international students as they are likely to return to their home jurisdictions following the completion of the BPTC³⁸. We do not have evidence to suggest that this will have a significant impact as the BPTC will still need to be attended by all students under Option B and therefore, the benefits which international popularity brings (e.g. stability of costs) is likely to persist³⁹.

Option C

Having one entrance exam could adversely impact home domiciled BAME students as they are more likely to score lower than their white counterparts on the centralised assessments⁴⁰, as outlined in the introduction section. This could result in fewer BAME students passing the BEE and proceeding onto the skills course which could result in the profession becoming less diverse. However, we do not know what the structure of the BEE would be, and whether this would resemble the current centralised assessments and result in the same impact as under the current system. More result would therefore be required.

As Option C provides the possibility for students to study privately, then accessibility to a course which covers the academic and knowledge modules has the potential to improve accessibility in comparison to the current position as the BEE would not require formal attendance.

We do not currently have evidence which suggests what the availability of the skills course would be. If the provision of this is similar to the current BPTC, then this is likely to continue to have a positive impact on BAME students. However, if there is a reduction in providers, students may be required to study away from home which could negatively

³⁸ The General Council of the Bar of England and Wales, An analysis of full-time students enrolled on the 2009/10 BVC (2011) [para 2.5]

³⁹ Responses to our consultation from academic institutions, including City and Northumbria Law School highlighted the importance of the international market in stabilising costs

⁴⁰ Bar Standards Board. 2016. Regression Report Write up

impact on BAME students as they are more likely to study closer to home⁴¹.

A number of respondents to our consultation, including academic institutions, highlighted that there may be difficulties for international students obtaining a visa for the short skills course. Further research is required to confirm these assertions⁴². This could be compared with the analysis in our consultation which suggested that this route would be popular for international students⁴³.

As work-based learning would remain the same as in Option A, we do not have evidence to suggest that adopting Option C, or the reforms we are developing, will result in a significant change on the accessibility for BAME applicants in gaining pupillage. As outlined above, an engagement strategy to reduce the effect of lower social capital can mitigate the disparity in BAME pupillage attainment, in comparison to white students.

Bar Council/COIC

It has been suggested that this option has the potential to make training for the Bar fairer as students do not make a substantial investment in the fees for the BPTC, when they do not possess the academic calibre required⁴⁴ to continue. This does have the potential to have a positive impact on BAME students as they are not required to invest in all modules at the start of the vocational training and therefore, if they are unsuccessful in passing part one, they would not have parted with the same amount of fees as they would be under the current system.

We do not currently have evidence to know of the impact on BPTC attainment for BAME students if the structure of the course, i.e. separation of the knowledge and skills modules, were to be approved. We would therefore need further evidence to develop our understanding of this.

If the current trend of lower attainment for the centralised assessments for BAME students⁴⁵ continues, then there is a risk that preventing progression onto part two could result in a less diverse profession than

⁴¹ As they are more likely to be in poverty than white students and be more averse to moving away from home. BSB Risk Outlook (2016) [50]. Data available at: <http://www.irr.org.uk/research/statistics/poverty/> and http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf and Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [para 6.46]

⁴² <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-3-students>

⁴³ Bar Standards Board, Future Bar Training Consultation on the Future of Training for the Bar: Future Routes to Authorisation October 2016 [para 196]

⁴⁴ Bar Council response to the Consultation on the Future of Training for the Bar: Future Routes to Authorisation (2017) [para 102.c]

⁴⁵ Home, EU and international

at present, thereby threatening the attainment of our regulatory objective. We have reformed the structure of the assessments from 2017 and are taking action to develop our understanding and mitigate the impact of differential attainment, as outlined above.

As it is anticipated that part one could be undertaken in private study, then the analysis applied under Option C applies here, in that accessibility can be improved. More evidence is required to understand whether the availability of training among the regions will continue under this option.

COIC highlight that students would be able to obtain a short term visa to complete part two but further research is needed to verify this.

As work-based learning would remain the same as in Option A, we do not have evidence to suggest that adopting the Bar Council/COIC option, or the reforms we are developing, will result in a significant change on the accessibility for BAME applicants in gaining pupillage. As outlined above, an engagement strategy to reduce the effect of lower social capital may mitigate the disparity in BAME pupillage attainment, in comparison to white students.

Some BPTC providers suggested in their consultation responses that combining knowledge and skills teaching together is a more effective way of preparing for the centralised assessments than by private study.

The Bar Council disagreed, asserting that it is more beneficial that the skills teaching is undertaken in part two as students have a more rounded understanding of procedure and evidence⁴⁶.

We do not currently have evidence to understand the impact which teaching structure, i.e. separation or integration of the knowledge and skills modules, has on attainment and whether this would have a positive or adverse impact on BAME groups. Further research is therefore required.

⁴⁶ Bar Council response to the Consultation on the Future of Training for the Bar: Future Routes to Authorisation (2017) [para 109]

Gender	<p>The current position</p> <p>Entry to the BPTC is nearly gender balanced and we do not have evidence which suggests that there are significant barriers to the entry of the BPTC on the basis of gender⁴⁷.</p> <p>On the BPTC, there appears to be no statistically significant difference in attainment by gender, although there are some relatively small differences. “For UK domiciled students, the percentage of males with a first class or upper second class degree achieving an Outstanding BPTC grade is slightly higher than that for females, and a higher percentage of females with a lower second class degree fail the course than males with the same first degree classification”⁴⁸. The reason for this is unclear and we are currently undertaking interviews with male and female students to try and understand possible barriers on the BPTC.</p> <p>“For non-UK students, females with a first class or upper second class first degree are achieving a Very Competent or Outstanding grade in slightly higher percentages than males, and failing the course less.</p> <p>With regards to pupillage, the BSB carried out a regression analysis with available data from the 2013/14 and 2014/15 BPTC cohorts to determine the effect of gender on likelihood of obtaining a pupillage, while controlling for previous educational attainment (both on the BPTC and at undergraduate level) and other characteristics. This analysis shows that once previous educational attainment and other demographic characteristics are controlled for, there is no statistically significant relationship between the gender of BPTC students and whether they subsequently obtain pupillage”⁴⁹.</p> <p>We are currently undertaking interviews with male and female students to gain more qualitative data on their experiences. This will be updated within the EIA once the findings are available (April 2017).</p> <p>When considering pupillage, the ‘Trends at the Bar’ report shows that on average, from 2006-11, 48.0% of pupils were men, compared with 45.0% of women⁵⁰.</p> <p>The ‘Diversity at the Bar’ report 2015 showed that 50.1% of pupils were men, compared with 48.5% of women⁵¹.</p>
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⁴⁷ BPTC Key Statistics 2016 An analysis of students over three academic years [26] and Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [para 7.28]

⁴⁸ Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [para 7.29]

⁴⁹ Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [para 7.30-31]

⁵⁰ Bar Standards Board (2014) Bar Barometer: Trends in the profile of the Bar [84]. We had no data for 7.0% of pupils between 2006 and 2011.

⁵¹ Bar Standards Board (2015) Report on diversity at the Bar [6]. We do not hold data for 1.4% of the pupils for 2015.

However, this pattern is reversed when we consider the ‘Diversity at the Bar’ report 2016, as 51.3% of pupils were female, compared to 48.7% of men⁵².

These figures do not, therefore, suggest that there is a barrier for men or women in entering the BPTC or gaining pupillage as they are almost gender balanced⁵³.

The Options

- *We do not anticipate that any option will have an adverse impact on gender, either regarding the BPTC or pupillage*

Option A

We do not have evidence to suggest that gender presents a barrier to studying on the BPTC or obtaining pupillage.

When providers seek authorisation, it is anticipated that the Authorisation Framework will be structured to consider whether there are any adverse impacts and for the providers to take steps to mitigate the impact of these.

We therefore do not anticipate that there will be a significant impact on gender if Option A is retained and the reforms introduced.

Option B

Within the caring responsibilities section below, we highlight that Option B may have a positive impact on those with caring responsibilities as more flexibility may be introduced. As women are more likely to be the primary care giver⁵⁴, this could have a positive impact on accessibility.

We do not have evidence to suggest any other significant impacts on gender if a number of different pathways were to be authorised. As above, when providers seek authorisation, it is anticipated that the Authorisation Framework will be structured to consider whether there are any adverse impacts and to work with providers to mitigate the impact of these, in line with our Equality objectives.

⁵² Bar Standards Board (2016) Report on diversity at the Bar [6]. There was a 100% disclosure rate for pupils in 2016.

⁵³ Analysis and commentary in regards to progression within the profession are outside the scope of this EIA.

⁵⁴ Current and future challenges of family care in the UK, Future of an ageing population: evidence review, Andreas Hoff, Zittau/Goerlitz University of Applied Sciences, March 2015 [5]

	<p>Option C</p> <p>Introducing greater flexibility in studying modes for the BEE could have a positive impact on gender, as with Option B.</p> <p>Aside from the above, we do not have evidence to suggest that adopting Option C will have a significant impact on gender. As above, when providers seek authorisation, it is anticipated that the Authorisation Framework will be structured to consider whether there are any adverse impacts and for the providers to take steps to mitigate the impact of these.</p> <p>Bar Council/COIC</p> <p>As above, introducing greater flexibility in study mode could have a positive impact on gender.</p> <p>Aside from the above, we do not have evidence to suggest that adopting the Bar Council/COIC Option will have a significant impact on gender. As above, when providers seek authorisation, it is anticipated that the Authorisation Framework will be structured to consider whether there are any adverse impacts and for the providers to take steps to mitigate the impact of these.</p> <p>Whilst the increased flexibility has the potential to positively impact on gender, consideration should be given to other factors which may inhibit the positive impacts outlined above. For example, the benefits from flexibility may not be realised if, for example, an individual is from a lower socio-economic background and learns best by traditional class room learning and chooses to follow this method of preparation.</p>
Disability	<p>The current position</p> <p>We have limited data about the number of disabled barristers. In the 'Diversity at the Bar' report 2016, 1.9% of pupils declared a disability, with 68.43% stating that they do not have a disability. However, disclosure remains an issue as 29.6% of pupils did not disclose their disability status to us⁵⁵. It is, therefore, difficult to draw significant conclusions.</p> <p>Our regression analysis of BPTC attainment shows that disability does not have a significant predictive effect for any modules, once other variables, such as prior educational achievement, are controlled for⁵⁶.</p>

⁵⁵ Bar Standards Board (2016) Report on diversity at the Bar [9]

⁵⁶ Bar Standards Board. 2016. Regression Report Write up.

Our consultation roadshows highlighted anecdotal evidence that the prescriptive nature of the attendance requirements within the BPTC handbook can have an adverse impact on those with mental health conditions⁵⁷. This is because the Handbook requires a minimum of 90% attendance and should this fall below 80%, the student must be failed because “it is not possible to meet the learning outcomes or to demonstrate that they have been met through assessment”⁵⁸. The evidence suggests that meeting this, with a mental health condition, can be difficult.

Some chambers premises, particularly in London, are listed buildings where physical adaptations can be a challenge to implement. This can limit the ability of some physically-disabled barristers, e.g. if they are in a wheelchair, to work effectively and may limit the availability of chambers in which they can work⁵⁹. This could have a negative impact for some physically-disabled candidates for pupillage because their options for chambers can be limited in comparison to a non-disabled person.

A positive impact of the current training pathways is that it has a good geographical spread, which provides accessibility among the regions⁶⁰. This may be particularly important for some individuals with a disability as they can still live in their home, which may be modified due to their condition.

However, if they are resident in London, then they may be prevented from starting the BPTC as the London courses are more expensive and our research has shown that individuals with a disability are more likely to be in poverty than those without a disability⁶¹.

Data used for the analysis of module marks is taken from key demographic data and previous educational achievement data provided to the BSB by the BPTC providers. [This data is more comprehensive than the Diversity at the Bar report 2016 as there was data missing for only 10% of the sample.](#)

The analysis taken has addressed any potential issues with missing data by using six ethnicity categories – White, Asian, Black, mixed ethnicity, other ethnic group, and no ethnicity data – to ensure that missing ethnicity data does not skew the results. Disability was not controlled in the same way as the focus of the report was the impact of gender and ethnicity.

The BPTC Results and Student Progression - Equality and Diversity Indicators - March 2016 provides that “there is a slight overall difference between those with a disability declared and those without a disability declared in the percentage of graduates achieving an Outstanding or Very Competent grade. Those with a disability declared achieved an Outstanding or Very Competent grade at a lower rate than those with no declared disability. This difference is particularly pronounced for those with a 2:2 degree. For those with a first class degree however, a significantly higher proportion of those with a disability declared achieved an Outstanding overall grade in comparison to those without a declared disability”. Importantly, the effect of factors, such as prior educational achievement, have been controlled in the regression analysis and do not show that disability has a statistically significant predicative effect.

⁵⁷ This evidence did not make clear whether the condition satisfied the criteria for disability under the Equality Act 2010, but it was considered noteworthy to identify the challenges which students may face.

⁵⁸ BPTC Handbook – Course specification and guidance – September 2015 - A6(6.3.2)

⁵⁹ BSB Risk Outlook (2016) [56]

⁶⁰ We received a number of responses to our consultation which agreed of the importance for equality reasons that training is provided among the regions (see Manchester Law School and the School of Law at Cardiff University).

⁶¹ BSB Risk Outlook (2016) [50]. Data available at: <http://www.irr.org.uk/research/statistics/poverty/> and http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf

It is possible that with the changes being made to work-based learning that a variety of providers submit proposals for authorisation. Their buildings may not be listed, which has the potential to improve accessibility of work-based learning for some physically disabled pupils. More engagement with prospective providers is required to understand the likelihood of this and the impact this could have on some physically disabled barristers.

It would need to be explored further whether the BPTC Handbook will become less prescriptive, which has the potential to mitigate the impact of the attendance requirement. With this possibility of reduced prescription, and the development of the Authorisation Framework, providers may be able to offer more flexible courses to align with the Professional Statement which could have a positive impact on those with a disability.

We are currently undertaking interviews with students to increase our qualitative data on their experiences. We do not yet have confirmation of whether these students have a disability and it is therefore not possible to confirm, at this stage, whether we will have an increase in our qualitative data.

If, following the interviews, our evidence base has not developed, we could engage with networks of disabled lawyers to develop our understanding of the challenges which may be faced.

The Options

- *We do not anticipate that BPTC attainment of students with a disability will be adversely affected by any option*
- *Increased flexibility available under all options for the vocational stage will likely benefit students with a disability*
- *Increased accessibility to pupillage providers could increase under all options*
- *The good geographical spread of training will likely remain under Options A and B*
- *Regional availability of vocational training is uncertain under Option C and Bar Council/COIC*

Option A

We do not anticipate that BPTC attainment of students with a disability will be adversely affected by the retention of Option A, or the reforms to the BPTC, as our regression analysis has shown that disability does not have a significant predictive effect on BPTC attainment once variables, such as prior educational attainment, are controlled.

It is likely that with the reduction in prescription and the alignment with the Professional Statement that the vocational training will become more flexible, as providers will, for example, have more scope in the delivery of their teaching and the outcomes of the Professional Statement may be met in more flexible ways than at present. This could have a positive impact on individuals with a disability as teaching models/modes may be more accessible.

We anticipate that our reforms to work-based learning, with the encouragement of other, non-traditional settings to offer opportunities, then there could be an improvement, in regards to accessibility for some physically disabled barristers, than under the current system. More engagement with prospective providers is required to understand the likelihood of this and the potential impact this could have on some physically disabled barristers.

We anticipate that the good geographical spread of courses will continue.

Option B

We do not anticipate that BPTC attainment of students with a disability will be adversely affected if Option B were adopted.

It is likely that with the reduction in prescription and the alignment with the Professional Statement that the vocational training will become more flexible. Similarly, as Option B, as a regulatory approach, is designed to be more flexible, it is possible that pathways which have not been illustrated in our consultation are proposed which reduce the impact of the attendance requirement on those with a disability/medical condition.

Option B provides an opportunity for a variety of work-based learning providers to submit proposals for authorisation. This could positively impact on some students with a physical disability to access work-based learning in organisations other than chambers, where buildings may be more accessible and adaptable. More engagement with prospective providers is required to understand the likelihood of this and the potential impact this could have on some physically disabled barristers.

A minority of respondents to the consultation argued that there is a risk that if a number of pathways were approved that the good geographical spread of vocational training among the regions could be reduced as providers may no longer continue to be financially viable as fewer students attend each course. This could result in reduced accessibility as training becomes more London centric. This would likely result in an adverse impact compared to the current position⁶². To mitigate the impact of this, we would look to have a phased approach to the introduction of new training pathways so as to minimise the impact of a number of different pathways being authorised at the same time on the market and viability of providers.

Option C

We do not anticipate that BPTC attainment of students with a disability would be adversely affected if Option C were adopted.

A positive impact of this option is that it would enable students to prepare for the BEE in a way that best suits their personal circumstances which could positively impact on disabled students as they would not be required to formally attend.

Although we are developing reforms to work-based learning to enable greater flexibility for organisations, we anticipate that the challenges faced by some physically disabled pupils will continue as pupillages are likely to continue to be predominately offered in chambers. More engagement with prospective providers is required to understand the likelihood of this and the potential impact this could have on some physically disabled barristers.

We do not have the evidence to know whether preparatory course will emerge for the BEE. If this course does emerge, then it is possible that it will be offered in a number of regions throughout the country. However, it could also be that students continue to study a law degree to prepare for this and therefore, the geographical spread would be far greater and positively impact on students.

⁶² We received a number of responses to our consultation which agreed of the importance for equality reasons that training is provided among the regions (see Manchester Law School and the School of Law at Cardiff University).

We do not have evidence to know where the skills course will be provided. It is possible that it continues to be offered across the country and therefore this could have a positive impact on students with a disability for the reasons outlined in the opening section.

However, there is a risk that international popularity decreases, which could threaten their financial viability⁶³. If this were to occur, then students with a disability could be adversely affected because the geographical spread of the course may decrease and the costs may increase. For the reasons outlined in the opening section regarding the reference to study location and financial support, this could result in a greater adverse impact, compared with the current position. More research is required to understand the likelihood of this.

Bar Council/COIC

We do not anticipate that BPTC attainment of students with a disability will be adversely affected if the Bar Council/COIC option were to be adopted.

This option has the potential to improve the flexibility for students with a disability to study part one, as they may do this in a way that best suits their personal circumstances. However, with the possibility of fewer students passing part one, there is a risk that providers may struggle to remain financially viable as there are fewer students undertaking the skills course. This could decrease the accessibility to the skills course in the regions and increase costs, presenting the same challenges to student with a disability as under Option C. This has the potential to result in a greater adverse impact than under the current pathway as individuals with a disability are more likely to be in poverty than non-disabled individuals and may prefer to study closer to home⁶⁴.

Although we are developing reforms to work-based learning to enable greater flexibility for organisations, we anticipate that the challenges faced by some physically disabled pupils will continue as pupillages are likely to continue to be predominately offered in chambers. More engagement with prospective providers is required to understand the likelihood of this and the potential impact this could have on some physically disabled barristers.

⁶³ Responses to our consultation from academic institutions, including City and Northumbria Law School highlighted the importance of the international market on stabilising costs.

⁶⁴ BSB Risk Outlook (2016) [50]. Data available at: <http://www.irr.org.uk/research/statistics/poverty/> and http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf. We also received a number of responses to our consultation which agreed of the importance for equality reasons that training is provided among the regions (see Manchester Law School and the School of Law at Cardiff University).

Age	<p>The current position</p> <p>Our consultation did not define the age for mature students. For the purposes of this assessment, we have considered this to be from age 35. We have used this threshold as this is how our figures are aggregated in our diversity reports and we considered the bracket of 25-34 too unreflective.</p> <p>We do not currently have data to show whether the age of students has a significant impact on BPTC attainment.</p> <p>Our 'BPTC Key Statistics' report 2016 shows that the majority of students on the BPTC were aged under 35⁶⁵. Our 2016 consultation highlighted that the strictly sequential nature of the training can be a barrier for mature students as they are required to invest heavily in the cost of the BPTC, usually before they have obtained pupillage⁶⁶. However, a minority of respondents to our consultation highlighted that it is the structure of the BPTC which is inflexible for mature students, especially if they have financial and family commitments, as well as employment.</p> <p>We anticipate that a positive impact of the current training is that it has a good geographical spread which improves accessibility among the regions. This could be of importance for mature students for the reasons outlined above.</p> <p>Our 'Diversity at the Bar' report 2015 showed that for pupils between 2014-15, 22.3% were under 25, 66.7% were 25-34, 7.4% were 35-44 and 3% were 45 and older⁶⁷.</p> <p>This compares with 20.7%, 68.7%, 6.5% and 3.6% respectively for the 2016 report⁶⁸.</p> <p>Of the pupils who disclosed their age, 10.5% of pupils in 2015 were considered mature students⁶⁹, which decreased to 10.1% in the 2016 report⁷⁰.</p> <p>We do not have evidence to suggest that the current system of work based learning adversely impacts on pupils due to their age.</p>
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⁶⁵ BPTC Key Statistics 2016 An analysis of students over three academic years [19]

⁶⁶ Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [5.14]

⁶⁷ Bar Standards Board (2015) Report on diversity at the Bar [10]. We do not hold data for 0.48% of pupils in 2015.

⁶⁸ Bar Standards Board (2016) Report on diversity at the Bar [9]. We do not hold data for 0.48% of pupils in 2016.

⁶⁹ Bar Standards Board (2015) Report on diversity at the Bar [10]

⁷⁰ Bar Standards Board (2016) Report on diversity at the Bar [9-10]

The Options

- *All options offer increased flexibility in the vocational training which will be likely have a positive impact upon mature students*
- *The geographical spread of training is likely to remain under Options A and B but is unknown for Option C and Bar Council/COIC proposals*
- *Option B provides opportunity for increased access to pupillage for mature students*

Option A

It is likely that with reduced prescription on the BPTC that more flexibility may emerge. This could positively impact mature students as they could have greater flexibility in the structure of the course to fit attendance around other commitments, including family and employment.

It is likely that the positive impacts from the wide geographical spread of training will continue.

Option B

It is likely that with reduced prescription on the BPTC that more flexibility may emerge. This could positively impact mature students as they could have greater flexibility in the structure to fit attendance around other commitments.

Some respondents to the consultation argued that there is a risk that if a number of pathways were approved that the good geographical spread of vocational training among the regions could be reduced as providers may no longer continue to be financially viable as fewer students attend each course. This could result in reduced accessibility as training becomes more London centric. This would have a greater adverse impact than under the current position as mature students may wish to study closer to home due to personal commitments. To mitigate the impact of this, we would look to have a phased approach to the introduction of new training pathways so as to minimise the impact of a number of different pathways being authorised at the same time on the market and viability of providers.

Whilst we do not anticipate the market for Option B(iii) to become significant, there is the possibility that it presents a greater barrier to mature students, who have already completed the academic and vocational elements.

However, it is possible this approach could benefit mature students who have already completed the vocational training as they may be a popular choice for work based learning providers. It is possible that they could apply for exemptions for some parts of the course.

The modular approach could have a positive impact for mature students as they are likely to have prior work experience, which may be desirable to work-based learning providers. This could be positive for mature students as the cost of learning may be offset with earnings which could be desirable if they have financial commitments.

We do not have evidence to know of the number of providers who will submit proposals for this pathway. If it is not widely available, access may be more challenging. However, this is unlikely to result in a greater adverse impact than at present and with the reforms already taking place to work-based learning, this is unlikely to have a significant impact.

Important considerations of other factors are also relevant here. It may be that students are also from lower socio-economic backgrounds which could further aggravate the adverse impacts if there is reduced accessibility among the regions. As above, a phased approach would be adopted so as to mitigate the risk of this.

Option C

The lack of requirement for specific training for the entrance examination could increase accessibility for mature students as they could prepare in a way which best suits their personal circumstances.

Similarly with the current BPTC, the proposed skills course would require formal attendance which could adversely impact on mature students who have other commitments. Further research would be required to understand how this could be structured to provide flexibility and reduce the impact of formal attendance.

One of our equality objectives is to collaborate with providers to develop best practice and it is likely that this could mitigate the impact that formal attendance on the skills course could have for mature students.

We do not have the evidence to know whether a preparatory course will emerge for the BEE. If this course does emerge, then it is possible that it will be offered in a number of regions throughout the country which could have a positive impact on mature students, particularly if they have personal commitments. However, there is currently a lack of research to know whether this will develop.

We do not have evidence to know where the skills course will be provided. It is possible that it continues to be offered among the regions and therefore this could positively impact mature students, particularly if they have personal commitments.

However, there is a risk that if international popularity decreases, then the financial viability of providers may be threatened⁷¹. If this were to occur, then mature students could be adversely affected because the geographical spread of the course may decrease.

Bar Council/COIC

A positive impact of this option is that it would enable students to prepare for part one in a way that best suits their personal circumstances. This could positively impact on mature students as they could manage their studying around other commitments and would not be required to formally attend which brings cost savings. This could have a positive impact as they are not required to commit upfront to a large cost of training if they have not already gained pupillage⁷².

However, as part two would require formal attendance, then the concerns around flexibility of the vocational training may persist. However, as outlined in Option A, with a reduction in prescription and the alignment of the skills course with the Professional Statement, then the adverse impacts on mature students may be mitigated.

With fewer overall students passing stage one and proceeding to stage two, there is the potential that accessibility to the skills course in the regions may decrease as providers struggle to remain financially viable. Costs may also be high for the skills course. This is likely to have an adverse impact on mature students who may have financial and family commitments. We do not currently have evidence to know whether this will occur.

⁷¹ Responses to our consultation from academic institutions, including City and Northumbria Law School, highlighted the importance of the international market in stabilising costs.

⁷² This is likely as a minority of students gained pupillage either before or during their BPTC - Future Bar Training (FBT) reforms – review of existing evidence, BSB Research Team, February 2016 [5.14]. More disaggregated data could be useful to understand the profile of students who gained pupillage before completing the BPTC to see if there is a correlation with the protected characteristics, socio-economic background and caring responsibilities.

<p>Sexual Orientation</p>	<p>The current position</p> <p>Within our ‘Diversity at the Bar’ report in 2016⁷³, we do not hold data for 31.8% of pupils. Of the pupils who did respond, 63.1% declared they were heterosexual/straight, 2.7% declared they were gay⁷⁴ and 2.2% were bisexual.</p> <p>Comparatively, within in the 2015 report⁷⁵, we do not hold data for 16.9% of pupils. Of the pupils who did disclose their sexual orientation, 78.2% were heterosexual/straight, 4% were gay⁷⁶ and 0.95% were bisexual.</p> <p>Having low disclosure rates can make meaningful analysis and conclusions challenging. In 2016, the BSB hosted a LGBT roundtable discussion which considered how to improve response rates to equality questionnaires and we are looking to develop these considerations in future.</p> <p>We recognise that our evidence base could be improved in regards to sexual orientation and we are developing an engagement strategy to seek the views of LGBT groups on our chosen route.</p> <p>The Options</p> <p>Our evidence has not highlighted any obvious impacts in relation to sexual orientation but as we have a lack of qualitative evidence about the experiences of LGBT students and pupils, we cannot fully anticipate whether there will be positive or adverse impacts from any of the options. We recognised this knowledge gap and are therefore looking to engage with LGBT groups regarding the impact of the chosen option. The Authorisation Framework will also have provision to consider the impact on LGBT students and pupils from their proposal.</p>
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⁷³ Bar Standards Board (2016) Report on diversity at the Bar [12]

⁷⁴ 2.2% declared they were a gay men and 0.5% declared they were a gay women

⁷⁵ Bar Standards Board (2015) Report on diversity at the Bar [12]

⁷⁶ 2.4% declared they were a gay men and 1.7% declared they were a gay women

Religion/Belief	The current position	
	Our 'Diversity at the Bar' report 2015 ⁷⁷ shows the following regarding religion/belief of pupils:	
	Agnostic	0.7%
	Buddhist	0.00%
	Christian (all denominations)	33.3%
	Hindu	0.7%
	Jewish	2.6%
	Muslim	3.1%
	Sikh	1.0%
	No religion/belief	39.4%
	Other religion/belief	0.5%
	We do not hold data for 18.8% of pupils in 2015	
	This compares with our 'Diversity at the Bar' report 2016:	
	Agnostic	1%
	Buddhist	0.2%
	Christian (all denominations)	28.4%
	Hindu	1.2%
	Jewish	2.4%
	Muslim	3.1%
	Sikh	0.5%
No religion/belief	29.6%	
Other religion/belief	0.7%	
We do not hold data for 32.8% of pupils in 2016		

⁷⁷ Bar Standards Board (2015) Report on Diversity at the Bar [11]

Our consultation events have highlighted anecdotal accounts of how the current structure of the part time BPTC course is inflexible and inaccessible. Part time teaching can often take place on a Saturday which may be inaccessible for certain individuals, e.g. Jewish students. This issue is likely to also impact on the attendance requirement mentioned within the disability section, i.e. 90% and above. As above, Jewish students account for, on average across 2015 and 2016, 2.51% of BPTC students (who disclosed their religion/beliefs). Our research report highlighted that part time teaching on the BPTC was only available at one provider on weekdays, with the majority of the remaining providers who offer the course part time, only providing weekend teaching. We recognise the challenges which may be faced by some students due to their religion and we anticipate that the Authorisation Framework will consider the steps providers, who are faced with this issue, will take to mitigate the impact of this.

We do not currently have data which considers how religious festivals may impact on training. Again, the Authorisation Framework will consider how providers will accommodate students who observe religious festivals, and as set out within our Equality Strategy, we will work with providers to influence best practice.

We do not have data which provides a breakdown, or comparison, of the progression of students from various religions/beliefs. We have not conducted this because we have low response rates to our equality questionnaires which would provide these figures. From the data we do have, there is an insufficient sample to provide meaningful conclusions.

We do not have evidence to suggest that there is any impact on students or pupils who hold non-religious beliefs. Similarly, there were no responses to the 2016 consultation highlighting concerns of this issue.

We do not have evidence to suggest that the current system of work-based learning adversely impacts on pupils due to their religion/belief.

Our equality objectives include beginning work with providers to identify and influence best practice. With this objective and implementation of the Authorisation Framework, we could improve the accessibility and flexibility of teaching so that it is accessible for all students, especially on the part time BPTC.

The Options

- *The increased flexibility available under all routes will likely positively impact on students with religion/beliefs*

Option A

The inflexibility of the current BPTC can adversely impact those from particular faiths, as outlined above. It is possible that the Authorisation Framework will mitigate this impact and therefore reduce the current disadvantage.

Option B

As in Option A, attendance on the part time BPTC may be inaccessible to students from particular faiths. It is possible that the combination of academic and vocational, and vocational and work-based learning, may result in weekday only teaching, even if it is on a part time basis, providing an opportunity to improve access in comparison to the current position. In addition, the Authorisation Framework will consider how providers will accommodate students who may be affected by the structure of the course due to their religion/belief.

Option C

By enabling students to prepare in a way that suits their circumstances for the BEE, then this could have a positive impact on those from particular faiths. However, we do not currently have evidence as to whether a preparatory course will emerge. If this does develop, the assessment of the provider against the Authorisation Framework could mitigate the adverse impact of the attendance requirement.

However, as the skills course would require formal attendance, then similar adverse impacts that are experienced by those from particular faiths on the BPTC are likely to persist. However, with a more collaborative approach with training providers, as set out in our equality objectives, we hope to influence best practice which may mitigate the impact of this.

Bar Council/COIC

If students choose private study for part one, then inaccessibility concerns may be mitigated. However, the same concerns in the present system permeate if they were to choose the traditional learning and undertake part two.

As above, a collaborative approach with providers, reforms to the BPTC and the implementation of the Authorisation Framework, could mitigate this and result in greater accessibility than under the current system.

<p>Gender Reassignment</p>	<p>The current position We do not currently have research on gender reassignment and training for the Bar.</p> <p>The Options Our evidence has not highlighted any obvious impacts in relation to sexual orientation but as we have a lack of qualitative evidence about the experiences of students and pupils who are proposing to undergo, are undergoing or have undergone a process of gender reassignment, we cannot fully anticipate whether there will be positive or adverse impacts of any of the options. However, it is possible, for example, that the high attendance requirements of the BPTC could present challenges for individuals in the process of gender reassignment as they may need medical appointments. The changes we are making to the BPTC may result in greater flexibility which could reduce the impact of this and also, the Authorisation Framework will have provision to consider the impact on students and pupils who are proposing to undergo, are undergoing or have undergone a process of gender reassignment from their proposal.</p>
<p>Pregnancy/ Maternity</p>	<p>The current position In 2015 we published our ‘Women at the Bar’ report which sought to understand the experiences of women in the profession. Whilst the report did highlight that awareness of maternity/parental leave policies is high, there was little transferrable research which applies to training for the Bar⁷⁸.</p> <p>Aside from the above, we do not have evidence regarding the impact of pregnancy on training for the Bar.</p> <p>We have not consulted with women who were pregnant during their training for the Bar but it is possible that the results of the interviews may improve our understanding of this.</p> <p>Our BPTC and pupillage statistics do not provide a breakdown of women who became pregnant during their training and it is therefore difficult for us to understand their experiences and how each of the options may have impacted on them.</p>

⁷⁸ Bar Standards Board. 2015. Women at the Bar

	<p>The Options</p> <p>Options A and B</p> <p>Due to the high attendance requirements of the BPTC, women who are pregnant/maternity may find this difficult to comply with if they are required to attend medical appointments. However, we do not have evidence to support this and our evidence has not highlighted other obvious impacts in relation to pregnancy/maternity. However, as we have a lack of qualitative evidence about the experiences of students and pupils who are/have been pregnant during training, we cannot fully anticipate whether there will be positive or adverse impacts from Options A or B. The Authorisation Framework will have provision to consider the impact on students and pupils who are pregnant to mitigate any adverse impacts which may arise.</p> <p>Option C and the Bar Council/COIC option</p> <p>In addition to the above, Option C and the Bar Council/COIC option has the potential to positively impact on students who are pregnant as there is greater flexibility in the preparation for the BEE or part one.</p>
<p>Marriage and Civil Partnership</p>	<p>The current position</p> <p>We have not consulted with students/pupils who were married or entered a civil partnership during their training, nor do we hold statistics for those who are married or in civil partnerships on the BPTC and in pupillage. We therefore do not know of the impact this characteristic may have.</p> <p>The Options</p> <p>Our evidence has not highlighted any obvious impacts in relation to marriage/civil partnership, but as we have a lack of qualitative evidence about the experiences of students and pupils in regards to this, we cannot fully anticipate whether there will be positive or adverse impacts from each of the options. However, our Authorisation Framework will have provision to consider the impact on students and pupils with this characteristic and if there are any concerns during the validation process, then providers will need to mitigate this.</p>

<p>Other Identified Groups</p>	<p>Socio-economic background</p> <p>The current position</p> <p>Under the current training system those from lower socio-economic backgrounds are underrepresented on the BPTC and in the profession.</p> <p><u>The research</u></p> <p>Our ‘Diversity at the Bar’ report 2016 showed that 21.0% of pupils attended a fee paying school, compared with 41.2% of pupils who attended a state school⁷⁹.</p> <p>Our ‘Diversity at the Bar’ report 2016 showed that 45.1% of pupils in 2016 were not the first generation within their family to attend university, compared with 24.6% of pupils who were⁸⁰.</p> <p><u>Costs</u></p> <p>There is some evidence to suggest that the decisions students make before they go to university are partly driven by considerations of cost and likely debt upon graduation⁸¹. There is also some research suggesting that those from lower socio-economic backgrounds are more likely to be debt averse than those from other social classes and are more likely to be deterred from going to university by the prospect of excessive debt.</p> <p>It is reasonable to think that these factors may have some influence on the make-up of the barrister profession.</p> <p>For the 2012 cohort of degree students, the average debt on completion of Bar training could be £73,000, not including the cost of living. This investment usually comes before the attainment of pupillage.</p> <p>Students from lower socio-economic backgrounds may be unable to afford this cost, or be deterred by the prospect of taking out loans to cover this, especially before a guarantee of pupillage.</p> <p>In addition to the disadvantages outlined above, BAME and disabled students are more likely to experience a combined disadvantage as they are more likely be in poverty than those who are white and not disabled⁸².</p>
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⁷⁹ 7.5% of pupils in 2016 attended a school outside of the UK. We do not hold data for 30.4% of pupils in 2016 - Bar Standards Board (2016) Report on diversity at the Bar

⁸⁰ 0.7% did not attend university and we do not hold data for 29.6% of pupils in 2016 - Bar Standards Board (2016) Report on diversity at the Bar

⁸¹ http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf
[http://eprints.lse.ac.uk/21010/2/Does_the_fear_of_debt_deter_students_from_higher_education_\(LSERO\).pdf](http://eprints.lse.ac.uk/21010/2/Does_the_fear_of_debt_deter_students_from_higher_education_(LSERO).pdf)

⁸² BSB Risk Outlook (2016) [50]. Data available at: <http://www.irr.org.uk/research/statistics/poverty/>

There is funding available to assist with the cost of training, including student loans for the academic stage, and the Inns of Court. The Inns offer scholarships for the GDL and BPTC, with some limited funding for the professional stage. If the student wishes to complete additional credits, they may be eligible for a postgraduate loan of up to £10,000. Career development loans are also available but are not on as favourable terms as the postgraduate loan. If students choose to study the Mlaw at Northumbria, then all four years are costed at the undergraduate level, and a student loan (£9000) is available.

Socio-economic background and BPTC attainment

When considering the relationship between BPTC attainment and socio-economic background, we found that the school attended does not have a significant impact on BPTC attainment, once factors such as previous educational achievement is controlled for⁸³.

However, our research did identify that those students with one or more parents educated to a degree level were more likely to obtain a higher grade on the BPTC than students whose parents do not have a degree (20.5% compared to 9.6%)⁸⁴. We do not understand why parental degree has a significant impact and further research is therefore required.

We have commissioned interviews with students from lower and higher socio-economic backgrounds to understand their experience on the BPTC. This may provide some explanation of the differential levels of attainment.

Socio-economic background and pupillage

Socio-economic background significantly correlates with whether BPTC graduates obtain pupillage.

Of the students who completed the BPTC in 2013/14 and 2014/15 years, a significantly higher proportion of privately-educated graduates obtained pupillage than their state-educated peers (34.4% compared to 17.8%). Also, a significantly higher proportion of those whose parents were educated to degree level obtained pupillage, compared to those whose parents do not have a degree (31.3% compared to 14.5%).

⁸³ Bar Standards Board. 2016. Regression Report Write up

⁸⁴ Bar Standards Board. 2016. Regression Report Write up

Even when previous educational achievement (on both the BPTC and at undergraduate level) is controlled for, those with a private education and university educated parents are more likely to obtain a pupillage than their peers with equivalent prior educational achievement⁸⁵.

Our evidence report highlighted that 32.4% of pupils in 2010/11 obtained pupillage before starting on the BPTC, and 7% whilst studying. It would be beneficial to understand the socio-economic background of those pupils to see whether there is a correlation with socio-economic background. If the trend identified above is also present here, then students from lower socio-economic backgrounds have compounded disadvantage as they are the students who would benefit most from the guarantee of pupillage before investing in the BPTC. This is evidenced in our 'Analysis of the backgrounds of pupil portal applicants in 2010' report which shows that "Applicants expecting to have no debt were significantly more likely to have attended Oxbridge, for one or both parents to have attended university and to have gone to a fee paying school suggesting that there was possibly a relationship between level of debt and other indicators of socio-economic background"⁸⁶.

In our research on social mobility, we found that, inter alia, the level of social capital, the type of school attended, the prestige of university and parental occupation may provide some explanation as to the differing levels of attainment of pupillage based on socio-economic background⁸⁷.

Whilst we do have evidence which suggests that students from lower socio-economic backgrounds may face disadvantage if they obtain a pupillage with low financial compensation, this may be as a result of the area of work in which the pupil practises and in some cases be influenced by external factors, such as availability of legal aid, and as long as this covers the minimum regulatory requirement, we are limited in our scope to make improvements to this.

We do not have additional evidence which suggests that the structure of work-based learning has an adverse impact on the socio-economic background of pupils.

⁸⁵ Bar Standards Board (2016), Social mobility briefing

⁸⁶ The General Council of the Bar of England and Wales, *An analysis of the backgrounds of pupil portal applicants in 2010*, Caroline Carney, 2011 [18]

⁸⁷ Friedman, S., Laurison, D. and Miles, A., 2015. Breaking the 'class' ceiling? Social mobility into Britain's elite occupations. *The Sociological Review*, 63(2), pp.259-289

Some of the concerns with regards to those from lower socio-economic backgrounds are societal problems and we are limited in our remit to have a positive impact on disadvantage prior to training for the Bar.

However, we do recognise that those from higher socio-economic backgrounds are disproportionately represented at the Bar and we have therefore identified opportunities to mitigate this, regardless of which option is adopted.

Within our Risk Outlook, we identified one way to encourage access to the profession was by engaging with students at the earliest stages of training. Therefore, when developing our stakeholder engagement strategy, we anticipate this would include reaching out to education institutions to explain the adopted approach so that their students fully understand how to train for a career at the Bar, reducing the disadvantage of a lack of social capital.

Within our equality objectives, we are looking to work collaboratively with providers to influence best practice and where we identify the causes of disadvantage, we would take appropriate action to remedy this.

Intersectionality

Socio-economic background can impact on the protected characteristics discussed in this EIA. For example, we have considered how BAME and disabled students are more likely to be in poverty than white students⁸⁸, and how the potential for cost savings under Option C and the Bar Council/COIC option could be offset by the challenges BAME students will likely face regarding their attainment on the BPTC and progression to the skills course, i.e. some of the cost savings may not be realised if they have to pay for preparatory training.

The Options

- *Differential attainment on the BPTC is likely to persist*
- *Lower pupillage attainment for students from lower socio-economic backgrounds is likely to persist under all options*
- *Option B provides potential cost savings which could positively impact students from lower socio-economic backgrounds*
- *It is likely that pupils from lower socio-economic backgrounds will continue to face disadvantage if they obtain a pupillage with low financial compensation under all options*

⁸⁸ BSB Risk Outlook (2016) [50]. Data available at: <http://www.irr.org.uk/research/statistics/poverty/> and http://www.educationopportunities.co.uk/wp-content/uploads/Does_cost_matter_report_June16.pdf

Option A

As we do not anticipate that there will be a significant change to the costs of qualifying as a barrister, or the funding available, then students from lower socio-economic backgrounds are more likely to be adversely impacted or deterred from training for the Bar than those from higher socio-economic backgrounds.

It is likely that students from lower socio-economic backgrounds will continue to be adversely impacted on the BPTC, in regards to whether their parents are educated to degree level and their attainment, in comparison to individuals from higher socio-economic backgrounds. As above, further research is required to understand the causes for this. It is therefore not possible to predict whether the reforms to the BPTC will mitigate this.

We anticipate that disparity in pupillage attainment between lower and higher socio-economic background applicants will continue. However, with the reforms to work-based learning, it is possible that a greater number of pupillages are offered than at present.

It is likely that pupils from lower socio-economic backgrounds will continue to face disadvantage if they obtain a pupillage with low financial compensation.

Option B

It is difficult to anticipate fees to candidates under each of the Option B pathways, but we expect that the active approval of new and innovative pathways will introduce new price competition in the market.

Having more flexible pathways presents the opportunity to introduce cost savings and funding which will have a positive impact on those from lower socio-economic backgrounds. For example, under Option B(ii), there are cost savings as all four years are charged at the same rate as the undergraduate programme (£9,000), for which a student loan from the government is available. Similarly, if providers offer additional modules to make an LLM, then a postgraduate loan may be available.

We expect that the modular approach could offer the opportunity for candidates in some circumstances to offset some of the cost of training with earnings.

It is likely that students from lower socio-economic backgrounds will continue to be adversely impacted on the BPTC, in regards to whether their parents are educated to degree level and their attainment, in comparison to individuals from higher socio-economic backgrounds. As

above, we are undertaking further research, including conducting interviews with students from lower socio-economic backgrounds, to develop our understanding of why there is differential attainment on the BPTC with reference to socio-economic background.

As students from lower socio-economic backgrounds are likely to have lower social capital than those from higher socio-economic backgrounds, then they may be disadvantaged by multiple routes being authorised, impacting their chances of attaining pupillage, i.e. concerns of a “golden route”. As above, we are developing a stakeholder engagement strategy to mitigate the adverse impact that this may have.

Option B has the potential to increase the number and types of pupillages available as it provides scope for a wider variety of organisations to deliver clinical legal education. This could have a positive impact on those from lower socio-economic backgrounds as there could be more pupillages available.

Although it was suggested by a minority of respondents in our consultation that degree classification may become a more significant determining factor in obtaining pupillage under Option B(iii), we do not anticipate this will have a greater adverse impact on those from lower socio-economic backgrounds than at present.

It was suggested by a minority of respondents in our consultation that chambers may be less likely to offer training for employed pupils if they have not completed the academic and vocational training. We do not have evidence to support this.

It is likely that pupils from lower socio-economic backgrounds will continue to face disadvantage if they obtain a pupillage with low financial compensation. As has been identified previously, this falls outside the scope of our remit as it is influenced by external factors, such as the availability of legal aid work.

Option C

By enabling students to study in a way that best suits their personal circumstances for the BEE, then students from lower socio-economic backgrounds could be positively impacted by Option C in regards to affordability. However, this should be balanced against the risk that preparatory courses for the BEE may emerge, which could be expensive. Students from lower socio-economic backgrounds therefore face the risk of not receiving training which is as comprehensive as those who have the financial means to afford this. However, we do not have evidence to suggest what this figure may be and the funding

opportunities that may be offered.

Similarly, the skills course could be expensive which could present a barrier for those from lower socio-economic backgrounds, as in the current system. However, we do not know how much this will cost at present.

It is likely that the disparity in vocational attainment on the basis of parental degree is likely to persist and could have a more adverse impact than at present because students could be prevented from undertaking the skills course.

We anticipate that those from higher socio-economic backgrounds will continue to be offered pupillage at a significantly higher proportion than those from lower socio-economic backgrounds and we do not have evidence to know whether our reforms to work-based learning will result in a greater positive impact.

As Option C would require significant investment funds, which are likely to be recovered through practising certificate fees, then the number of pupillages available could decrease. This could result in an adverse impact on those from lower socio-economic backgrounds as these students are already under-represented.

It is likely that pupils from lower socio-economic backgrounds will continue to face disadvantage if they obtain a pupillage with low financial compensation.

Bar Council/COIC

As students are able to prepare for part one in a way that suits their personal circumstances, including private study, then accessibility to part one could be increased for students from lower socio-economic backgrounds as the costs could be reduced. However, there is the possibility of a two-tier system emerging that sees wealthier students able to afford comprehensive training for the part one exams. This may have a greater adverse impact on students from lower socio-economic backgrounds as our research has shown they tend to score lower on the BPTC than students from higher socio-economic backgrounds.

This problem would be further compounded if, as the Bar Council has suggested, application for pupillage occurs after completing part one, and even more so if students' scores in part one are factored into the allocation of pupillages.

There is also a concern, as highlighted by some respondents to our previous consultation, including the Association of Law Teachers and a BPTC provider, 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 mootings, 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”⁸⁹.

While part two, the skills element of the course, may be cheaper than the current BPTC as the knowledge modules are separated, it may still present a cost barrier to those from lower socio-economic backgrounds. Further evidence is required to develop our knowledge of what this cost may be and therefore to make meaningful comparisons between the cost of the current BPTC and the proposals that this model will present cost savings.

With fewer students paying for the skills modules, the costs of delivering this may be substantial which could adversely impact on those from lower socio-economic backgrounds, in a similar way outlined under Option A. However, as above, we do not know what the costs for the skills course may be and therefore, it is challenging to determine whether there will be a significant improvement to students from lower socio-economic backgrounds.

Further research is required to understand the funding which could be available under this option.

Whilst COIC have proposed two student intakes each year to provide savings in overheads, more evidence is required to understand the likelihood of this.

We do not have evidence to know of the cost implications for regulating this option and more evidence would therefore be required.

Whilst we know that students from lower socio-economic background score lower on the BPTC overall than those from higher socio-economic backgrounds, we do not currently have evidence which confirms whether attainment in the centralised assessments specifically is significantly affected by socio-economic background. If the trend of lower attainment overall also permeates into the centralised assessments, then students from lower socio-economic backgrounds are likely to be adversely affected as they are less likely to pass part

⁸⁹ BSB Future Bar Training - Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training Summary of responses (January 2016) [para 41.2]

one.

There is a risk that those from higher socio-economic backgrounds will continue to be offered pupillage at a significantly higher proportion than those from lower socio-economic backgrounds.

Some respondents to the consultation felt that the increased flexibility would enable students to undertake work experience. However, this could adversely impact on those from lower socio-economic backgrounds who may need to work to support their studies and could mean that their experience is not as extensive as those who have not needed to work during studying.

It is likely that pupils from lower socio-economic backgrounds will continue to face disadvantage if they obtain a pupillage with low financial compensation.

Caring responsibilities

The current position

Our 'Diversity at the Bar' report 2016 shows that 68.9% of pupils do not have caring responsibilities for children, compared with 0.7% who do⁹⁰ and 66.7% do not have caring responsibilities for other people⁹¹.

Our 'Women at the Bar' 2015 report highlighted that balancing the demanding nature of the Bar with caring responsibilities is difficult⁹² and this may dissuade able applicants from considering a career at the Bar⁹³.

Our consultation in October 2016 highlighted that the high cost of training can present a barrier for some students and it is unlikely that the reforms to the BPTC will radically increase participation of those with caring responsibilities as there is unlikely to be a significant cost reduction.

⁹⁰ We do not hold data for 30.4% of pupils in 2016 - Bar Standards Board (2016) Report on diversity at the Bar

⁹¹ 4.8% of pupils did have caring responsibilities; 1.4% at 1-19 hours per week and 3.4% at 20-49 hours per week. We do not hold data for 28.4% of pupils for 2016 - Bar Standards Board (2016) Report on diversity at the Bar [16-17]

⁹² Bar Standards Board. 2015. Women at the Bar [23]

⁹³ We have been unable to engage students with caring responsibilities in our interviews because the sample of students we have engaged is focused on socio-economic background and gender. However, it is possible that there are students with caring responsibilities within this sample which could increase our qualitative data. [Also see Structure, agency and career strategies of white women and black and minority ethnic individuals in the legal profession, Tomlinson et al 2013 \[263\]](#)

Our 2016 consultation also highlighted that the strictly sequential nature of the current training can be a barrier for those with caring responsibilities. However, a minority of respondents to our consultation did not consider that it is the sequential nature of the training which is inflexible to those with caring responsibilities, but rather, the structure of the BPTC. Whilst these respondents did not offer evidence in support of this, it may be that attendance requirements can be challenging for those with caring responsibilities.

Our equality objectives include beginning work with providers to identify and influence best practice. Therefore, with these objectives and implementation of the Authorisation Framework, we could improve the accessibility and flexibility of teaching so that it is accessible for all students, especially on the part time BPTC.

The Options

- *The opportunity for increased flexibility under all options for the vocational stage will positively impact students with caring responsibilities*
- *The work-based learning reforms under all options will positively impact students with caring responsibilities*
- *Option C and Bar Council/COIC could have a positive impact*

Option A

The inflexibility of the current BPTC can adversely impact on those with caring responsibilities. It is possible that the Authorisation Framework will mitigate this impact and therefore reduce the current disadvantage.

The reforms to work-based learning may provide the opportunity for increased flexibility which may have a positive impact on those with caring responsibilities.

Option B

By providing greater opportunity for innovation, it may result that more distance learning is offered as part of the vocational study. This may have a positive impact on those with caring responsibilities as structured attendance may not be required as frequently.

If a two tiered system emerges, this has the potential to disadvantage those with caring responsibilities who may favour a more flexible pathway. We do not have evidence to be certain this disadvantage will materialise.

Option C

As students may prepare for the entrance exam in a more flexible way which suits their circumstances, this could have a positive impact for those with caring responsibilities who may find attendance on a structured course more difficult.

However, attendance on the skills course may have an adverse impact on those with caring responsibilities. With the reduction in prescription and alignment with the Professional Statement, it is likely that this risk will be mitigated.

There is a risk that students with caring responsibilities may not pursue traditional class room training, which is likely to be more comprehensive in preparing for the BEE. When compared with other students without caring responsibilities, who may be able to attend this training, then those with caring responsibilities may be adversely impacted. More evidence is required to know whether a preparatory exam will emerge.

Bar Council/COIC

The ability to study in a way that best suits a student's learning style and personal circumstances for part one enables greater flexibility which could have a positive impact on those with caring responsibilities.

The skills course is estimated to be up to five months which may present a challenge to those with caring responsibilities due to the formal attendance requirement. However, as this is shorter than the current BPTC, then the impact is likely to be more positive than the current pathway. With the reduction in prescription and alignment with the Professional Statement, it is likely that this risk will be mitigated.

3. Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision)		
a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	
b. Continue the policy (impacts identified)	Continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	x
c. Adjust the policy and continue	Take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	x
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	
Reason for decision:		
<p>We think that Option B, which may include the Bar Council/COIC option (if proposals are submitted to us), has the greatest potential to increase access to the profession and provides the greatest opportunity for cost savings to make training for the Bar more affordable.</p> <p>Although there are potential adverse impacts, we are taking steps to address these through the reforms to the BPTC and work-based learning, the development of the Authorisation Framework and, if Option B is adopted, a phased introduction of different pathways.</p> <p>We also anticipate the development of an engagement strategy to ensure there is clear information on how to train for the Bar, reducing the influence, to some extent, of social capital, advancing equality of opportunity for BAME students, as well as those from lower socio-economic backgrounds.</p>		

4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.

Race

Action Required	Desired Outcome	Person Responsible	Timescale
A research report, with the responses of the BPTC students from the interviews which are currently being conducted, should be provided to the Research team	We are provided with full details from the interviews which develop our understanding of the barriers which BAME students may face	Research team	April 2017
Consider whether further engagement with BAME lawyers is required following the responses from the interviews with BAME students	Development of our knowledge of the challenges faced by BAME students and pupils The above would improve future training pathways for BAME students		Quarter 4 Once the new training system is implemented
To undertake further research about the profile of BAME barristers who are successful in gaining pupillage	We will have a better understanding of the intersectionalities between race and other characteristics, such as socio-economic background	Research team	TBC
Continue to run BPTC attainment analysis for ethnicity	Understand why there is disparity between race and attainment on the BPTC	Research team	TBC

Action Required	Desired Outcome	Person Responsible	Timescale
	<p>The identification of the causes of disadvantage for BAME students on the BPTC</p> <p>Better understanding of whether our changes have made an impact</p>		
<p>To assess the pathways that separate the knowledge and skills modules and ask providers who are proposing this, to provide research on the impact that the separation could have</p>	<p>Better understanding of the impact which the separation of the knowledge and skills courses could have</p>	<p>Prospective providers</p>	<p>When the proposal is submitted to us for authorisation</p>
<p>For prospective providers of Option C or the Bar Council/COIC option to provide evidence of whether there would be a barrier for international students in studying on their course, with specific reference to visa eligibility</p>	<p>Better understanding of the impacts on international students from changing the structure of the BPTC</p>	<p>Prospective providers</p>	<p>When the proposal is submitted to us for authorisation</p>
<p>Develop a stakeholder engagement strategy</p>	<p>Targeted outreach work to mitigate the impact on BAME students who may lack social capital</p> <p>Provide clear information on training on our website</p>	<p>Communications</p>	<p>April 2017</p>
<p>Develop and test the Authorisation Framework</p>	<p>The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to race</p>	<p>Regulatory Assurance/Strategy and Policy</p>	<p>Autumn 2017</p>

Gender

Action Required	Desired Outcome	Person Responsible	Timescale
A research report, with the responses of the BPTC students from the interviews which are currently being conducted, should be provided to the Research team	To develop our qualitative research of the challenges which may be present as a result of gender	Research team	April 2017
Consider the responses to the interviews which are being undertaken with students and whether these provide information about BPTC attainment of males and females on the basis of degree classification and whether, following this, further research is required	Understanding of why UK domiciled males achieve Outstanding on the BPTC at a higher rate than females who have the same degree class Understand why UK domiciled females with a lower second class degree fail the course at a higher percentage than males	Research team	TBC
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to gender	Regulatory Assurance/Strategy and Policy	Autumn 2017

Disability

Action Required	Desired Outcome	Person Responsible	Timescale
Consider the evidence report from the interviews which are currently being conducted to identify whether the interviewees had a disability	To develop our qualitative research of the challenges which may be present for students with a disability	Research team	April 2017
Explore whether engagement with networks of disabled lawyers is required following the interviews	To develop our EIA analysis of the potential impacts which the chosen route will have on disabled students and understanding of the impact this may have on the chosen training route	Research team	TBC
Explore the reduction in prescription of the attendance requirement within the BPTC Handbook	Greater flexibility in achieving the desired outcomes to reduce the impact of the attendance required	Regulatory Assurance	TBC
Exploration of the likelihood of non-traditional pupillage providers entering the market	Increased access of pupillage as more providers are able to enter the market The testing of the Authorisation Framework will assist this exploration	TBC	TBC
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to disability	Regulatory Assurance/ Strategy and Policy	Autumn 2017

Age

Action Required	Desired Outcome	Person Responsible	Timescale
If Option C is adopted, further research would be required to understand how the BEE may be structured	Clarity of how the course will be structured to provide more information for the EIA	TBC	TBC
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to age	Regulatory Assurance/ Strategy and Policy	Autumn 2017

Sexual orientation

Action Required	Desired Outcome	Person Responsible	Timescale
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to sexual orientation	Regulatory Assurance/ Strategy and Policy	Autumn 2017

Religion/belief

Action Required	Desired Outcome	Person Responsible	Timescale
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to religion/belief	Regulatory Assurance/ Strategy and Policy	Autumn 2017

Gender reassignment

Action Required	Desired Outcome	Person Responsible	Timescale
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to gender reassignment	Regulatory Assurance/ Strategy and Policy	Autumn 2017

Pregnancy/maternity

Action Required	Desired Outcome	Person Responsible	Timescale
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to pregnancy/maternity	Regulatory Assurance/ Strategy and Policy	Autumn 2017

Marriage/Civil Partnership

Action Required	Desired Outcome	Person Responsible	Timescale
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to marriage/civil/partnership	Regulatory Assurance/ Strategy and Policy	Autumn 2017

Socio-economic background

Action Required	Desired Outcome	Person Responsible	Timescale
Complete interviews with students from lower and higher socio-economic backgrounds and following the review of their responses, consider whether further research is required to understand the impact of socio-economic background on BPTC attainment	To develop our qualitative research of the experiences for students from lower and higher socio-economic backgrounds and to understand why parental degree has a predictive effect on attainment on the BPTC	Research	April 2017
Investigate whether there is more information about the students who are successful in gaining pupillage before starting the BPTC	Enhance our understanding of the impact of socio-economic background and pupillage	Research	TBC
As clear information about the training pathway may reduce the impact of a lack of social capital, we will develop an engagement strategy with educational institution	That students from lower socio-economic backgrounds are not disadvantaged by having lower social capital than those from higher socio-economic backgrounds	TBC	TBC
Explore further options for reducing potential discrimination during the application process	To mitigate the impact of socio-economic background	TBC	TBC
For prospective providers to provide further information as to the potential cost of part one of the Bar Council/COIC option	To better anticipate the impacts of this option on those from lower socio-economic backgrounds	Prospective providers	When prospective providers seek authorisation
For prospective providers to provide further information as to the potential funding options under the Bar Council/COIC option	To better anticipate the impacts of this option on those from lower socio-economic backgrounds	Prospective providers	When prospective providers seek authorisation

Action Required	Desired Outcome	Person Responsible	Timescale
For prospective providers to provide further information as to the likelihood of them having two student intakes per year	To understand whether the cost impacts identified by COIC will be realised	Prospective providers	When prospective providers seek authorisation
Further research to understand the cost implications of regulating the Bar Council/COIC option	To better understand how much this will cost to regulate	TBC	TBC
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to socio-economic background	Strategy and Policy	Autumn 2017

Caring responsibilities

Action Required	Desired Outcome	Person Responsible	Timescale
Develop and test the Authorisation Framework	The Authorisation Framework will ensure a robust assessment of the impact of the prospective provider's proposal with regards to caring responsibilities	Regulatory Assurance/ Strategy and Policy	Autumn 2017

(Version 1: 4 March 2014)

Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007

The provision of guidance

1. Section 162 of the Legal Services Act 2007 (the Act) allows the Legal Services Board (the LSB) to give guidance:
 - About the operation of the Act and any order made under it
 - About the operation of any rules made by the Board under the Act
 - About any matter relating to the functions of the LSB
 - For the purpose of meeting the regulatory objectives
 - About the content of licensing rules
 - About any other matters about which it appears to the LSB to be desirable to give guidance
2. Guidance under section 162 may consist of such information and advice as the LSB considers is appropriate. The LSB will have regard to the extent to which an approved regulator has taken into account guidance when exercising its functions.

Purpose of this document

3. This document sets out the LSB's guidance to approved regulators on their regulatory arrangements for education and training. It is aimed at existing approved regulators and those applying to the LSB for designation as an approved regulator or licensing authority.
4. We expect all regulators to be considering the evidence and recommendations contained within the Legal Education and Training Review and to complete a review of their regulatory arrangements for education and training. This guidance sets out the principles that we expect approved regulators to take account of in that review. Any approved regulator that departs from our guidance must justify doing so with explicit reference to the regulatory objectives and better regulation principles supporting such departure.
5. The LSB considers that the information provided here gives sufficient clarity as to the outcomes to be delivered, while allowing an appropriate degree of discretion for approved regulators to decide how best they can be secured, their relative priorities and an appropriate timeframe.

Our approach

6. Under the Act the LSB has two important oversight responsibilities. Under section 3 of the Act it is the LSB's duty to promote the regulatory objectives and to have regard to the better regulation principles. Under Section 4 the LSB must 'assist in the maintenance and development of standards in relation to the regulation by approved regulators of persons authorised by the approved regulator to carry on activities which are reserved legal activities' and 'the education and training of persons so authorised'. This provision allows (and indeed imposes a positive duty on) the LSB to take action to help in the development of regulatory standards and specifically education and training.
7. Education and training is one of a number of tools available to regulators to manage risk and support the delivery of the regulatory objectives set out in the Act. This has particular relevance to the need to protect and promote the interests of consumers and to encourage an independent, strong, diverse and effective legal profession. Regulators must also act in accordance with the better regulation principles.
8. In our regulatory standards framework the LSB has set out clear criteria for how regulation needs to change:
 - An outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly plural and diverse market
 - A robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk
 - Supervision of the regulated community at entity and individual level according to the risk presented
 - A compliance and enforcement approach that deters and punishes appropriately
9. This framework does not explicitly cover education and training requirements but, as with all regulatory tools, we see a need for regulators to take a risk based and outcomes approach in this area. This is supported by the recommendations within the LETR and is reflected within this guidance.

Outcomes

10. Over time we expect regulators to have in place regulatory arrangements for education and training that deliver the following outcomes:
 - Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation
 - Providers of education and training have the flexibility to determine how to deliver training, education and experience that meets the outcomes required

- Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency¹ requirements
- Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and on an ongoing basis
- Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession

11. While we believe the outcomes stand independently, our guidance sets out our views on how they might best be achieved. In order to ensure coherence across the objectives, regulators should consider all of the objectives together and not in isolation from each other.

Outcome 1: *Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation*

- a. Requirements may be role or activity specific, with certain universal requirements being consistent regardless of regulator. These universal requirements may focus on areas such as professional principles and ethics
- b. Regulators move away from 'time served' models that focus predominantly on inputs rather than outcomes as a default position
- c. Requirements exist only where needed to mitigate risks posed by the provision of a legal activity. We would therefore expect regulators to review their approach to the regulation of students. It is difficult to see how the regulatory burdens and costs involved can be justified when students are acting under the supervision of a qualified person and in many cases within a regulated entity
- d. Regulators act to facilitate easier movement between the professions, during training, at the point of qualification and beyond
- e. Regulators review requirements regularly to ensure that education and training stays current and relevant to modern practice

Outcome 2: *Providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the outcomes required*

- a. Approval of education and training routes is dependent on providers' ability to demonstrate how their approach enables candidates to achieve the required outcomes

¹ By competency we mean the minimum skills, knowledge and behaviours that are required to satisfactorily provide authorised legal services in a manner that is compliant with existing rules and regulations of practice.

- b. Regulators take care not to predetermine approval by prescribing particular routes
- c. Multiple routes to authorisation are able to emerge, with no one route being the 'gold standard'²
- d. Approval processes for new routes to authorisation support providers in their delivery of the required education and training outcomes and do not put in place unnecessary obstacles (for example, not requiring burdensome authorisation and reporting requirements, repeated waivers or exemptions from regulators)
- e. Regulators complement rather than duplicate existing quality assurance processes such as those undertaken by higher education institutions themselves and those carried out by the Quality Assurance Agency (QAA). We would expect all regulators to undertake a review of their existing quality assurance processes to identify where changes can be made

Outcome 3: *Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements*

- a. Education and training requirements should be set at the minimum level at which an individual is deemed competent for the activity or activities they are authorised to do
- b. Requirements beyond the minimum are only in place where they can be justified by the risks. We would expect regulators to review all available evidence to determine the likelihood of the risk occurring and to monitor the impact of any requirements over time. This may lead to an ongoing review cycle with strong links to regulatory supervision functions
- c. The balance between initial and ongoing requirements for education and training should be determined in accordance with the risks posed by that activity
- d. Regulators should consider whether broad based knowledge of all areas of law needs to be a prerequisite for authorisation in all areas. For example, there may be areas where the risks allow for authorisation in a specific activity and a broad base of knowledge is not necessary
- e. On the job training is utilised where knowledge can be obtained effectively in this way rather than requiring all knowledge to be obtained before authorisation

² 'Gold standard' refers to any route that meets the prescribed outcome and is considered preferable to the other available routes

- f. Continuing Professional Development (CPD) participants are required to plan, implement, evaluate and reflect annually on their training needs. A robust approach to monitoring is developed and aligned or integrated with existing supervision functions
- g. Regulators are risk based in relation to reaccreditation and make a clear assessment about its use. Significant risk based requirements at the point of authorisation are likely to indicate sufficient risk to require some form of reaccreditation. However, this does not mean that wherever there is an initial requirement this must be duplicated at a later date.

Outcome 4: *Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and ongoing*

- a. Regulators move towards obtaining assurance from entities that day-to-day competency requirements are being met. This means a shift away from low risk decisions (e.g. about staff secondments) being made by regulators themselves
- b. When authorising an entity to provide reserved legal activities, regulators focus on ensuring the appropriate controls and supervision arrangements are in place to ensure the competence of all those employed to provide legal services and not only those with professional titles. For the avoidance of doubt, we do not see that a licensing regime for individual paralegals is needed in the context of entity regulation
- c. The systems and processes required of entities vary depending on the business model or nature of the services provided, and to whom services are provided. For example, we would expect regulators to take account of the proportion of reserved and unreserved services being provided

Outcome 5: *Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession*

- a. Regulatory arrangements promote competition and the interests of consumers through the availability of a range of qualification options
- b. Regulators should not impose limits on numbers entering the profession either directly or indirectly (for example by restricting places on vocational training courses to those that have successfully obtained a pupillage or training contract)
- c. Any education and training requirements are sufficiently flexible to meet the needs of a developing market, enabling businesses to make decisions about who they employ

Timetable

12. Given the complexity and importance of education and training, and the need to balance other priorities, it is not for the LSB to set the timetable for this process. However, given the time taken to get to this point we wish to ensure that momentum generated by the LETR is not lost.
13. The LSB will adopt a flexible approach to monitoring regulators' progress. We intend to contact regulators over the coming months to discuss with them their approach to and timetable for the review of their regulatory arrangements. We will also discuss how we might monitor their progress going forward.
14. Regulators that have clear plans in broad accord with the guidance which they are making progress against will be left to continue. However, statutory guidance provides a clear basis for the LSB to seek explanation and take necessary action if any approved regulators do not deliver.

Summary Briefing: Future Bar Training (FBT) – review of existing evidence

BSB Research Team, March 2017

1. Introduction and context

1.1 The four key principles and objectives underpinning the Future Bar Training (FBT) programme are:

- **Encouraging greater flexibility** - so that the system encourages and enables innovation in how education and training is delivered;
- **Improving upon affordability** - to bring down the cost to students;
- **Improving accessibility** - so that the best candidates are able to train as barristers and so that the Bar as a whole better reflects the communities it serves; and
- **Maintaining high standards** - to ensure that any new training pathway maintains and enhances current standards.

1.2 This summary briefing presents some of the key findings identified by a review of the evidence pertinent to the FBT programme. The full report, which contains more detailed analyses, figures and charts, is currently being finalised and will be published in the coming months.

2. Aim and scope of this review

2.1. The aim of this review was to rapidly collate, review and synthesise the available evidence relevant to barrister training, the route to qualification and the requirement for legal education and training reforms.

2.2. The review findings are intended to assist the BSB Board in its decision-making and to show the Legal Services Board (LSB) that the most up-to-date evidence has been considered and evaluated.

2.3. The review aims to build upon the findings of the Legal Education and Training Review (LETR, 2013)¹ using a wide variety of information sources. It does not

¹ Education, L., Training Review (LETR). 2013. *Setting Standards: The future of legal services education and training regulation in England and Wales*. <http://www.lettr.org.uk/the-report/>

focus on curriculum or course content in any great depth since these issues were largely covered by the LETR and a more outcomes-focused approach to education and training is now being adopted through use of the BSB Professional Statement.

3. Methodology

3.1. A desk-based review of the literature was undertaken to a tight timetable, between December 2016 and February 2017. This involved the following stages:

- Initial consultation with BSB policy and operational colleagues, leading to the identification of key topics and themes to investigate further;
- Review of key topics and themes set out in the LETR, the BSB FBT public consultation documents and responses to the first consultation;
- Creation of search strategies and collation of the relevant literature, including published academic research findings; reports and reviews; survey datasets; consultation responses; statistics; and internal BSB data, papers and analyses pertinent to legal education and training and the barrister profession;
- Preliminary assessment and review of the nature and quality of the evidence; drawing out the key points;
- Identification of apparent gaps in the evidence, areas of uncertainty and potential proxy indicators;
- Bespoke secondary analysis of internal BSB datasets; and
- Syntheses of the data, highlighting key points according to the four principles underlying the FBT reforms.

3.2. The findings are based on the evidence that was identified, accessed and reviewed within these time limits and should not be considered as comprehensive as a systematic review or a meta-analysis.

3.3. The summary of findings which follows is organised and presented according to the four key principles underpinning the FBT reforms: flexibility, affordability, accessibility, and maintaining high standards.

4. Flexibility in training for the Bar

Key Points

- 4.1. The current linear three-stage system of training for the Bar for those that intend to practise in England and Wales involves candidates taking a large risk in undertaking what is a comparatively expensive course (the Bar Professional Training Course, BPTC) and hoping to gain pupillage which will enable entry into the barrister profession.
- 4.2. The same might be said for any choice of career, but the main routes to becoming a barrister or solicitor are relatively unique amongst other similar status professions in the UK in what is effectively a requirement to pass an expensive vocational course before entry into practice in the profession.
- 4.3. The LETR (2013) highlighted how a lack of flexibility in training, in addition to requiring a significant up-front investment also holds back innovation in legal education and training. It also highlighted the general principle that the burden should be on the regulator to identify why a pathway should not be permitted rather than on proponents making the case for change².
- 4.4. A lack of flexibility also limits those with significant experience in the legal sector from taking shorter routes to qualification and makes it harder to prove that experience gained is equivalent to that required to gain full practising status, and may make it harder for non-traditional entities to provide pupillage.
- 4.5. Some flexibility is inherent within the current system of training for the Bar – for example, the ability to enter onto the BPTC with an undergraduate degree in any subject combined with a Common Professional Exam (CPE)/Graduate Diploma in Law (GDL), or to study the BPTC full- or part-time. Students are also able to take the BPTC as part of an LLM at several providers. But the flexibility in the system is largely within the separate stages of training and not either in concurrently running the stages of training required in qualifying for the Bar, or between vocational courses.
- 4.6. The key issues regarding flexibility might be summarised thus:

The current system:

- The rigidity of the current three-stage system may be forcing up the costs of training and potentially making it more difficult for those who would

² Education, L., Training Review (LETR). 2013. Setting Standards: The future of legal services education and training regulation in England and Wales. <http://www.lettr.org.uk/the-report/>. Paragraph 5.51.

benefit most from an increase in flexibility of training pathways to enter into the profession.

- The difficulty in transferring between legal professions. There is limited flexibility for BPTC graduates to transfer and become a solicitor following completion of the vocational training stage and prior to completion of the professional stage.

The future system:

- The perception of alternative training pathways in the profession. With any potential expansion of training routes, there is a risk that candidates who qualify through new or alternative pathways might not be perceived as favourably or as well-qualified by some in the profession in comparison to those that train through more traditional pathways.

4.7. The LETR and the BSB FBT consultations included questions as to whether the Bar should remain a graduate profession. For the majority of the history of the Bar, it was open to non-graduates who met the requirements of their Inn.

4.8. The move to a more flexible system and potential for development of pathways for non-graduates would represent a significant shift in the direction the process of training of the Bar has taken over the past 60 years. If non-graduate pathways were to be approved, there might be potential to improve access to the profession, attracting talented individuals with an interest in law who decide not to go to university for whatever reason. Conversely, such a move could also magnify the types of issues faced in gaining pupillage by those who do not go to elite universities and for those who do not go to university at all.

Comparison with other professions

4.9. Comparisons are drawn between training for the Bar and training pathways in other professions (Architects, Actuaries, Chartered Accountants, Chartered Engineers, Chartered Legal Executives and Medical Doctors). This covers a broad range of training pathways, all in professions requiring a high-level of aptitude. The points of note are:

- **Non-degree routes:** Architects, Actuaries, Chartered accountants and Chartered Legal Executives all have structured training pathways that do not require a qualifying degree, although in the case of Architects this route does not appear to be a popular one.
- **Two tiered systems:** Actuaries, Chartered Accountants and Chartered Legal Executives have a two-tiered system giving a recognised qualification upon successful completion of the first tier, which then allows progression onto further training.

- **Mixed vocational and professional stage:** Following on from the academic stage, there does not appear to be so great a divide between the vocational and professional stages of training in any of the professions above. Subsequent training is largely on-the-job with accredited organisations, interspersed with time to study for exams that enable full professional status that are often funded by the employer.
- **Self-study:** There is more emphasis on self-study while training for Actuaries, Chartered Accountants and Chartered Engineers. Self-study while working is also an option for Chartered Legal Executives.
- **Minimum length of time to qualify:** It generally takes longer to qualify in the above professions in comparison to the Bar, in the case of a prospective barrister entering straight into pupillage.
- The most flexible training programmes (in terms of possible pathways that are available) are in training to be Chartered Accountants, then Chartered Legal Executives and Actuaries. All three include the possibility of online study on a modular basis, and all three have routes that do not require a degree.
- Architecture, engineering and medicine appear to be less flexible overall, but have some interesting features, such as rotations in multiple areas of practice, two-part contiguous degrees and including short-courses and assessments within the training programme.
- The economies of scale involved, and the largely self-employed nature of the Bar may make a lot of the more flexible features in training for other professions impractical for the Bar

Comparison with other jurisdictions

4.10. Comparisons are drawn between training for the Bar and training pathways in other OECD jurisdictions. Although the majority have seemingly less flexible, or at least, longer training programmes for qualification as a solicitor or barrister than currently offered in England and Wales. The points of note are:

- Vocational training: of the jurisdictions with a separation of academic and vocational training, Australia has perhaps the most flexible system, although there are interesting facets to the systems in Scotland and Hong Kong in terms of flexibility.
- In Australia, a candidate undertakes a period of traineeship or a vocational course at a training provider in order to be able to qualify for a practising certificate. The vocational course is shorter in duration than the BPTC, lasting 0.5 years full-time, or 1 year part-time. Qualification for the bar is then dependent upon undertaking an extra period of reading and a

state bar exam. This is similar to the Scottish model, which also has a common vocational training course for barristers and solicitors.

- The vocational course in Hong Kong is also similar to the Scottish and Australian system, but upon finishing the course, prospective barristers can enter straight into pupillage or seek a training contract as a solicitor.
- Canada represents a mix between our system and that of the US, requiring a law degree and a, generally shorter vocational course. Notably, in some provinces, the vocational course is only open to those already with training contracts.

5. Affordability of training for the Bar

Key Points

Academic stage

- 5.1. There is some evidence to suggest that the decisions students make before they go to university are partly driven by considerations of cost and likely debt upon graduation, and it would be reasonable to infer that this might have implications for the make-up of the barrister profession.
- 5.2. The decision-making processes employed by A-level students when they decide not to go to university because of the cost involved might also translate to the career decisions of those weighing up whether the costs incurred in training for the Bar are worth the benefits in the long run.
- 5.3. The average level of debt for students who undertake a three year undergraduate degree in England and pay the maximum tuition fees was estimated by Institute of Fiscal Studies with The Sutton Trust to be over £44,000³ in 2014.
- 5.4. The average level of debt for students who undertake a three year undergraduate degree and pay the fees for a GDL without funding is likely to be upwards of £60,000.

Vocational stage

- 5.5. The BPTC currently costs between approximately £14,500 and £19,000 at the eight providers of the course. When weighted using factors for 2015/16 student

³ Crawford, C. & Jin, W. (2014). *Payback time? Student debt and loan repayment: What will the 2012 reforms mean for graduates?* London: Institute for Fiscal Studies. Original figure, rounded to nearest hundred, £44,000 for class of 2014 quoted in: <http://www.suttontrust.com/researcharchive/degrees-of-debt/>

numbers at each BPTC provider, the average full-time BPTC student starting the course in October 2017 will be paying approximately £17,200 in tuition fees.

- 5.6. The current cost of the BPTC course, which takes nine months when studied full time, is more than one and a half times the cost of maximum undergraduate tuition fees in England and Wales (based on all providers).
- 5.7. While the cost of training was less before the (then) Bar Vocational Course (BVC) was opened up to multiple providers, the course fees did rise rapidly from 1991/92 to 1996/97, which was the last year the BVC was provided solely by The Inns of Court School of Law. During this period the cost of the BPTC rose by around 48% when adjusted for inflation, and 68% when not adjusted⁴.
- 5.8. The average increase in fees has slowed slightly over the past four years, increasing by around £200 or around 1.3% above inflation per academic year. This is in comparison to an average £530 per year increase above inflation from 2010/11-2013/14. It is possible that this deceleration in the rate of increase in fees has been caused by a stagnation or decrease in the number of students at some BPTC providers over the past few years, particularly for UK domiciled students.
- 5.9. Estimates based upon funding figures published on The Inn's websites suggest that around a quarter of all BPTC students receive some funding from their Inn of Court with most awarded on the basis of merit. This likely encompasses around 40% of UK domiciled students at an average award of around £15,000.
- 5.10. Further awards are available from other sources, but little is known regarding their aggregate value or the number and profile of BPTC student recipients. This is an avenue for further research.
- 5.11. When taken alone full-time or part-time, the BPTC is not currently eligible for funding through the student loan system or through the student's local education authority. If a BPTC is taken as part of an LLM from the outset, a candidate may be eligible for a Postgraduate student loan of up to £10,000, which was introduced in 2016, and is repayable under the same terms as an undergraduate student loan. This is currently offered by two providers, with three more providers proposing to offer the BPTC as part of an LLM from the outset in the future.

⁴ Raw data taken from annex of: Bar Working Group (2005). *The Legal Profession: Is Access Denied?*

- 5.12. For a student who does not receive funding for the BPTC, when combined with added living costs, their level of debt upon graduating from the course may be upwards of £80,000 (if they study the course full-time).
- 5.13. The impact of BSB regulations on the fees charged by training providers to deliver the current BPTC is unclear. The requirement for small group sizes and maintenance of student to staff ratios may have an impact but the extent of this is unknown. This is an identified data gap. The drivers of the costs of the BPTC are not well understood.
- 5.14. Annual Pupillage Surveys carried out from 2009-10 to 2013-14 reported on the expected level of debt that newly authorised barristers will carry on completion of pupillage. Few students who carried high levels of debt obtained pupillage and the largest proportion of students who obtained pupillage were those who carried no debt whatsoever.
- 5.15. The 2011 Pupillage Survey noted that, "*Applicants expecting to have no debt were significantly more likely to have attended Oxbridge, for one or both parents to have attended university and to have gone to a fee paying school*" suggesting that there was possibly a relationship between level of debt and other indicators of socioeconomic background.

Professional stage

- 5.16. Of UK/EU BPTC graduates who enrolled on the BPTC between 2011 and 2015, only around 37 per cent commenced a first six pupillage in England and Wales as of December 2016. The uncertainty of gaining pupillage added to the cost of training might reasonably be expected to discourage many from applying, and leave many of those who do enrol with a large burden of debt, which may be difficult to pay off in the early stages of a practising junior barrister's career, or for those who do not gain pupillage.
- 5.17. The bottleneck in pupillages available has been proposed to be a function of the amount of work available for Junior Bar, based on responses provided to the first BSB FBT consultation. There may be limited scope for the BSB to influence the number of pupillages available, given this circumstance.
- 5.18. Although the Bar can be a lucrative profession for many, the earnings are not evenly distributed by area of practice, region, or stage of career. There is a large disparity in earnings during pupillage, with many advertised at the minimum salary range of £12-£20k over the 12 month training contract, and fewer advertised at £40k+.
- 5.19. It can also take a while before a self-employed barrister builds up enough of a caseload to earn an amount they can reasonably live on in some areas of practice, and the remuneration offered at the lower end of the scale may make

undertaking a pupillage impractical for those with greater financial responsibilities.

Comparison with other professions and jurisdictions

- 5.20. Using training in other high-aptitude professions as a comparator, training to be a barrister appears to be less affordable because the cost of education and training for other professions is generally covered by the student loans system or else the professional training is paid for by the candidate's employer. It appears that in many other high-aptitude professions used for comparison, by the vocational stage of training, candidates are either already working in the profession, or are more assured of entry into the profession at the end of training, although there are exceptions.
- 5.21. Comparisons are also drawn between the cost of training for the Bar and training pathways in other OECD jurisdictions. Using the cost of vocational training in comparison to average gross earnings as a crude measure of affordability, the ratio of cost to average earnings is far higher in England and Wales compared to other jurisdictions with a similar training pathway to qualify for the Bar (over 50% vs 16-35% in Australia, Hong Kong, Ireland and Scotland).
- 5.22. Opening up the higher education market does appear to influence costs but does not necessarily drive them downwards. The most important factor on cost in an open market appears to be the prestige of institution, as many students are willing to pay more to attend the most prestigious institutions.

Value for money

- 5.23. The value for money offered by the BPTC needs to be seen in the context of the proportion of those completing it who go on to gain a position for which the course itself is required, or are able to enter into other demanding roles where the BPTC is valued. Around 37% of UK domiciled BPTC graduates enrolled between 2011 and 2015 had commenced a first six pupillage as of December 2016.
- 5.24. When including those that have failed the BPTC course, or not yet completed it, the figure for UK domiciled BPTC students who have gone on to gain pupillage is 28%. Generally, while the data in this area are still being explored, it appears that in other professions, by the vocational stage of training, candidates are either already working in the profession, or are more assured of entry into the profession at the end of training, although there are exceptions.
- 5.25. It is worth noting that the likelihood of pupillage is strongly positively correlated with degree class and BPTC grade, so the value of the current system of training for the Bar for candidates with the highest grades may compare well with value for money of training in other professions.

6. Accessibility in training for the Bar

Key Points

- 6.1. Using the data on applications and enrolment on the BPTC from the BPTC Key Statistics Reports, each year, around 55% of applicants to the BPTC are successful in their application and enrol on the course.
- 6.2. Research undertaken by the BSB has shown that the most significant predictors of whether or not a prospective barrister gains pupillage are related to academic and vocational history, namely;
 - First degree institution attended
 - First degree classification and
 - BPTC grade

Number of pupillages available

- 6.3. The overall number of BPTC graduates each year is far greater than the number of pupillages available, although a substantial proportion of BPTC graduates are international students who do not intend to practice in England and Wales following completion of the BPTC (46% in 2016/17 cohort).
- 6.4. The number of first six pupillages registered with the BSB has remained relatively stable over the past nine years, while the number of UK domiciled students on the BPTC has decreased over the past five years (60% → 54%).
- 6.5. There have been two large reductions in first six pupillages registered over the last 25 years, following which numbers did not recover to the levels prior to the reductions. These were between 1995-1997, and 2001-2003.

Equality and diversity

- 6.6. The percentage of female pupils in 2015/16 was higher than that for males. The gender split in pupillage has been around 50% for a number of years.
- 6.7. There is no significant difference in attainment between males and females on the BPTC.
- 6.8. After passing the Bar Course Aptitude Test (BCAT), a lower proportion of UK domiciled candidates from BME backgrounds go on to enrol on the BPTC. Why this would be the case is uncertain, but it is a trend that remains consistent across degree classification groups
- 6.9. BME students of all first degree classifications fail the BPTC in higher proportions than white students, and those that do graduate get proportionally less “Outstanding” and more “Competent” overall grades.

- 6.10. On a modular basis the greatest divergence between the results of BME UK domiciled students and white UK domiciled students are in the centrally assessed modules as well as Resolution of Disputes out of Court (ReDoC), which formerly depended upon the same form of assessment: Multiple Choice Questions (MCQs) and Short Answer Questions (SAQs). This may be an avenue for further research to explore if and how the way modules are assessed affect student results by protected characteristic.
- 6.11. A smaller proportion of UK domiciled BME BPTC graduates go on to gain pupillage than white UK domiciled BPTC graduates. When controlling for other factors, the influence of ethnicity on likelihood of gaining pupillage is statistically significant in a multiple regression model.

Social mobility

- 6.12. Many of the factors relating to social mobility are embedded at a relatively early age. Entry into many professions is largely dependent upon academic achievement, including the reputation of the university attended. The Bar is no exception to this and heavily selects for these factors.
- 6.13. Those from lower-socioeconomic backgrounds are more likely to be educationally disadvantaged in comparison to those from more privileged backgrounds, and thus less likely to gain the top grades needed to attend the most prestigious universities. If they do attain the grades required they are also less likely to apply for the most prestigious universities, which are heavily targeted by recruiters when it comes to entry into careers post-university.
- 6.14. Around 30% of UK domiciled students on the BPTC between 2013/14 and 2015/16 mainly attended a fee-paying school between the ages of 11-18, and around half of all non-UK domiciled students had. In comparison, around 7% of those between the ages of 11-18 will mainly attend a fee-paying school.
- 6.15. The Bar has a particularly high concentration of individuals from privileged backgrounds. A disproportionate percentage of past pupils have attended fee paying schools and attended the most prestigious universities, and barristers have the highest percentage of parents in higher professional roles or as senior managers, at 55.2% when compared with other prestigious professions⁵. In addition, surveys conducted by the BSB, and analysis of data in our Core Database suggests that around 44% of the practising Bar attended a fee-paying school.

⁵ Friedman, S., Laurison, D. and Miles, A. (2015). *Breaking the 'class' ceiling? Social mobility into Britain's elite occupations*. *The Sociological Review*, 63: 268

- 6.16. In house multiple regression analysis undertaken regarding the influence of socioeconomic background on chance of pupillage shows a significant correlation between the two when previous educational achievement and other characteristics are controlled for.
- 6.17. When previous educational achievement and other characteristics are controlled for, those with a private education and at least one parent educated to degree level are more likely to obtain a pupillage than their peers with equivalent prior educational achievement and other characteristics. This may be due to factors related to social capital.
- 6.18. Despite this, the Bar has been shown to be relatively meritocratic in terms of the role of academic achievement in predicting likelihood of gaining pupillage⁶, but early life experiences are likely to embed a lack of social mobility in the profession. Those from lower-socioeconomic backgrounds are less likely to attend the most prestigious universities, and attendance at such institutions is a significant factor in the chance of gaining pupillage.

7. Maintaining high standards in training for the Bar

Key Findings

Degree requirements

- 7.1. There is reason to re-visit degree classification requirements for UK students based upon the evidence of outcomes of those that enrol on the BPTC.
- 7.2. From 2011-2015 there were around 8000 students enrolled on the BPTC. Of these, approximately 25% had a 2:2 degree or equivalent, with 34.2% of these being UK domiciled students, and the rest domiciled outside the UK prior to enrolment.
- 7.3. Of those with a 2:2 degree, from 2011-2015 there was an average failure rate of around 30% in comparison to around 11% for those with a 2:1, and 3% for those with a first, for all domiciles.
- 7.4. A far higher percentage of those with a 2:2 have yet to complete their course. For 2011-2014 enrolled students, around 12% are yet to complete the course (17.5% for UK domiciled students only). This is in comparison to around 5% of

⁶ Zimdars, A. and Sauboorah, J. (2009). *Some observations on meritocracy and the Law: the profile of pupil barristers at the Bar of England and Wales 2004 – 2008*. Accessed from: http://www.barcouncil.org.uk/media/18148/pupillage_analysis_zimdars_and_sauboorah.pdf

those with a 2:1, and 3% of those with a first who are yet to complete the course.

- 7.5. For UK domiciled students however, there is some divergence in achievement of UK domiciled students on the course with a GDL in comparison to those with a law degree. The data show that overall, those with a GDL are actually performing better on the course within all degree classification groupings, with the failure rate for those with a GDL and a 2:2 only around 12%.
- 7.6. In terms of pupillage, as of December 2016, out of around 300 UK domiciled graduates on the BPTC with a 2:2 degree, 13% had gone on to gain pupillage (based on those enrolled between 2011 and 2015). This is in comparison to 33% of those with a 2:1 and 56% with a first. Getting an 'Outstanding' grade on the BPTC does markedly increase the chances of getting pupillage for those with a 2:2, but less than 15 students have achieved this since 2011.
- 7.7. When taking everyone into consideration (including those that have failed, withdrawn and have not yet completed the course), only 6% of those with a 2:2 who have enrolled on the BPTC have thus far secured pupillage, compared to 27% of those with a 2:1 and 52% of those with a first class degree.
- 7.8. It may be worth taking a more risk-based approach in terms of enabling entry to the BPTC for candidates that are particularly unlikely to progress onto pupillage.

Bar Course Aptitude Test (BCAT)

- 7.9. The BCAT was introduced in 2013. It tests aptitude for critical thinking and reasoning, which are key skills required for the BPTC. The aim of the test is to ensure that those undertaking the BPTC have the aptitude to succeed on the course. It was introduced to address concerns about standards on the BPTC course, in particular the volume of students taking the BPTC who went on to fail the course
- 7.10. The BCAT was introduced with a cut score of 37. Following a review⁷, amidst criticism that it was set too low, the cut score was increased to 45 following approval by the LSB in 2016. Using data from the 2013/14 and 2014/15 cohorts, it is possible to conclude that around a 20% reduction in the overall

⁷ Bar Course Aptitude Test (BCAT) Review. Summary of Findings – March 2016. https://www.barstandardsboard.org.uk/media/1740488/030916_bcat_impact_and_performance_evaluation_summary_va694929.pdf

BPTC failure rate would have been achieved on the basis of the new cut-score of 45.

- 7.11. The reforms already made to the BCAT should decrease failure rates on the BPTC substantially, but there are still issues around attainment on the course for those with a 2:2 degree, and those who score just above the new BCAT cut score with a 2:1.
- 7.12. There is a positive correlation between BCAT score and rates of failure on the BPTC. This correlation holds particularly strongly within degree classification groups, but not so well between them. Those with a first across all BCAT score ranges generally perform better on the course than those in the same ranges with a 2:1, and those with a 2:1 show the same relationship with those with a 2:2. This is both in terms of failures rates and the percentage gaining each BPTC grade.
- 7.13. In terms of BPTC grade on the course, differences in degree classification also translate to differences in BPTC grade across degree classifications in the same BCAT score range group.
- 7.14. Of those with a 2:2 and a BCAT score from 45-48 that graduate from the BPTC, 69% of them gain a competent overall grade. This is compared to 44% of those with a 2:1, and 17% of those with a first. In the score range 49-52, the respective figures are 55% of BPTC graduates with a 2:2, vs 32% of BPTC graduates with a 2:1, and 18% of BPTC graduates with a first gain a competent grade overall. Those achieving a competent overall are far less likely to gain pupillage.
- 7.15. BCAT scores show a strong relationship with attainment on the BPTC and likelihood of gaining pupillage within first degree classification groups.
- 7.16. When controlling for BCAT score, there are still significant differences in attainment on the BPTC across first degree classification groups. This suggests that there are factors relating to aptitude that have a strong effect on attainment on the BPTC that the BCAT is not selecting for.
- 7.17. However, when looking at BPTC students that have taken the BCAT and gone on to gain pupillage, there appears to be a positive correlation between BCAT score and chance of gaining pupillage, independent of first degree classification and BPTC grade.
- 7.18. Perhaps the competences which give a candidates a good BCAT score are reflected better when it comes to gaining pupillage than they are reflected on the BPTC, and indeed it is quite rare for all first degree classifications for candidates to gain pupillage if they have scored below the new cut-off on the BCAT.

7.19. Based on BSB data, with the new cut-score of 45, around 12% of non-UK domiciled students would not have been admitted to the BPTC since the BCAT was brought in. The equivalent figure for UK domiciled students is around 11%. The new cut score may make running the BPTC at several providers that have a large contingent of students with BCAT scores between 37-44 non-UK domiciled students unviable, or have implications for affordability at such providers.

Centralised assessments

7.20. As shown by recent research undertaken by the SRA,⁸ some form of centralised assessment is used in training to become a lawyer in 14 out of the 18 jurisdictions they surveyed, with one jurisdiction intending to incorporate centralised assessments in the near future. Out of the 14 jurisdictions that use centralised assessments currently:

- 12 include a written exam, with eight of these having this as the sole centrally assessed exam format;
- three include a practical skills test;
- four include a multiple choice questions (MCQ) exam;
- two include an oral exam/interview.

7.21. Centrally-set exams are also set for those training to become a chartered legal executive, patent attorney and licenced conveyancer in England and Wales. Other professions also make wide use of centralised assessments, including examinations required in receiving chartered or full practising status in medicine, engineering (depending upon the discipline), accountancy and actuary.

7.22. Evidence on module results over the last three years suggests that the centralised assessments have been set at a high-level:

- When looking at raw average module score by BCAT score range, average module scores are below the pass mark of 60 in several instances for the centralised assessments. This is only the case for the centralised assessments and no other modules.
- The range in average module scores between the lowest BCAT score range and top BCAT score for each domicile is also greatest for the centralised assessments, as well as Resolution of Disputes out of Court

⁸ SRA (2016) *Qualification in other jurisdictions – International benchmarking*. Accessed from: <https://www.sra.org.uk/documents/SRA/research/ICLR-benchmarking.pdf>

(ReDoC), which has the same assessment format, suggesting there may be something about Multiple Choice Questions (MCQs) and Short Answer Questions (SAQs) that inflates differences in aptitude selected for by the BCAT. As we already no longer have this exam format for the centralised assessments, as already noted it will be interesting to monitor future differences in results between ReDoC and Criminal, Civil and Ethics.

- Average scores in the centralised assessments have been far lower than those for other modules for those with BCAT scores lower than 50.
- When analysing areas of assessment as the cause of overall failure on the BPTC, the centralised assessments are more frequently the sole identifiable cause of failure on the BPTC in comparison to non-centrally assessed modules. Students failing non-centrally assessed modules are more likely to have failed in multiple areas, including the centralised assessments.
- The centralised assessments are also the modules with the highest proportion of those who get a competent grade for the module, having done so at the second sit.

7.23. This all suggests that the centralised assessments have been set at a high level, but also a level that seems slightly incongruous with achievement in most other modules on the course, particularly for those with lower BCAT scores. This may be partly related to the type of assessment in the previous format, but is also likely due to the rigour of the centralised assessments as well as their high validity and reliability. It also perhaps suggests a more joined up approach in the expectations of student standards upon completion of the BPTC between centralised assessments and non-centralised assessments is perhaps warranted if other assessments are not rigorous enough in ensuring standards.

7.24. The centralised assessments have been reformed for 2016/17, so much of this analysis may not hold true with the new format of the assessment, but analysis of how the centralised assessments fit with the rest of the course in terms of outcomes does not appear to be undertaken with any regularity. Therefore, it would seem to be worthwhile to monitor them more closely against the rest of the course to see where particular points worthy of further research may lie.

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 way 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 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.
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 and Threshold Standard 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 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 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 many who do not obtain pupillage nevertheless have very successful careers. Our future system must take into account these factors as well.

The Northumbria 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 continue to be in our system. Criticism of this model, on the basis that students undertaking this course are less likely to obtain pupillage, have not been supported by evidence that this is the case.
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 qualified this far 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 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 on 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 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.

COMMENTS FROM AIDAN CHRISTIE QC

FOR BOARD MEETING 23 MARCH 2017

1. I apologise for my absence. I gave my views on the Consultation and the draft recommendations at the Board meeting last week.
2. I summarise them below taking into account the draft Policy Statement dated 23 March 2017 which was circulated on 20 March 2017. That is a very fair and balanced summary of the position to date.
3. My views are these.

Legal Academic Learning

4. Agreed.

Vocational Training

BCAT

5. Agreed. We should obviously review the pass mark.

Admission to an Inn and Call

6. Agreed subject to review in relation to call requirements.

The BPTC

7. The flaws in the existing BPTC course have been extensively canvassed. They are helpfully captured in the BC's views quoted at paragraph 18 of the draft Policy Statement. I agree with them.
8. I accept that the existing course will no doubt have to remain in place in the interim but I do not think that the considerations identified in paragraph 26 justify its retention any longer than is necessary to fill that gap. If it is not fulfilling its purpose in meeting the four criteria set out in paragraph 2 then it ought to be phased out.
9. The COIC/BC model is obviously not fleshed out yet. There are potential disadvantages in it but I think that overall it represents by far the best approach to vocational training in the future.
10. That is the view which I have formed independently on the merits. It is reinforced by the fact that it is also the view of a significant majority of the respondents to the consultation and of the overwhelming majority, so far as I can tell, of the ATPs and the professional bodies. Like the BSB, the ATPs and the professional bodies plainly have in mind the criteria and the regulatory objectives set out in paragraphs 2 and 5 respectively of the draft Policy Statement. There is a notable consistency in the views which they have expressed and their views are based on first-hand experience of training for barristers. In this matter I believe that their views should be accorded very considerable weight.

Part 1 – Public

11. At the meeting last week I expressed the view that the COIC/BC model should be the only route. I can see that there is merit in offering an alternative route based upon the modular approach referred to in paragraph 31 but that option will really be viable only for employed barristers and it will take some time to establish.
12. I do not think that the BSB should pursue the Northumbria model. The lack of enthusiasm for it in the profession is very significant. That should not be ignored. I think that there is a risk of confusion and the creation of a two-tiered system of training. Neither of those is in the interests of students, the Bar or consumers.
13. I have referred already to the views of the profession. In this area it is particularly important that the BSB should listen very carefully, as it has done, to the views of the profession. They are, after all, at the very sharp end of training generally and they will have to live with any proposals which the BSB makes. If it is perceived, rightly or wrongly, that the BSB is not taking on board the issues which the profession has, very properly, raised, I fear that could have a very negative impact.

Pupillage

14. Agreed.

Aidan Christie QC

BSB Business Plan for 2017-18**Status:**

1. For scrutiny and agreement.

Executive Summary:

2. As this is the second year of the current strategy, the emphasis is very much on consolidation and continuation of work started in 2016/17. The business plan focuses on this theme, giving highlights of our achievements in 16/17 and how we will be building on this work in the coming year.
3. Our response to the CMA, and our work on Future Bar Training are the two headline items for the business plan: ensuring we have enough capacity to deliver our ambitions for FBT; responding to the CMA report and the MoJ response to it (expected imminently.) We will of course continue to deliver regulatory “business as usual” in accordance with the Strategic Plan.
4. The financial aspects of the Business Plan were provided to the PRP committee for scrutiny: they are the same as were submitted to the Board and as agreed by the Bar Council’s Finance Committee on 21 February 2017. The summary is as follows:
 - a. Total income will be £7,824k compared to £8,036k in 2016/17 (-£212k). This incorporates the lower forecast income for BCAT & BPTC.
 - b. Total expenditure will be £5,212k compared to forecast expenditure in 2016/17 of £5,198k (+£14k).
 - c. Variances in departmental budgets are noted in annex 2.
 - d. Final adjustments are being made to the budget following agreed plans for FBT and the CMA Action Plan.
5. The business plan was presented to the PRP in draft, the committee considered the draft and made the following comments and amendments:
 - a. That more emphasis be placed on the ‘golden thread’ and focus given to our efficiency and effectiveness.
 - b. The activity tables should adopt a stronger critical milestone focus.
 - c. The tone should be dynamic and active.
 - d. That the narrative should focus on the high level, and does not need to reference every activity.
 - e. That the business plan should make clear that whilst the cost of regulation has remained static, the organisation is undertaking more complex regulatory activity.
6. The committee also considered the full activity matrix, which is for internal use only.

Recommendations

7. The Board is asked to:
 - **scrutinise and comment on** the business plan draft
 - **offer drafting suggestions**
 - **agree the plan**
 - **note** that the final version will be published at the end of March.

Background

8. As reported previously, the SMT has undertaken a detailed planning exercise, aiming to ensure:
- Clear prioritisation of work, including understanding of which items are able to be re-sequenced during the year if necessary.
 - Consensus on scope of proposed activities, including scrutiny of whether an activity is necessary at all and reprioritisation / resequencing of some possibilities as insufficiently high priority for inclusion in this year.
 - Appropriate balancing between business as usual, new initiatives and obligations.
 - Realistic phasing of programme and project milestones given resourcing levels.
 - Proper consideration of impact of phasing of work on supporting resources e.g. Research and Communications & Public Engagement.

Risks and Uncertainties

9. As well as the corporate risks that the SMT and GRA Committee keep under review (including turnover of staff), there are the following risks and uncertainties to the proposed programme of work:
- a. **PCF Collection** – If PCF income is below the budgeted figure, the organisation will have to reprioritise our work programme.
 - b. **BPTC and BCAT** – The implementation and public engagement around FBT may result in fluctuations in the income from BPTC and BCAT. We have therefore set a conservative income forecast for the year.
 - c. **CMA** – The MoJ's response to the CMA report, including on the issue of regulatory independence, is expected by 24 March and we have included the need to respond in our plan. The substance of the MoJ response will allow us to then populate the plan with details of the necessary actions, albeit with limited time to finalise this planning.

Annexes

Annex 1 – Draft Public Business Plan 2017-18

Annex 2 – Summarised Financial Information

Lead responsibility:

Dr Anne Wright CBE, Chair, PRP Committee
Dan Burraway, Corporate Support Manager

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Logo

Business Plan

2017-18

The BSB regulates barristers and specialised legal services businesses in England and Wales, in the public interest

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Our Values

INTEGRITY

We operate to the highest ethical standards

We are honest, open, and inspire trust

We consider the social and environmental impact of our actions

EXCELLENCE

We are committed to quality

We are creative, innovative, and lead change

We are responsive, accessible, and accountable for our actions

FAIRNESS

We act responsibly, proportionately, and in the public interest

We promote equality of opportunity and equal access to justice for all

We value inclusion and diversity

RESPECT

We respect and support others

We value expertise, learning, and knowledge-sharing

We foster a collaborative and developmental working environment

VALUE FOR MONEY

We are cost-effective and accountable for our use of resources

We work efficiently, with an innovative and value-for-money mind set

We strive for clarity, simplicity, and straightforwardness

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- Foreword by the Chair and Director General
- About this document
- What the BSB does
- Key facts
- Our strategic programmes
- Diagram of strategic programmes
- Risk Outlook
- Strategic programme 1 – *Regulating in the Public Interest*
- Strategic programme 2 – *Supporting barristers and those the BSB regulates to face the future*
- Strategic programme 3 – *A strong and sustainable regulator*
- Risks to delivery
- Strategic dashboard
- Equality statement
- Governance
- Organisational chart
- Our budget

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Foreword by the Chair and Director General

Welcome to the second annual Business Plan of our three-year strategy for the years 2016 to 2019. Our Business Plan should be read in conjunction with our [2016-19 Strategic Plan](#) and our [Risk Outlook](#).

In the past year we have:

- launched a new Continuing Professional Development (CPD) scheme for experienced barristers with effect from 1 January
- published the Professional Statement, which now includes the Threshold Standard and Competences and sets out in more detail the skills, knowledge and attributes which barristers are expected to have on "day one" of being issued with a practising certificate.
- held a major consultation about the future training of barristers
- published the results of our survey on women's experiences at the Bar and outlined the work we will be doing to address discrimination

In every case our aim is to benefit those who use the services of the Bar and the justice system as a whole. Our changes to CPD will mean that barristers can focus on the training that will best equip them to improve their services for clients and not simply to meet a requisite number of hours. Similarly, the publication of the Professional Statement and our

Business Plan – 2017/18

Future Bar Training programme puts more focus on the skills, knowledge and attributes which barristers should have, rather than an overly prescriptive process for obtaining them.

We also undertook a range of other regulatory and policy work throughout the year. Our Annual Report for 2016-17 will report on these activities in detail.

In the coming year

- We will, with stakeholders:
 - o begin to implement the reform of Future Bar Training;
 - o conduct research so that we can better understand the barriers for students and pupils with protected characteristics; and
 - o continue to implement our recommendations to improve the experiences of young people who are the subject of proceedings in the Youth Courts and the standards of advocacy that they receive.
- By the end of June, in collaboration with the other legal regulators, we must respond to the report by the Competition and Markets Authority (CMA) which was published in December 2016. The report concluded that competition in the legal services market for consumers and small businesses is not working well, largely because consumers and small businesses lack the experience and information they need to drive competition by making well-informed purchasing decisions.
- We will respond to any reviews as to the future of legal regulation by the Ministry of Justice.
- As well as responding to the CMA, we will continue to fulfil our statutory responsibilities and uphold our Regulatory Objectives, in the public interest. As we announced last year when we published our current Strategic Plan, we have determined that there are three areas in particular where we see a need to focus. These are:
 - o meeting consumer needs
 - o improving diversity and enhancing equality
 - o responding to commercial pressures.

These continue to be the key themes in our risk-based approach to regulation during the 2016-19 period.

Our Business Plan describes what we will be doing to carry out our core regulatory activities and how we will address these three challenges during 2017-18. As we did last year, we will be organising our work into three key programmes (see page xx).

We will continue to consult you about our policy proposals. We invite you to follow our progress via our website (www.barstandardsboard.org.uk), and to engage with us as we continue our work (contactus@barstandardsboard.org.uk).

Sir Andrew Burns KCMG

Dr Vanessa Davies

Chair

Director General

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About this document

Last year, we published a suite of important documents to assist in understanding our work in regulating the Bar in England and Wales. They can all be found on our website [insert link].

Our **Strategic Plan** sets out the long-term direction for us as an organisation, in light of the external environment and our priority areas.

This is underpinned by:

- annual **Business Plans** which set out our programme of work for each year and the resources we require to support our activities. (This is our Business Plan for 2017-18.)
- specific **strategies, policies, regulations** and **guidance** which set out in detail our approach to particular aspects of regulatory and corporate activity.

Our **Regulatory Risk Framework** describes how we approach risk based regulation.

We start by seeking to understand the external environment which impacts upon our work, those whom we regulate and the consumers of legal services.

We categorise those things which can go wrong in the delivery of legal services in our **Regulatory Risk Index**. This is a living document which helps us systematically and consistently to identify and respond to potential issues in the market for barristers' services.

We publish a **Risk Outlook** report which sets out our priority risk themes.

In planning our approaches to dealing with our priority themes and other regulatory risks and issues we will take into account the challenges, constraints and opportunities we face as an organisation. We use dedicated **corporate and project risk management** to ensure the efficient and effective delivery of our regulatory role and other corporate responsibilities.

Our Strategy for 2016-19

Our strategy sets out the way in which we will regulate barristers and entities for the three years. It also sets out how we will respond to potential proposals for change in the regulatory landscape and its underpinning legislation. We will organise our work over this period into three programmes:

- Regulating in the public interest
- Supporting those we regulate to face the future

Ensuring that the Bar has a strong and sustainable regulator You can read more about our strategy here. [Link to "Our Strategic and Business Plans"]

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What the BSB does: our core work

The BSB regulates barristers and specialised legal services businesses in England and Wales, in the public interest.

We are responsible for:

- Setting the education and training requirements for becoming a barrister;
- Setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- Setting standards of conduct for barristers;
- Authorising organisations that specialise in advocacy, litigation, and specialist legal advice;
- Monitoring the service provided by barristers and entities to assure quality;
- Handling complaints against barristers and the legal services businesses that we regulate and taking disciplinary or other action where appropriate.

The work that we do is governed in particular by the Legal Services Act 2007 (the Act) as well as a number of other statutes.

Along with the other legal service regulators identified in the Act, our objectives are the same as the Regulatory Objectives laid down in the Act. These are:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of citizens' legal rights and duties; and
- Promoting and maintaining adherence to the professional principles.

You can find out more about how we undertake our work to regulate legal services in relation to our Regulatory Objectives here. [Link to "How we do it"]

Strategy and Policy

We are a risk- and evidence-based regulator. Risk-based regulation means that we are constantly monitoring the market for barristers' services. We identify the potential risks that could prevent our Regulatory Objectives from being met. When we have done this, we focus our attention on the risks that we think pose the greatest threats to our regulatory objectives. We then take action to try to prevent those risks from occurring, or to reduce their impact.

You can read more about our [risk-based approach to regulation](#) and find out about the risk areas upon which we are focusing most of our attention during the early years of our strategy on our website.

Business Plan – 2017/18

We gather evidence about what is happening in the market and the impact that our actions are having – we do this by conducting research (either by ourselves or with others) and engaging with stakeholders who have an interest in our work. Where necessary, we use this knowledge to set or revise standards and introduce rules and guidance for barristers and entities. These are collated in the BSB Handbook. We develop policy on the educational pathways into the profession. In addition we develop policy on conduct of practice in areas such as chambers' complaints handling and direct public access to barristers. Another area of particular concern is equality and diversity, where we set a number objectives in our Equality Strategy. This is available on our website and the key actions have been incorporated into this business plan.

Regulatory Assurance

Our aim is to assure, maintain and enhance standards across the profession through the development of measures for assessing the adherence to the standards set out in the BSB Handbook of both individual barristers and the chambers and entities in which they practise. This includes a risk-based approach to the supervision of chambers, the authorisation of new entities and the regulation of Continuing Professional Development (CPD).

We oversee the Academic, Vocational, and Pupillage stages of training that must be completed in order to qualify as a barrister.

We also decide on individual applications from people wishing to qualify and/or practise as barristers but who would like to be exempted from some or all of the normal training requirements.

Enforcement

We investigate concerns about the professional conduct of barristers and others whom we regulate and, where appropriate based on an assessment of risk, take action against those who have breached the provisions of our Handbook.

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Key facts

We regulate **16,160** barristers and **65** entities (legal services businesses, owned by lawyers, but not necessarily barristers)

In 2016 we opened **433** complaints

13 locations provided the Bar Professional Training Course for **1409** students in the last academic year

150 people took the Bar Transfer Test (for transferring solicitors or overseas lawyers)

478 pupil barristers registered last year

We have **79** members of staff

£5,212k our budget for 2017-18

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Our Strategic Work Programmes

We have organised our work into three Programmes. Each Programme comprises both reform and continuing regulatory “business as usual”.

Embedded into these programmes is our approach to how we will address the main risks we perceive to our Regulatory Objectives:

- The risk of failure by those we regulate to meet consumer needs
- The risk of lack of diversity, and discriminatory practice and culture at the Bar
- The risk of commercial pressures on legal services providers

More information about these risks can be found in our [Risk Outlook](#).

In the following pages we give a short explanation of what each of our strategic programmes means and what we will do to achieve our aims during 2017-18.

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We have broken down the activities into quarterly milestones which are based upon a financial year – so quarter one (Q1) starts in April 2017 and quarter four (Q4) ends in March 2018. These checkpoints help us to monitor performance and ensure we stay on track with our work.

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Diagram - headlines [to be designed]:

Programme One Regulating in the public interest	Programme Two Supporting barristers and those the BSB regulates to face the future	Programme Three A strong and sustainable regulator
Better public understanding of legal services	Preserving the Bar's professional identity and high standards for the benefit of consumers and society as a whole	Continued separate regulation of advocacy, specialist legal advice and litigation in the public interest
Deeper dialogue with the profession and consumers to improve services in specific areas	Closer cooperation with other legal professionals where that makes sense in the public interest	Increasing our constitutional and financial independence from government and the profession
Increasing our transparency in decision-making, and simplifying where possible	Removing unnecessary barriers in the legal services market	Continuing to live our values: fairness, integrity, respect, excellence, and value for money

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Strategic Programme One - Regulating in the public interest**What this means:**

We want to help the public to understand the fast-changing and complex market for legal services, so that consumers of those services can make informed choices and have a better knowledge of their legal rights and duties as citizens.

We will nurture a deeper dialogue with the profession and consumers so that what we propose and what we do can be demonstrably evidence-based and risk-focused as well as understood by users and providers. We will do this by engaging with both the profession and consumers in face-to-face meetings and digital channels where appropriate.

We will continue to strengthen our real and perceived independence from the profession, so that we can articulate and defend our judgements on the basis of independent and unbiased assessments of the evidence about where risks to our regulatory objectives lie. This includes

Business Plan – 2017/18

continuing to ensure our regulatory decision making processes are independent, consistent and transparent.

Our work programme:

During the first year of our current strategic plan, we brought additional expertise to our communications and public engagement team, including a dedicated director. This has been timely, as in December 2016, the Competition and Markets Authority published its report on the legal services market and how the public interacts with it. The report found that the public is not well-informed about how and where to access legal information and services. We intend to work closely with the other legal regulators during 2017-18 to do what we can to improve this. As suggested by the CMA, this will involve making improvements to the existing Legal Choices website which is funded and run by the legal regulators for this purpose.

We announced our proposals to improve standards of advocacy in the Youth Courts last year. Following on from that, we will publish our youth proceedings competency framework this year and further work will also be undertaken in this area. We will also build on the work we have undertaken so far as part of our Immigration Thematic Review; and publish new consumer guidance for users of immigration services; and a vulnerability framework for barristers interacting with these clients.

We expect to be able to license businesses (Alternative Business Structures) that are jointly owned and managed by both lawyers and non-lawyers in April 2017, after the relevant approvals from Parliament have been obtained.

We are also seeking additional powers in relation to those we regulate already, via an order under section 69 of the Legal Services Act. If approved, the Order will grant us new powers to intervene into legal practices where it is necessary for us to do so in order to protect clients. These powers are similar to those held already by other regulators. We anticipate that intervening will be a rare occurrence, however we consider these powers to be an important regulatory tool for us to use as a last resort in order to protect the public.

Our business-as-usual work supervising barristers' practices will continue during 2017-18. This helps us identify good practice and publicise it as well as spot when things may be going wrong so that we can help avoid or solve problems for the benefit of barristers' clients and the wider public.

We will continue to enforce our rules in order to maintain the public's trust and confidence in barristers and the businesses we regulate. We aim to do this fairly, swiftly and proportionately. Typically we deal with around 400 conduct reports or complaints about barristers every year. We investigate these concerns and make decisions on instances where the professionals we regulate have not met the requirements set out in the BSB Handbook.

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Timeline of activities

Programme One				
Activity	Q1	Q2	Q3	Q4
CMA Action Plan	<ul style="list-style-type: none"> Stakeholder engagement Analysis of the current use of Legal Choices website. Explore other media and communications opportunities (other than web-based) Comprehensive understanding of technical requirements of the vision set out and mapping it to current technical infrastructure Formally publish action plan in response to the CMA recommendations. 	<ul style="list-style-type: none"> Consultation on transparency launched Scoping of the work to improve Legal Choices website Cost benefit analysis of change. Analysis of common data between the different regulators. 		<ul style="list-style-type: none"> Publishing outcome of consultation. BSB policy position on transparency. With other regulators, developing a forward action plan for further development of Legal Choices. Agree common data standards for regulatory data
Alternative Business Structures	<ul style="list-style-type: none"> Launch of ABS scheme (Pending Parliamentary Process) 			
Embedding risk-based principles across the organisation	<ul style="list-style-type: none"> Implement next phase of risk prioritisation 			<ul style="list-style-type: none"> Commence planning for 2019 Outlook, including approach to evidence collection

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Programme One				
Activity	Q1	Q2	Q3	Q4
Bar Professional Indemnity Insurance and BMIF	<ul style="list-style-type: none"> • Begin review of minimum insurance terms and governance arrangements with BMIF 	<ul style="list-style-type: none"> • Board decision on insurance requirements for single person entities. 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •
Public and licensed access	<ul style="list-style-type: none"> • Consultation on rule change 	<ul style="list-style-type: none"> • Board decision on consultation 	<ul style="list-style-type: none"> • Potential rule change application to LSB (pending board decision) 	<ul style="list-style-type: none"> •
Seek s69 order	<ul style="list-style-type: none"> • Agree content and get LSB recommendation to Lord Chancellor 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • Seek Parliamentary approval and make any necessary rule changes 	<ul style="list-style-type: none"> •
Research	<ul style="list-style-type: none"> • Board approval of research strategy 	<ul style="list-style-type: none"> • Ongoing implementation 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •

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Programme One				
Activity	Q1	Q2	Q3	Q4
Standard of Proof (SoP)	<ul style="list-style-type: none"> • Consultation on Standard of Proof 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • Board decision on consultation. 	<ul style="list-style-type: none"> • Potential application to LSB for rule change required, as output of consultation.
Review of disciplinary tribunal services	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • Board consideration and of review recommendations 	<ul style="list-style-type: none"> • Implementation 	<ul style="list-style-type: none"> • Implementation

We will spend £2.5m on Strategic Programme One, which is **48%** of the BSB's direct costs.

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Strategic Programme Two - Supporting barristers and those the BSB regulates to face the future

What this means:

The legal services market is changing rapidly and will continue to do so. We will help the public to understand the separate nature and specific skills of the Bar in a legal world where regulatory constraints apply primarily to the reserved activities, such as advocacy in the higher courts and litigation. This is particularly necessary where the forces of unregulated competition will be increasingly felt in other areas of a barrister's work and competence. For example, the public needs to understand the difference between a fully qualified, regulated and insured barrister and a paid "McKenzie Friend."

We will seek to encourage the profession to cooperate more closely with solicitors and other legal professionals where that may offer advantages for the public.

We will ensure our regulatory frameworks do not pose unnecessary barriers to entering the market and we will reform legal education and training to support the advocates of the future.

Business Plan – 2017/18**Our work programme:**

In the upcoming year, we will continue to build on the work that we undertook during 2016-17.

In October 2016, we conducted eight “roadshow” workshops in cities across England and Wales, two chambers visits and a webinar to explain the new Continuing Professional Development (CPD) scheme for barristers of more than three years’ standing. The changes mean that experienced barristers have more flexibility in setting relevant learning objectives and in identifying and completing activities that will help them meet those objectives. From a regulatory perspective, we believe that this approach is more proportionate than requiring experienced barristers to complete a set number of hours. We will expect barristers to declare annually, as part of renewing their practising certificates, that their CPD for the year has been completed. We also want them to be prepared for “spot checks” by us of their CPD declarations to ensure compliance with the new scheme

We have made good progress in our work to help improve Equality and Access to Justice over the last year. This has included the publication of the “Women at the Bar” report, which told us we must do more to raise the profile of the Equality Rules among chambers. We took action by writing to all Heads of Chambers to draw their attention to the report and to remind them of the need to ensure they are complying with the Equality Rules, which have been in place since 2012. We continue to publish our Equality and Diversity statistics each year. The most recent data showed us that women enter the barrister profession in just over equal proportion to men but the overall profession is around 35 per cent women to 65 per cent men. We launched a consultation on a possible rule change to enable practitioners at the self-employed Bar to claim Shared Parental Leave, with the aim of encouraging a culture whereby both parents are able to care for children in the first year of birth or adoption. We have considered responses and a rule change to accommodate Shared Parental Leave will be considered by the Board in quarter 1 of this year.

We launched a separate consultation on Future Bar Training in the autumn of 2016. We received over 1,100 responses. At their request, we added to the illustrative models in the consultation document, a more specific proposal from the Council of the Inns of Court (COIC) which also had the support of the Bar Council. Many barristers wrote in support of that proposal, and there were many other responses from inside and outside the profession.

The COIC/Bar Council proposal was discussed at a seminar which we held last July and has been debated at other consultation events since then. We are very grateful for the active involvement of the COIC and the Bar Council and to all those who have responded. We want to authorise arrangements which maintain high standards and which improve flexibility, accessibility and affordability..

(AMEND IN LIGHT OF 23 MARCH DECISION)

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Much of our work on the Future Bar Training programme during 2017-18 will be focussed on the implementation of the chosen approach to ensure that it is introduced as soon as practicable.

We will continue our Strategy and Policy work over the coming year. Last year, we commissioned an independent survey on the future models of legal services delivery. A report on the findings will be published in 2017/18 and should provide a helpful evidence base that will inform our response to the CMA's report.

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Timeline of activities

Activity	Q1	Q2	Q3	Q4
Continuing Professional Development (CPD)	Continue dialogue with profession	ditto	ditto	<ul style="list-style-type: none"> ATP Renewals - First round of submissions under the new scheme
Youth courts	<ul style="list-style-type: none"> Publication of competency statement. Further development of regulatory approach Response to the Ministry of Justice report into youth justice 	<ul style="list-style-type: none"> Guidance for young people on what to expect from their advocate in youth court proceedings. 	Compulsory registration for advocates undertaking youth-court work.	<ul style="list-style-type: none"> Embed approach to quality assurance of Youth Court Advocacy into general approach to quality assurance.
Immigration	<ul style="list-style-type: none"> Publish new consumer guidance 			<ul style="list-style-type: none"> Launch vulnerability framework
Equality objectives	<ul style="list-style-type: none"> Report on research into experiences of students Board to approve recommendations of shared parental leave review 	<ul style="list-style-type: none"> Workshops with female barristers Develop action plan from Board diversity data review 	<ul style="list-style-type: none"> Roundtable with race equality organisations 	

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Activity	Q1	Q2	Q3	Q4
Scope of practice	•	•	•	Publish proposals on Scope of Practice review
Anti-Money Laundering	• Information gathering work by HM Treasury	•	• Submit compliance and effectiveness documents	Onsite visit from HM Treasury Peer review by FATF
Future Bar Training (FBT)	<ul style="list-style-type: none"> • Publish results of consultation & announce board decision on new regulatory approach. • Review of assessments and curriculum starts 	<ul style="list-style-type: none"> • Publication of revised BPTC handbook, ready for 2017/18 Academic Year. • Pilot programme for pupillage accreditation. • Consultation on rule change • Confirm scope of evaluation 	• Review of assessments and curriculum reports.	• Application for rule change submitted to LSB

We will spend **£1.8 million** k on Strategic Programme Two which is **35%** of the BSB's direct costs.

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Strategic Programme Three - a strong and sustainable regulator

What this means:

We will continue to position the BSB as the regulator of legal services which have advocacy, and specialist legal advice at their core.

We will actively promote regulatory governance arrangements which are constitutionally and financially independent of government and of the profession we regulate, whilst at the same time ensuring that we maintain our credibility with the public. We will maintain and extend our accountability.

We will continue to promote our core values of fairness, integrity, respect, excellence and value for money. We will maintain our strong track-record of transparency, accountability and good stewardship of resources by setting out clear and meaningful measures of success.

Business Plan – 2017/18**Our work programme:**

We have made good progress in the reform of our governance structures. We have transferred routine decision-making powers and policy decisions to appropriately qualified and trained staff members, and disbanded some of the committees that used to make those decisions. The Qualifications Committee will be disbanded by the end of 2017, and transitional arrangements are in place now. The Education and Training committee will be disbanded once the Future Bar Training programme is completed. The Governance Reform programme will continue through until 2019.

We have also formed an Advisory Pool of Experts (APEX) in the last year. The expert pool consists of both barristers and non-lawyers who can provide advice in the areas of competition and economics, equality and diversity, higher education, insurance, regulatory risk and regulatory policy and theory. These experts will be used where we need to draw on specialist knowledge and advice to inform our work.

We have begun a leadership programme and management training for existing and aspiring middle managers, which will continue into 2017-18. These programmes are designed to invest in the knowledge and skills of staff with leadership and line management responsibilities.

Our Accessing Staff Potential to Inspire Regulatory Excellence (ASPIRE) programme is an internal change programme that champions four aspects of our work: Risk, Governance, Consumers and Equality. It has been in place since May 2015. Two years after it began, we will assess ASPIRE against the regulatory standards framework and make a decision as to whether or not it needs to remain in place as a formal programme of change or whether the work it has undertaken is now sufficiently embedded within our day-to-day work to no longer require a separate programme.

We will also be revising our assurance model and framework to ensure that the “checks and balances” we have in place to monitor our work remain both effective and comprehensive. We will be mapping areas of high risk to assess whether we have sufficient oversight in those areas and whether we have too much oversight in areas of low risk. An internal auditor will be appointed during the 2017-18 business year to make an assessment.

In conjunction with Resources Group, our corporate support function, we are overhauling our information management systems. This will ensure all corporate knowledge and contacts are accessible and consistent across the organisation. The purpose is to reduce inefficiency, dispense with the same information stored in multiple locations, identify where there are gaps in our information and improve succession planning, which should ultimately result in cost savings.

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Timeline of activities

Activity	Q1	Q2	Q3	Q4
Disciplinary Tribunal Regulations (DTRs)	<ul style="list-style-type: none"> • Introduction of the new DTRs (approval stage) • Application submitted in April 	<ul style="list-style-type: none"> • Embedding new DTRs into business as usual. 		
BSB - Professional Indemnity Insurance	<ul style="list-style-type: none"> • Negotiations on Bar Council PII insurance terms to commence in April 2017 to ensure value for money. • If necessary, tender for contract to provide legal defence services. 			
Regulatory independence	<ul style="list-style-type: none"> • Respond to MoJ's Response to CMA report 	<ul style="list-style-type: none"> • Development of Bar Council / BSB Internal Governance Rules (IGRs) 		
Governance reforms	<ul style="list-style-type: none"> • Interim / transitional arrangements in place. • Governance budget in place for APEX members & recruitment 	<ul style="list-style-type: none"> • New appeals / review board & APEX fully implemented. • Action plan from Board Diversity Data review to address areas of underrepresentation (links to Equality & Access to Justice) 	Ongoing business as usual activity	

We will spend **£0.9 million** on Strategic Programme Three which is **17%** of the BSB's direct costs.

Business Plan – 2017/18

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Challenges and uncertainty for our plans

As already discussed, there is a great deal of uncertainty ahead of us concerning the regulatory environment in which we operate. This uncertainty has made business planning particularly challenging for the year ahead.

Our response - with the other legal regulators - to the recommendations in the CMA report could lead us to introducing other programmes of work not included in this plan. For this and other reasons, we have tried to maintain a high-level of flexibility in our Business Plan. This will enable us to switch attention and resources where necessary in order to respond to, what are as yet, uncertain developments. We will continue with our prioritisation exercises, such as the internal risk forum and the ASPIRE programme so we are ready to respond to unexpected external events.

Not least of these uncertainties is the fact that the CMA report called for the Ministry of Justice to press ahead with plans to consider the full and complete separation of the legal regulators from their representative bodies. If there is to be further debate about complete separation, then we will of course have to contribute based on our position as a public interest regulator. We believe that full separation could allow both the regulator and the representative body to be stronger in their respective roles and that the Bar Council continues to have a vital role which must be properly funded.

In addition, the CMA urged the Ministry of Justice to conduct a review of the regulatory framework in the longer term to consider how regulation can be more flexible and risk-based.

Lastly, the full implications of the UK's exit from the European Union remain to be seen and we could not write about the challenges and uncertainties in regulating the Bar without mentioning Brexit. We have targeted our resources on the critical projects, and are therefore not including specific actions in our plan at this stage. Until clearer proposals are available we will be monitoring developments keenly and will communicate to the profession and the public if and when necessary.

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Strategic Dashboard

This page shows the “dashboard” performance reporting that we will be using this year. We will give an overall picture of progress against each of our strategic aims, then an update on our key programmes of work and service standards, as well as our corporate resources and risks. This will be reported to our Planning, Resources and Performance Committee as well as to the Board and then to the public.

[Diagram of the Dashboard to be inserted]

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Equality Statement

[In February 2017, we published our Equality and Diversity Strategy for 2017-19.](#)

There is a slow rate of progress in increasing diversity at the Bar, particularly for women. It is in the public interest that the Bar more accurately reflects the community it serves to improve access to justice. With this in mind, we have developed the following Equality Objectives over the next two years.

Our Equality Objectives are to:

1. Address the causes of discrimination experienced by those with protected characteristics at the Bar.
2. Reduce the barriers to progression and retention, and improve social mobility.
3. Improve our understanding of the diverse experiences of students training for the Bar.
4. Increase equality of access to the profession.
5. Improve Access to Justice for vulnerable clients, with focus on immigration and young people.
6. Embed Equality and Diversity best practice across all BSB departments.

We are committed to increasing diversity in the profession and within our workforce and ensuring that equality considerations are factored into everything that we do. In particular, our “Women at the Bar” report, published last year, has given us a solid evidence base about how we might raise the profile of our Equality Rules to create a culture of equality in the workplace. The Future Bar Training programme also has a solid equality and access to justice framework in mind. We want to improve access to the profession to encourage individuals of varied backgrounds to join the Bar..

The promotion of equal access to, and diversity within, the profession helps to combat social injustice. It is unlawful for individuals to experience disadvantage on the basis of protected characteristics. All of our staff and those with whom we engage are entitled to be treated with dignity and respect and be part of an environment that is free from barriers.

A profession that is representative of the people it serves is more likely to meet the diverse needs of clients and to be more effective. We work more productively when we maintain an inclusive workplace free from discrimination.

We have a number of general and specific legal duties arising from the Equality Act 2010. Our commitment to equality and diversity is a significant factor in fulfilling the regulatory objective of ‘encouraging an independent, strong, diverse and effective legal profession’ as set out in the Legal Services Act 2007.

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As required by s 149 (1) of the Equality Act 2010, we will work to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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Governance

The BSB is led and governed by a Board of 15 people, 7 barristers and 8 lay people, including a lay Chair.

Leadership

The Board is responsible for leading our organisation. It sets our direction, and approves policy and strategy, The Board represents us with external stakeholders and accepts collective accountability for the organisation's work in regulating barristers in the public interest.

Culture

The Board aims to develop, shape and lead by example in relation to our organisational culture and values.

Strategy

The Board sets and approves the strategy for the organisation, taking account of the wider regulatory and risk landscape. When approving strategy, it takes account of short-term pressures but maintains sight of broader long-term trends and our aims, objectives and mission.

Good Governance

The Board is responsible for ensuring that sound and effective arrangements are in place so that we can operate in accordance with our organisational values and good governance principles.

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Chair:

Sir Andrew Burns KCMG

Vice-Chair:

Ms Naomi Ellenbogen QC

Barrister Members:

Mr Aidan Christie QC

Ms Justine Davidge

Ms Judith Farbey QC

Mr Andrew Mitchell QC

Mr Adam Solomon

Ms Anupama Thompson

Lay Members:

Ms Alison Alden OBE

Ms Rolande Anderson (Standing down December 2017)

Mr Steven Haines

Ms Zoe McLeod

Ms Nicola Sawford

Dr Anne Wright CBE (Standing down December 2017)

Vacancy (to be filled no later than January 2018)

Details of terms of office and declarations of interest for all Board members and advisers are available on our website (insert link.)

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Our Board runs its work through five committees:

- Education and Training Committee
- Governance, Risk and Audit Committee
- Planning, Resources and Performance Committee
- Professional Conduct Committee
- Qualifications Committee

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The Education and Training Committee oversees all regulatory activity relating to education and training for the Bar. This includes setting the standards of education and training that people must pass before being able to practise as barristers, together with the further training requirements that barristers must comply with throughout their careers. The Governance Reform programme is likely to see this Committee disestablished within 2017/18.

The Governance, Risk and Audit Committee is responsible for ensuring The Board's corporate governance standards and internal controls are maintained. The Committee keeps under review and advises the Board on all matters relating to the risk management framework and our internal audit function.

The Planning, Resources and Performance Committee is responsible for work relating to development of our strategic direction and plans. It advises the Board on developments to the planning, resource setting and performance monitoring processes. It also considers whether financial and operational resources are properly and effectively allocated and efficiently managed.

The Professional Conduct Committee makes decisions about reports and complaints regarding the conduct of barristers. Where a barrister has breached the BSB Handbook, the PCC has a number of options which includes the imposition of “administrative sanctions” (warnings and low level fines) for less serious conduct issues but also referral to to disciplinary action (eg a disciplinary tribunal) for more serious issues of professional misconduct.

Our Qualifications Committee deals with applications for waivers or exemptions from provisions of the BSB Handbook relating to qualification and practice as a barrister, as well as applications for licensed access. There will be changes to the Committee during 2017-18 in line with our governance reform.

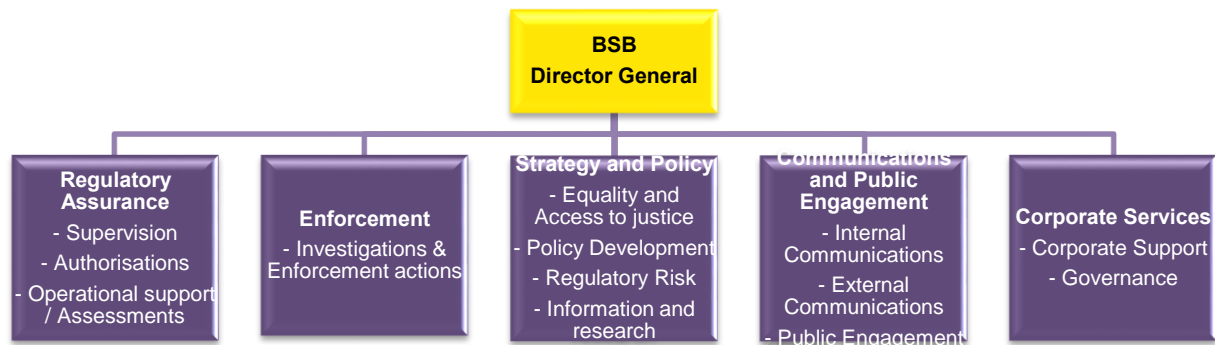
Our work is overseen by the Legal Services Board, in accordance with the Legal Services Act 2007.

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Organisational Chart

This organisation chart shows how we have structured the executive during the term of the current Strategic Plan. At 1 April 2017 we will have 79 people employed at the BSB.

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Our budget

Our budget year runs from 1 April 2017 to 31 March 2018 and the budget that we control directly for this period is **£5,212k**.

We estimate that direct income from sources other than PCF will be **£888k**

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The Practising Certificate Fee (PCF)

The Bar Council approves our budget and collects our funding. Its intention when the budget was set last year was to increase the amount of PCF revenue by 1.25%, to meet strategic needs over a three-year period

Rationale

The Bar Council set out its rationale for the compilation of the overarching budget. The headlines drivers for a 12% increase in Practising Certificate Fees for 2017-18 are:

- Managing the deficit in the (now closed) defined benefit pension scheme (the monies raised by the 12% will be kept entirely separately)
- The need to meet costs arising from the expiry in 2019 of the lease on the Bar Council / BSB's current office accommodation;
- The completion of the Bar Council / BSB three-year programme of investment into our information systems and processes, which will in the future reduce organisation wide costs by £500k annually;
- The need to manage other risks to income and expenditure.

The PCF explained

The PCF can only be spent on the activities that are permitted under s51 of the LSA 2007. Regulation is a permitted purpose and so a significant proportion of the PCF is spent by the BSB. However some of the Bar Council's activities are also "permitted purposes" so a

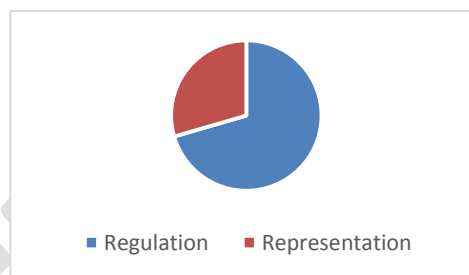
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portion of the PCF is also spent by the Bar Council on activities managed wholly separately from the BSB (shown below as “Representative” costs).

Under these rules, the Bar Council has consulted on its budget and PCF proposals with the profession and has received approval of both from the LSB. A copy of the consultation paper for the 2017-18 PCF and budget is on the Bar Council’s website.

Diagram of What PCF funds are spent on (table to be adjusted to show pension funds 12%)

Income band	PCF level for 2017
£0 - £30,000	£123
£30,001 - £60,000	£246
£60,001 - £90,000	£494
£90,001 - £150,000	£899
£150,001 - £240,000	£1,365
£240,001 and above	£1,850



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How is the BSB funded?

Part of our income comes from charges we make for specific services we provide to individuals. We describe that kind of income as “income streams directly controlled by the BSB”. Directly controlled income streams include for example the fees from BPTC providers, and the Bar Transfer Test (BTT). The remainder of the BSB’s funding is from practising certificate fees. This latter income stream is not directly controlled by the BSB.

Table of Income**Where will the Bar Standards Board get its income from?**

<i>Income streams directly controlled by the BSB</i>	£k
Education and Training	£616k
Authorisations (eg waivers, entities)	£272k

Total BSB generated income	£888k
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Income streams not directly controlled by the BSB

Practising Certificate Fee contributions	£6,936
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Funding from BC reserves	£0
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Regulation – the costs explained

The BSB has direct control of a budget of £5,212k for 2017/18. Those funds will be spent on each of the areas shown below and overleaf.

However, this does not reflect the full cost of the BSB. We share the costs of common services with the Bar Council including a share of the premises at 289-293 High Holborn as well as relying upon the Resources Group to carry out support work (HR, IT, and Finance etc). The Resources Group budget is managed separately and part of that budget is apportioned to the BSB.

Table of Expenditure

What will we spend our money on?	
<i>Budgets controlled directly by the BSB</i>	Total budget
Entity Regulation and ABS	£45 k
Authorisations – Waivers and Accreditation	£245 k
Examinations	£343 k
Supervision – Post Qualification	£494 k
Supervision – Education and Training	£275 k
Professional Conduct	£1,315 k
Strategy and Policy	£984 k
Communications and Public Engagement	£400 k
Corporate Services	£748 k
Chair & Director General	£362 k
Total BSB Budget	£ 5,212
<i>Budgets not directly controlled by the BSB</i>	£k
Resources Group allocation (inc premises costs)	£3,043
Total cost of regulation	£8,254

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Pie chart of expenditure (to be completed)



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We are committed to providing a high standard of service and dealing with everyone in a way that is fair, transparent, and proportionate. We welcome your feedback on our services, particularly where the level of service has exceeded or fallen below your expectations.

Your comments and suggestions are important to us as they will help us to meet our obligations to you and to improve our performance.

Write to us:

Bar Standards Board
289-293 High Holborn
London WC1V 7HZ
DX: 240 LDE
Phone us: 020 7611 1444
contactus@barstandardsboard.org.uk
www.barstandardsboard.org.uk
Twitter: @barstandards

	2016/17 (Forecast)	2017/18 (Budget)
Income		
PCF	6,573	6,936
Inns Subvention	250	
Regulatory Fees & Charges	1,213	888
Total Income	8,036	7,824
Direct Expenditure		
Staffing Costs	4,170	4,366
Non-Staffing Costs	1,023	846
Total Expenditure	5,193	5,212
RG Cost	3,060	3,043
Surplus / Loss	218	431

Key Variances

- QASA Income has been reduced to £0k
- Income from BCAT and BPTC has been forecast lower than the current year. This is on the assumption that FBT may lead to more students deferring enrolment.
- Budget shifts in Regulatory Assurance (RAD) (Incorporating: Entity Regulation and ABS, Authorisations - Waivers & Accreditation, Examinations, Supervision - Post Qualification, and Supervision Education and Training) reflect the restructure in September 2016.
- The budget for RAD also includes funds apportioned for FBT.
- The Professional Conduct budget includes a reduction in spending on outsourced casework based on current trend.
- Strategy & Policy includes a reduction in one off research costs.
- Communications and Public Engagement includes costs for the website.

Detailed Breakdown

Income	2017/18 Budget	2016/17 Forecast	Variance
Entity Regulation and ABS	86,000	44,000	42,000
Authorisations - Waivers and Accreditation	186,000	229,000	- 43,000
Examinations	75,000	103,000	- 28,000
Supervision - Education and Training	541,000	808,000	- 267,000
Professional Conduct Department	-	-	-
Total directly controlled income	888,000	1,184,000	

Expenditure	2017/18 Budget	2016/17 Budget	Variance
Entity Regulation and ABS	45,000	83,000	- 38,000
Staff Costs	45,000	83,000	- 38,000
Other Costs	-	-	-
Authorisations - Waivers & Accreditations	245,000	271,000	- 26,000
Staff Costs	201,000	197,000	4,000
Other Costs	44,000	74,000	- 30,000
Examinations	343,000	330,000	13,000
Staff Costs	135,000	129,000	6,000
Other Costs	208,000	201,000	7,000
Supervision - Post Qualification	494,000	484,000	10,000
Staff Costs	494,000	481,000	13,000
Other Costs	-	3,000	- 3,000
Supervision - Education and Training	275,000	364,000	- 89,000
Staff Costs	168,000	271,000	- 103,000
Other Costs	107,000	93,000	14,000
Professional Conduct	1,315,000	1,279,000	36,000
Staff Costs	1,192,000	1,145,000	47,000
Other Costs	123,000	134,000	- 11,000
Strategy and Policy	984,000	991,000	- 7,000
Staff Costs	869,000	832,000	37,000
Other Costs	115,000	159,000	- 44,000
Communications and Public Engagement	400,000	355,000	45,000
Staff Costs	278,000	281,000	- 3,000
Other Costs	122,000	74,000	48,000
Corporate Services	748,000	728,000	20,000
Staff Costs	645,000	575,000	70,000
Other Costs	103,000	153,000	- 50,000
Chair and Director General	362,000	328,000	34,000
Staff Costs	338,000	328,000	10,000
Other Costs	24,000	-	24,000
Total Expenditure	5,211,000	5,213,000	- 2,000
Total Staff Costs	4,365,000	4,322,000	43,000
Total Other Costs	846,000	891,000	- 45,000

Collection of practice area information

Status

1. For decision.

Summary

2. The BSB executive has identified a need to collect more robust data about practice areas at the Bar. The purpose of this paper is to outline the rationale for making such data collection mandatory and to seek the Board's agreement to consult on a rule change to make this a part of our authorisation to practise process. In addition, where necessary, if there are any other adjustments to rules needed to facilitate the IT improvements underway in relation to the authorisation to practise process, these too would be consulted on at the same time.

Recommendations

3. That the Board agrees to consult on changing our authorisation rules to require barristers to disclose their areas of practice and the proportion of work undertaken in each practice area as part of the authorisation to practise process from 2018-19; and that any other incidental changes required to enable the process are also consulted on at the same time.

Background

4. Different parts of the BSB have identified a need to gather more structured information about barristers' areas of practice. A new authorisation to practise (ATP) portal is being designed for the 2018-19 practising year. This will have the capability to ask barristers to declare the areas of law in which they practise and the proportion of their practice attributable to each area for the previous year. This is information that self-employed barristers are already required to provide to the Bar Mutual Indemnity Fund (BMIF). At present, provision of the information would be voluntary, but in order for the information to be robust and useful for regulatory purposes it is proposed that it should become compulsory.
5. The regulatory rationale for seeking this information is outlined below.

Regulatory risk

6. The Regulatory Risk team has identified the following reasons for collecting information about barristers' practising areas:
 - Having a good understanding of the market we oversee and an ability effectively to influence priority areas are two key aspects of being an effective risk-based regulator.
 - The Bar works across varied and diverse areas of legal work, within which the realities of practice, the difficulties facing consumers and nature of outcomes for those impacted can differ hugely. We cannot be truly proportionate and targeted to real issues if we treat the Bar as one homogenous set of practitioners and practices and our risk based approach will not be able to take such meaningful account of particular barriers, detrimental impacts or realities of how to help address risks in different sectors of the market without a better grip on those sectors themselves.

- We may be able to target further data collection to the most relevant information for the specific areas of practice undertaken, reducing regulatory burden across the market as a whole by only asking for what is particularly pertinent in higher risk areas of work.
- Having reliable information about areas of work updated annually will enable us better to track changes in the market and particular sectors, For example how those involved in family law work responded to cuts in legal aid provision, where practices may be consolidating, where competition is particularly limited etc.
- This will also enable us better to focus thematic activity or research where it is relevant and so better inform our policy development work.

Operational activity: supervision

7. We need current data in order to maintain an up to date risk profile, so that we can target our resources at the areas of highest risk and be proportionate in our approach. Practice area is an important piece of information for this. The impact assessment of Chambers that we carried out in 2014 used practice areas as a key indicator to categorise Chambers as high, medium or low impact. We target our Supervision activity at Chambers whom we classify as high and medium impact. For example, crime, family and immigration are areas where client vulnerability is likely to be highest.
8. Our current approach to data capture is inconsistent for barristers, chambers and authorised bodies:
 - We do not collect data for individual barristers.
 - For chambers, we captured practice data in 2014 when we carried out our impact assessments. As chambers are not authorised, there is not an annual mechanism to do this.
 - We capture practice area at source upon authorisation of entities, and have used this to create an impact rating. But we do not currently update the data at renewal (although we do ask for notification of material changes).
9. When carrying out thematic reviews, it is a challenge to identify chambers or sole practitioners that we might want to sample from. For example, when we undertook the immigration thematic review and when we tried to identify which chambers were most at risk of issues raised by the Panama Papers leak, we used a combination of internal data and publicly available information.
10. We are required by the 4th Money Laundering Directive to have a risk profile of our regulated community. To build a risk profile of chambers/entities we need to know which ones practise predominantly in areas that engage the regulations. It is difficult to do this without robust data.
11. The other area where it will be useful is quality assurance of advocacy. Declaration of practice area will help to get a more complete picture of the advocacy market.

What do we need to do to facilitate data collection?

12. We already have a rule that requires the Bar to “promptly provide all such information to the Bar Standards Board as it may, for the purpose of its regulatory functions, from time to time require of you”¹. We have considered whether that rule is sufficient to

1. ¹ rC64

Part 1 – Public

permit the collection of practice area information as failure to comply with such a request would be a disciplinary matter. However, compulsory declarations are routinely collected as part of the ATP process. This means that the issuing of a practising certificate is contingent on the provision of compulsory declarations. Taking this approach would ensure the return of robust, annual data returns without having to resort to the threat of disciplinary action and the additional regulatory resources connected with that. This would require a rule change.

13. It is proposed that the practice areas should mirror those collected by the BMIF and that barristers should be asked to declare the proportion of their practice that each area of law constitutes (which is also declared to BMIF annually). This will avoid duplication of effort – barristers would be able to make an identical declaration to the BSB. This mirrors the approach taken with the declaration of income as part of ATP. Unlike the income declaration, it is proposed that BSB staff would have access to an individuals' declared areas of practice but it is not proposed at present that such information would be published.

IT enablement of the A to P process

14. The authorisation process is currently being redeveloped and the technology on which it is based is being modernised. There is a small possibility that aspects of the “self-service” principle aimed at in this development may be more effective if supported by amendments to rules, e.g. the need to provide a unique (as in non-shared) email address to access the system. If we think that rule changes were required to facilitate technological advances, we would consult on them at this time as well.

Equality impact analysis

15. Collecting additional information about the Bar will enable us better to target our equality and access to justice work and to monitor the impact that we are having in this area. Fuller equality analysis will be undertaken prior to consultation.

Risk implications

16. Regulatory risks are addressed in the body of the paper. Operationally, the collection of reliable data will rely on a robust IT solution – the risks of which are being managed through the IM Programme.

Regulatory objectives

17. Better data about the nature of practice at the Bar will enable us better to target our activities and promote all regulatory objectives.

Publicity

18. Subject to Board agreement, a consultation is proposed over the summer. This will give us sufficient time to ask the LSB to approve any rule change ahead of next year's ATP. A key message will be that we are seeking not to gather information that most barristers are providing to BMIF in any event, in order to minimise the burden on the profession.

Lead responsibility

Ewen Macleod, Director of Strategy and Policy

Qualifications Committee: Annual Report to the Board for 2016 and Update on Implementation of Governance Review

Status:

1. For **noting** and **approval**.

Executive Summary:

2. This is a report on the work of the Qualifications Committee during 2016 and an update on implementation of the governance review.

Recommendations

3. It is recommended that the Board:
 - i) Note the report; and
 - ii) Resolves to disestablish the Qualifications Committee with effect from 31 August 2017

The Work of the Committee

4. The Qualifications Committee is responsible for determining a range of applications made to the Bar Standards Board, including applications for waiver from the requirements for qualification as a barrister, for authorisation as a pupillage training organisation, for waiver from the rules governing entitlement to practise as a barrister and for the grant of licensed access. It also determines applications for review of its own decisions, of decisions of the Record Office on the issue of practising certificates and of decisions of the Inns Conduct Committee on student admission and discipline.

Committee Membership

5. During 2016, the Committee had a total of 21 members (11 barrister; 10 lay). The Chair was Rob Behrens and the Vice-Chairs were Adam Solomon and Professor Carl Stychin.

How the Committee Worked in 2016

6. The Committee had previously delegated all of its decision-making powers, except for its review function, to Panels. There were five Panels, each responsible for different types of application and each comprising four or five members of the Committee, at least two barrister and two lay.
7. During the course of 2016, each Panel continued the work begun in 2015 to delegate all first-instance decision-making to staff. By the end of 2016, each Panel had revised its guidance documents to ensure that the criteria against which all applications are considered are clear and had delegated all decision-making powers to staff.

Numbers of Applications Considered

8. The numbers of applications considered in 2016 are set out in Annex A. The total number of applications is 1,251, around 4% lower than in 2015.
9. The numbers of applications considered by staff and by Panels/the Committee for each quarter of the year are set out at Annex B. These show that, apart from the period April to July, when new staff were being trained, there has been a steady increase in the proportion of decisions taken by staff, from just under 59% in the first quarter to just over 80% in the final quarter.
10. Annex B also sets out the outcomes of decisions of review and shows that the proportion of staff decisions amended on review (22.2%) was very slightly higher than the proportion of Panel decisions amended on review (21.7%).

Appeals to the High Court

11. There were no appeals to the High Court against decisions of the Qualifications Committee during 2016.

Key Performance Indicators

12. The Committee's performance against its KPIs is set out at Annex C.
13. We were disappointed to miss our targets in the third and fourth quarters of the year. The reasons for this were as follows:
 - From 1 April 2016, the Qualifications team was reduced to a smaller number of more highly skilled staff, in anticipation of the transfer of decision-making from Panels to staff, which would no longer require the resources of supporting the Panels. However, the Panels continued to operate until the end of December, so that staff continued to bear the workload of Panel support, in addition to their own caseload, throughout this period.
 - There were particular staff shortages during the period July to September, caused by the sudden departure of one member of staff at the same time as other members of the team taking annual leave.
 - It took time to train new members of staff to the point where they could take up a full caseload.
 - A significant amount of staff-time was taken up with implementation of the Authorisations Governance Review Project.
14. We are confident that we will substantially improve our performance against the KPIs during 2017, for the following reasons:
 - First-instance decision-making has now been fully delegated to staff, so that there is no longer any resource required for the support of Panels.
 - The team is now at full-strength, with all members fully trained.
 - The most resource-intensive phase of the Authorisations Governance Review Project has now been completed.

Governance Review

15. The Board has previously agreed that, from 1 September 2017, all first instance decisions currently taken by the Qualifications Committee will be taken by staff, supported by advice from APEX, and all applications for review currently considered by the Qualifications Committee will be determined by appeal panels drawn from a pool of independent reviewers. We are moving towards this in three phases.

Phase 1

16. During 2016, each Panel of the Qualifications Committee revised its published “Criteria and Guidelines” documents in order to clarify the criteria against which decisions are made and so to make them easier for staff to apply and for applicants to understand. The Committee approved final versions of the guidelines at its meeting on 21 February 2017. They have now all been published on the website, on a newly structured page (<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/current-requirements/forms-and-guidelines/applications-authorisations,-exemptions,-waivers-and-reviews/>), which is much easier for potential applicants to navigate.

Phase 2

17. Members of the Qualifications Committee have been split into two “pools”, one of “advisors” and one of “reviewers”.
18. Since 1 January 2017, the Committee has delegated all first instance decision-making to staff, who are able to seek advice from members of the pool of advisors where necessary. This is acting as a pilot for the system that will be in place after 1 September 2017, when all decisions will be taken by staff, who will be able to seek advice from members of APEX.
19. From 1 April 2017, all applications to the Committee for review will be considered by a panel of three members of the Qualifications Committee. This is acting as a pilot for the system that will be in place after 1 September 2017, when reviews will be undertaken by appeal panels.

Phase 3

20. We will be recruiting additional members of APEX, to support decision-making from September, and a pool of independent reviewers, from whom appeal panels will be drawn from September, during the period May to July. Both groups will include both barristers and lay people.
21. A number of members of the Qualifications Committee had appointments concluding on 31 December 2016. It is essential to the continuing operation of the Committee that these members are appointed until the Committee is disbanded at the end of August 2017. Appraisals were conducted for those members whose terms concluded on 31 December 2016, and appointments were made for a second term until 31 December 2017. The duration of this term was to allow contingency for any delay to the work to establish the structures that will support executive decision making and the appointment of review panels. That work continues to progress to schedule and we are confident that the expert advisers and review panels will be established and operational by the end of August.

22. BSB Standing Orders provide that a person shall cease to be a Committee member if the Board resolves to disestablish or substantively restructure a Committee so as to be inconsistent with continued office by that person, upon three months' notice. To allow the giving of three months' notice to those members of the Qualifications Committee with terms beyond the end of August, formal resolution of the Board to disestablish the Committee is sought.
23. The Board is therefore asked to resolve to disestablish the Qualifications Committee from 31 August 2017.

Lead responsibility:

Rob Behrens
Chair, Qualifications Committee
March 2017

Number of Applications Considered by Qualifications Committee 2016

	Total (2015 figure in brackets)
Transferring Qualified Lawyers Panel (“Panel 1”)	
Qualified Foreign Lawyers	96 (127)
European lawyers applying for Call to the Bar	18 (12)
European lawyers applying for Registration under the Establishment Directive	13 (5)
Registered European Lawyers applying for Call to the Bar	0 (0)
Legal Academics applying for dispensation from the standard requirements for Call to the Bar	5 (3)
Applications for Temporary Membership of the Bar	0 (1)
Solicitors applying for Call to the Bar	115 (98)
Reduction in Pupillage for a Barrister who has also qualified as a Solicitor	19 (39)
Extension of time in which to Pass Bar Transfer Test	115 (96)
General Exemption	3 (2)
<i>Total Panel 1</i>	<i>384 (383)</i>
Pupillage Panel (“Panel 2”)	
Applications for approval to undertake external training	8 (9)
Applications for reduction in pupillage	73 (77)
Applications from pupils for dispensation from the pupillage regulations	38 (42)
Applications for retrospective registration of pupillage	7 (21)
<i>Total Panel 2</i>	<i>126 (149)</i>
Practising Rules & CPD Panel (“Panel 3/4”)	
Applications for extension of time for completion of the New Practitioners Programme	29 (23)
Applications for waiver of the NPP Requirements	13 (8)
Applications for extension of time for completion of the Established Practitioners Programme	55 (68)
Applications for waiver of the EPP Requirements	41 (29)
Applications for rights of audience/waivers of the practising rules	84 (58)
Applications for rights to conduct litigation	111 (149)

Part 1 – Public

	Total (2015 figure in brackets)
Applications for waiver of the Public Access Rules	16 (20)
Applications for exemption from the Vocational Conversion Course	1 (0)
Applications for licensed access	24 (23)
Applications for licensed access – renewals	43 (19)
Applications for licensed access – reapplications	10 (7)
Registration for licensed access – immigration advisers	87 (67)
<i>Total Panel 3/4</i>	<i>514 (471)</i>
Pupillage Training Organisation Panel (“Panel 5”)	
Applications for authorisation as a pupillage training organisation	11 (24)
Applications for waivers of the Pupillage Funding & Advertising Requirements	16 (38)
<i>Total Panel 5</i>	<i>27 (62)</i>
Academic Stage Panel (“Panel 6”)	
Applications for Partial Exemption from the Academic Stage – QLD Provider	12 (11)
Applications for Partial Exemption from the Academic Stage – non-QLD Provider	14 (6)
Applications for Exercise of Discretion to Waive Requirement to obtain lower second class honours	10 (6)
Application for Certificate of Academic Standing on the basis of overseas or non-standard degrees	97 (106)
Applications for reactivation of stale qualifications	21 (21)
Application for approval of credit transfer	3 (32)
Application for approval to exceed permitted study-time	0 (3)
Application for approval for exceeded attempts	0 (3)
Application for permission to commence Vocational Stage before completing Academic Stage	2 (5)
Application for condonation	0 (2)
Application for approval of deemed pass/aegrotat	0 (1)
Bar Examination Transcript/Certifying Letter	8 (7)

Part 1 – Public

	Total (2015 figure in brackets)
Mature Non-Graduate	8 (9)
<i>Total Panel 6</i>	<i>175 (212)</i>
TOTAL APPLICATIONS – Initial decisions	1,226 (1,277)
Full Committee – Applications for Review	
Qualified Foreign Lawyers	4 (3)
European Lawyers applying for Call to the Bar	1 (0)
European lawyers applying for Registration under the Establishment Directive	1 (1)
Temporary Admission	0 (1)
Legal Academics applying for dispensation from the standard requirements for Call to the Bar	0 (1)
Solicitors applying for Call to the Bar	4 (2)
General Exemption	1 (2)
Applications for reduction in pupillage	3 (5)
Applications from pupils for dispensation from the pupillage regulations	1 (0)
Applications for external training	0 (1)
Applications for extension of time for completion of the New Practitioners Programme	1 (0)
Applications for waiver of the NPP Requirements	1 (0)
Applications for waivers of the practising rules	0 (1)
Waiver of the Public Access Rules	0 (2)
Applications for exemption from the Vocational Conversion Course	1 (0)
Waiver of the Pupillage Funding & Advertising Requirements	1 (2)
Applications for Partial Exemption from the Academic Stage	0 (1)
Applications for Exercise of Discretion to Waive Requirement to obtain lower second class honours	0 (1)
Applications for Certificate of Academic Standing	2 (1)

Part 1 – Public

	Total (2015 figure in brackets)
Reactivation of Stale Qualifications	1 (1)
Application for permission to commence Vocational Stage before completing Academic Stage	1 (0)
Mature Non-Graduate	0 (1)
Fee Waiver Request	1 (0)
Decisions of the Inns Conduct Committee	1 (1)
Decisions on Issue of Practising Certificate	0 (1)
TOTAL APPLICATIONS FOR REVIEW	25 (28)
TOTAL APPLICATIONS	1,251 (1,306)

Qualifications Committee – Staff Decision-Making

The following table shows the proportion of decisions taken by staff and by the Qualifications Committee/Panels, for each quarter of 2016.

	1 January to 31 March 2016		1 April to 30 June 2016		1 July to 30 Sept 2016		1 Oct to 31 Dec 2016	
Staff	218	58.8%	204	56%	201	71.3%	255	80.2%
Panel / Committee	124	36.3%	160	44%	81	28.7%	63	19.8%
Total	342		364		282		318	

The following table shows the outcomes of applications for review of each of Panel decisions, staff decisions and decisions of other bodies, for the period February 2016 to February 2017 inclusive.:

	Reviews of Panel decision		Reviews of staff decisions		Reviews of ICC decisions	
Original decision upheld	18	78.2%	7	77.8%	3	100%
Original decision amended	5	21.7%	2	22.2%	0	0%
Total	23		9		3	

Qualifications Committee – Performance Against Key Performance Indicators

The following KPIs were agreed in August 2014:

- i) The percentage of applications determined within six weeks of receipt of the complete application, including all required documentation and the application fee.
Target: 75%
- ii) The percentage of applications determined within twelve weeks of receipt of the complete application, including all required documentation and the application fee.
Target: 98%

The following table shows performance against these KPIs, as well as an additional measure for applications determined within eight weeks, for each quarter of 2016.

	Target	1 January to 31 March 2016		1 April to 30 June 2016		1 July to 30 Sept 2016		1 Oct to 31 Dec 2016	
Within 6 weeks	75%	290	84.8%	289	79.4%	203	72%	183	57.5%
Within 8 weeks		326	95.3%	320	87.9%	255	90.4%	260	81.7%
Within 12 weeks	98%	342	100%	356	97.8%	278	98.6%	291	91.5%
Total		342		364		282		318	

Scheme of Delegations for BSB Entities - Proposed Amendments

Status

1. For discussion and approval.

Executive Summary

2. The Board's approval is sought to change the wording of the delegated powers for Entity Authorisation to ensure consistency with proposed changes to the Handbook reflecting the Legal Services Board's ("LSB") approval of the BSB as a designated licensing authority.
3. There are also a small number of minor proposed amendments intended to increase overall clarity.

Recommendations

4. It is recommended that the Board:
 - a) **approve** the proposed amendments to the Scheme of Delegations ("the Scheme") set out in Annex 1.

Background

5. The Scheme describes the authority granted by the Board to its committees and the executive to carry out functions on its behalf. The Board has delegated authority to the Director General of the BSB for oversight of all operational and administrative activities. The Director General may delegate these further without disposing of accountability for them.
6. The BSB was approved by the Legal Services Board in late 2014 to authorise and regulate entities (authorised bodies). The delegation by the Board to the executive of its powers to take decisions relating to entities is set out in Delegations 9-12 of the Scheme.
7. Subject to parliamentary approval, the BSB will be designated as a licensing authority in April 2017. Changes are required to the Handbook to reflect the designation with parallel amendments necessary to the Scheme to ensure overall consistency.

Proposed Amendments

8. The proposed amendments to the Scheme are:
 - i. The term "*BSB entity*" is proposed where the powers are intended to apply to both authorised (formerly referred to as entities) and licensed (ABS) bodies.
 - ii. The addition of "licence(s)" or "licensing" is proposed to ensure consistency with the Handbook and to distinguish between the types of body.
 - iii. The deletion of "*annual renewal*" from Delegation (9) is proposed to provide clarity. All decisions or actions relating to the annual renewal process are captured by the powers to revoke or suspend an authorisation or license and by the powers to modify or impose conditions on an authorisation or license set out in Delegation (11).

- iv. It is proposed to move “*the imposition of authorisation conditions*” from Delegation (9) and update Delegation (11) with “*conditions imposed on it at any point.*” Delegation (11) specifies the power to amend a licence or authorisation at any point and is considered a more appropriate place for references to conditions.
 - v. Amendments to Delegation 12 are proposed to:
 - Add “*or reject*” to specify the powers available to the decision-maker;
 - Add “*Head of Legal Practice*” to clarify the acronym “*HOLP*” and “*Head of Finance and Administration*” to explain the acronym “*HOFA*”;
 - Include “*emergency / temporary HOLPs or HOFAs*” to indicate a similar delegation of authority for this activity.
9. There are no changes to the sequence of sub-delegated decision-making set out in Column B.

Resource implications

10. There are no resource implications.

Equality Impact Assessment

11. There are no equality impact risks. The proposed amendments set out the delegation of powers as it relates to all BSB entities and clarifies acronyms.

Risk implications

12. Revising the Scheme addresses the risk of any potential ambiguity about the delegation of powers for all BSB entities and ensures governance remains robust.

Impacts on other teams / departments or projects

13. The proposed amendments to the Scheme ensures consistency with the proposed changes to the Handbook.

Consultation

14. No consultation is proposed.

Regulatory objectives

15. The proposed amendments clarify the procedures by which the BSB operates and do not in themselves further the regulatory objectives.

Publicity

16. No publicity is planned. The amended Scheme of Delegations will replace the version published on the website and will be circulated to all BSB staff.

Annexes

17. Annex 1 – Scheme of Delegations with the proposed amendments tracked.

Lead responsibility:

Clíodhna Judge
Head of Supervision and Authorisation

Scheme of Delegations for BSB Entities– Proposed Amendments

<u>BSB Entity Authorisation / Licensing</u>	
9. Authorise <u>license</u> or refuse entity applications (including applications for litigation extensions) and revoke <u>revoke</u> or suspend <u>suspend</u> of these authorisations / licences, including the imposition of authorisation conditions and annual renewal	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
10. Extend the decision period for considering entity applications	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
11. Agree to impose or <u>modify a BSB entity's authorisation or licence,</u> including the conditions imposed <u>on it at any point on an entity</u>	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer
12. Approve or reject of an owner, manager, <u>Head of Legal Practice (HOLP)</u> or <u>Head of Finance and Administration (HOFA), including emergency / temporary HOLPs or HOFAs</u> and emergency HOLP or HOFA for entities	Director of Regulatory Assurance Head of Supervision and Authorisation Authorisations Manager Supervision Manager Senior Supervision and Authorisation Officer Supervision and Authorisation Officer

Chair’s Report on Visits and External Meetings, February – March 2017

Status:

1. For noting

Executive Summary:

2. In the interests of good governance, openness and transparency, this paper sets out the Chair’s visits and meetings since the last Board meeting.

List of Visits and Meetings:

Sir Andrew Burns

28 February	Attended Education and Training Committee meeting
1 March	Attended a reception by The Society of Legal Scholars
2 March	Was in attendance at PRP Committee meeting
2 March	Met with Kathryn Stone OBE, Chief Ombudsman at the Legal Ombudsman
4 March	Gave a report at the Bar Council meeting
7 March	Chaired the Chairmen’s Committee meeting
7 March	Attended GRA Committee meeting
9 March	Met with the Chairs and Chief Executives of CILEx and SRA
29 March	To attend the Inns Strategic Advisory Group (ISAG) meeting at Lincoln’s Inn

Equality Impact Assessment

3. No Impact

Risk implications

4. These reports address the risk of poor governance by improving openness and transparency.

Consultation

5. None

Regulatory objectives

6. None

Publicity

7. None

Lead responsibility:

Sir Andrew Burns KCMG

Director General's report - BSB meeting 23 March 2017

For consideration and noting.

Director General

1. The four weeks since the last Board meeting have seen intensive internal work on the Business Plan across the BSB. Once the Board has agreed it for publication, internal staff events will be held to ensure all colleagues are able to gear their activities for the coming year to it. They will be supported in this through the annual performance management and review exercise, and our 17/18 Learning and Development strategy. If any Board members are interested in attending the events, they are most welcome: contact Jeanette Fordyce Harvey to be advised of dates. The Annual Staff Survey is in the final planning stages and is likely to be launched at the end of April.
2. We have also been working hard to prepare the reports and analysis in support of the FBT decisions before the Board this month, with significant pressure on a small group in the Strategy and Policy Team.
3. There have been several opportunities to foster further cross—regulatory working at several levels this month, and primarily in connection with the CMA recommendations: there are very good working relationships across all the front-line regulators on this and a number of current other topics.
4. The Board will wish to note the resignation of our Head of Corporate Services, Viki Calais, who after more than six successful years with us is moving to a new senior business support role at Barnardo's. We wish her every success in her new path and thank her for the substantial contribution she has made to the smooth running of the business and the good stewardship of our resources.

Strategy and Policy

Regulatory risk

5. We have been working with our APEX risk advisor on finessing proposals around development of risk reporting for the Senior Management Team and they will receive a paper within the next few weeks outlining proposals for development of departmental reports and a BSB-wide view of risks drawing on available data and insights from Risk Forum discussions.
6. This month saw the first meeting of representatives from legal regulators to focus on sharing information about risk-based regulation. We were delighted to welcome colleagues from a broad range of backgrounds together to start to form a network for sharing experiences, good practice and pooling knowledge on specific risk areas. The group has agreed to continue a programme of meetings, focusing on specific areas of risk which are of common interest across different regulators, and to undertake joint horizon scanning activity.
7. The Centralised Assessment Team project board discussed and approved proposals around development and testing of assessment methodology and the Information Management programme team has also agreed a way forward for building a prototype assessment tool.

Research

8. Since the Board meeting in February, work has progressed in a number of areas.
9. We have been working with IRN on the Family Law research project. IRN are interviewing clients who have used barrister's services for a family law issue and analysing responses, with a draft report to be delivered by the end of March.
10. We are working with NatCen Research to conduct qualitative research into barriers to access to the profession to inform further aspects of the Future Bar Training programme. Recruitment for the interviews is largely completed, with a number of interviews with pupillage applicants and former BPTC students already having taken place. We are also working on scoping research and data requirements for further final policy development and future evaluation required for FBT.
11. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority on a research project on judicial perceptions of criminal advocacy of both barristers and solicitor advocates. The Invitation to Tender was re-released at the end of February following a limited number of responses to the first ITT. The supplier will be appointed - and work on the research will start - at the end of March.
12. The team has been working with the QC Appointments Panel to support their research project looking into lower application rates by women to become QCs. Initial findings have been shared with a stakeholder workshop held in mid-February, and the final report is expected in April.
13. Pixl8 have been appointed to conduct research into users of the BSB website to inform future improvements. A survey for website users has already been developed, and we will continue to work with the communications department to shape and quality assure the research going forward.
14. Work continues on the review of the available data, information and evidence pertaining to the Future Bar Training programme. A draft report of findings was presented to the SMT and the Education and Training Committee in February and shared with internal BSB colleagues. Comments received are now being reviewed and will be reflected in the final version of the report that will ultimately inform the rule change application to the Legal Services Board. An abridged version of the full report has been included with this month's Board papers.
15. We have received the final draft report of the market study of the models of provision of legal services by barristers, from Pye Tait consulting. A final review of this version is underway and the report will ultimately be signed off by the internal Project Team. We will arrange a BSB-wide knowledge sharing session by the end of March, where Pye Tait will present the key findings and also hold a discussion with SMT to decide the next steps.
16. We are also supporting the implementation of the Immigration Thematic Review especially on the consultation on the consumer guidance and an evaluation framework for the whole project.
17. The Research Quarterly digest for Q3 2016-17 has been published on Verity and will be circulated within the organisation by the Communications department.

Future Bar Training Programme

Consultation - Future routes to authorisation

18. A paper is being presented to the Board this month on the results of the 2016 consultation on futures routes to authorisation. Alongside the summary of consultation responses, an Equality Impact Assessment (EIA) of the three approaches is also being presented.
19. We have also met the LSB and SRA to discuss our proposals.

Stakeholder engagement

20. A stakeholder engagement plan has been developed to ensure that we continue to engage and inform stakeholders as we move forward. This will be shared with the Board.

Research

21. We have been working with the research team to pull together the evidence base which will support our consultation on Rules changes and the subsequent application to the LSB later this year. We are also working with the equality and access to justice team and the research team to explore further the barriers faced by under-represented groups when entering the profession.

Professional Standards

22. The Professional Standards Team received over 120 enquiries through the Professional Standards Helpline in February. The Team has also been providing assistance on queries relating to the BSB Handbook to the Records Office during the Authorisation to Practise (AtP) process, and the Project Management Office as Barrister Connect is redesigned.
23. The report on the review of the Public and Licensed Access schemes is published this month. The recommendations in the report will be taken forward over 2017/18, although some will be taken forward as part of the BSB's wider response to the CMA report. The first step will be to put the proposed changes to regulatory arrangements out to consultation (in Q1 of the 17/18 business year).
24. The implementation of the recommendations arising from last year's Immigration Thematic Review is well under way. The first key deliverable will be publication of consumer guidance in Q1 of 17/18. Draft guidance is currently being developed, and meetings are being held with key consumer groups to build relationships, gather feedback on our approach and test the guidance.
25. We held a meeting with a number of APEX and board members on 21 February to explore work on professional indemnity insurance (PII). A board-to-board meeting between Bar Mutual and the BSB has also been scheduled for 5 April. This will enable us to understand better BMIF's position (in particular relating to the insurance of single person entities) and to discuss our work programme (particularly governance issues and regulatory oversight of BMIF's insurance terms).

26. A new (third) Edition of the BSB Handbook will be published in April. This will include regulations governing Alternative Business Structures (ABSs). We also plan to remove all gender-specific references from the new Edition, as a first step towards making the Handbook gender-neutral.

Equality and access to justice

27. Hosted by the BSB on the 15th of February, the Head of E&AJ attended a roundtable to support the Queen's Council Appointments with their research into increasing the number of women appointed to QC.
28. Led by the BSB Head of Investigations and Hearings, LGBT history month was celebrated with a knowledge sharing session on transgender experience, hosted by barrister Robin White. A total 24 people attended from the BSB and Bar Council and the event received positive evaluations.
29. Co-ordinated by the E&D Senior Policy Officer, a Shared Parental Leave (SPL) paper has been produced for the March board meeting. The paper includes analyses of the 19 responses to the SPL consultation with recommendations for a Handbook rule change.
30. The Head of E&AJ chaired a meeting to discuss the FBT Equality Impact Assessment on the 17th of February. The meeting was attended by the lay Equality and Diversity (E&D) and Regulatory Policy APEX advisors, and relevant members of the Strategy and Policy Department. Subsequent engagement with the lay and barrister E&D APEX advisors has provided more in-depth analyses to ensure thorough equality considerations are included in the FBT programme.
31. Resources Group have appointed Richard Thompson, Head of Project Management Office, in the role of Equality Champion. Two Equality Champions (EC) meetings have taken place, one prior and one after publishing the 2017-19 BSB Equality Objectives. All champions have drafted departmental E&D actions plans and these have been reviewed by the E&AJ Team. In line with the associated published Objective, all action plans will be finalised by May 2017.

Professional Conduct

Training

32. We continue to provide training to staff through the PCD training programme. A two-day course for Officers on "Investigation, report writing and witness statements" is planned for the end of March which will be followed up later in the year with witness handling training. The PCD management team is now in the process of developing the programme for 2017/18.

Prosecution Panel

33. Following a successful campaign to attract new members to our Prosecution Panel (the panel that provides the BSB with pro-bono representation at Disciplinary Tribunals), we have recently appointed 11 new barristers to the pool. Each has now attended the required induction session and several have already represented us at hearings.

Independent Decision-Making Body Project

34. The Task Completion Group for the IDMB has been formally appointed and is due to meet in April for the first time and will meet monthly thereafter. The Project Team is continuing the time monitoring commenced last year and is currently conducting research across a range of other regulators who operate similar panels. Work has also commenced on developing the pilot of the IDMB and considering the changes to the regulations that may be required.

Disciplinary Tribunal Regulations review

35. We had originally anticipated that we would be able to introduce the amended Disciplinary Tribunal Regulations in January 2017. However, following discussions with the LSB, we will be resubmitting the application in a slightly different form for their approval. The anticipated date for the new regulations to come into force is now June 2017.

Litigation

36. Since the last update, there is still no indication of the date when the limitation point in the discrimination case is to be heard before the Supreme Court. The Employment Tribunal matter is no longer listed in March, the date has been vacated as the barrister has instructed new representatives who are in discussions with those instructed by the BSB, with a view to reaching a resolution to the matter.
37. The claim for damages arising from a case that was referred to Tribunal but subsequently dismissed by the PCC has been issued and the BSB has served its defence. There are no dates for any hearings at present.
38. The PCD has been issued with one new Judicial Review. This arose from the decision to dismiss aspects of a complaint relating to a barrister's conduct in an appeal against conviction. The defendant sought an injunction to prevent those matters that had been referred to a tribunal from proceeding until the decision to dismiss had been reconsidered. The injunction was refused but the underlying claim remains, albeit that it has not reached the permission stage as yet.

Regulatory Assurance Department***Pupillage***

39. We have commenced a project to ensure that pupillage training is designed to meet the competences required, as set out in the Professional Statement, Threshold Standard and Competences ("PSTS&C"). In line with the objectives of FBT, we plan to take an outcomes-focussed approach, which was agreed by the Education and Training Committee on 28 February. In place of the current checklists, we will require Pupillage Training Organisations ("PTOs") to formulate their own training material and demonstrate to the BSB, through the Authorisation and Supervision process, that it enables barristers to demonstrate the competences at the threshold standard on "day one" of practice. We will provide guidance on how to do that within an updated Pupillage Handbook, but it will be down to PTOs to develop their own training plan and records. It is important to ensure that any changes are not perceived as a burden that put off small PTOs from taking on pupils, so we will be piloting this approach with a range of PTOs, small and large, to test this.

40. Supervision of PTOs has previously focussed on chambers only, but this approach will cover all types of PTOs. Some of the Supervision team have accompanied the Training Supervision Team on visits to BPTC providers, to improve shared understanding and to share good practice in training supervision.

Centralised Assessment of Incoming Information (“CAT”)

41. The Project Team has been testing the risk assessment methodology on past cases. It is currently working on how CAT allocates information to other departments (Supervision, PCD and others) for a regulatory response.

Licensed Body (“ABS”) Implementation / Statutory Interventions

42. The position remains the same as we await final parliamentary approval of our designation order.

Authorisations

43. There is a separate report of the Qualifications Committee elsewhere on the Agenda.

Youth Court Advocacy

44. The Youth Proceedings Competences and associated guidance which were approved at the February meeting of the BSB board have been published. We have worked closely with the BSB’s Communications and Public Engagement Team to generate publicity around this agenda. This has involved materials being published on the BSB website, a twitter campaign and a number of interviews with the legal press. Articles have appeared in Legal Futures, the Law Gazette and Legal Cheek. A number of senior figures within the youth justice sector have responded extremely positively to the publication and reiterated their desire to continue to work with us in this important area of work. We have also met with the Youth Offending Team Managers National Forum and the Chair of the Youth Justice Board to promote the introduction of the competences and our future phased approach to regulation.
45. The next step on this piece of work will be to continue to foster the positive relationships we have built within the sector. We will also be working with a range of organisations to produce a guide for young people about what to expect from their barrister and the Youth Court.
46. In addition, The BSB has joined the Alliance for Youth Justice Reform, which brings together senior members of organisations across the sector. The Alliance is chaired by Lord Carlile of Berriew and its aim is to seek to bring about changes to the youth justice system including the implementation of the recommendations of the Charlie Taylor review of Youth Justice.

Communications and Stakeholder Engagement

47. Since this report was prepared for the February Board meeting, the following press releases and announcements have been issued:
- 10 February: A press release to accompany the publication of the BSB’s new two-year equality and diversity strategy
 - 14 February: An announcement to invite tenders from recruitment specialists to help with a number of appointments due within the BSB over the next two to three years

- 17 February: A press release about a barrister disbarred following a conviction for putting a woman in fear of violence by harassment
 - 17 February: A press release about an unregistered barrister disbarred for misappropriating client funds as a solicitor
 - 24 February: A press release about a barrister disbarred for conspiring to supply cocaine
 - 24 February: A press release to announces the BSB's new regulatory approach to improve advocacy standards within Youth Courts
48. The Board will have seen the fortnightly media coverage that the above announcements generated. This has included a number of follow-up articles in the press with interviews with Oliver Hanmer speaking about Youth Court advocacy. These interviews were arranged following a proactive effort from the Communications Team to generate further media coverage for this story.

Work in Progress

49. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- the publication of a report into recent public and licensed access scheme research;
 - the announcement of the Board's decision regarding Future Bar Training; and
 - the publication of the 2017/18 Business Plan.
50. The team is also working on the following projects:
- preparing follow-up communication activities to support the BSB's work to improve advocacy standards in the Youth Courts;
 - preparing communication and engagement activities to support the Board's decision on the future of Bar training;
 - helping to draft the 2017/18 BSB Business Plan;
 - researching the User Experience (UX) on the BSB website to better understand the site's users and their needs from it; and
 - introducing new rotating banners (with images) on the home page of the BSB website.

Online and social media

51. During February, 31,245 users visited the BSB website. At the time of writing, we have 16,754 followers on Twitter, 2,715 followers on LinkedIn and 326 organisation likes on Facebook.

Corporate Services

Governance

52. Ten requests for engagement of APEX members have been submitted, with all requests initially accepted (scheduling of one meeting with multiple members was unable to achieve a time that all could attend). Requests have been made of ten of the eleven appointed experts to date. All members have been invited to attend an update at the BSB in late April, to ensure they remain apprised of the issues and challenges before the BSB and its priorities in the coming months. It is likely that the update will

include a session on the Business Plan for 2017/18 and on the programme of work planned to respond to the CMA report.

53. Six agencies responded to the invitation to tender for an external recruitment consultant to support recruitment of Board and Committee members over the coming three years. Shortlisted agencies will be invited to present their proposed approach on 20 March. Presentations will be expected to outline how the services provided will enhance the diversity profile of the candidate pool.
54. A selection panel is being convened for recruitment of an additional academic member of the Education and Training Committee. Interviews will be held in early June. Planning is also in progress for recruitment of the expert advisers and members of the authorisations review panels that are to be appointed prior to the disbanding of the Qualifications Committees, with interviews to be held in the latter half of June.

Corporate support

55. BDO LLP have completed interviews and document review for the assurance mapping exercise and are currently preparing a report that will be submitted to the Board and GRA committee in due course. Once the report has been received and considered, Corporate Support will begin work on the assurance plan, and tendering for an internal audit will begin.
56. The business plan has been submitted to the Board after oversight and scrutiny from the PRP. The Communications and Public Engagement team are project managing the publication of the plan which will be released at the beginning of April. The main priorities in the plan are Future Bar Training and responding to the CMA report.

Resources Group

57. Resources Group reports appear quarterly in detail in the PRP papers. This month, work has continued well in most areas including on the Work Smart project and potential office move and on the IM Programme. The new Finance System project is back on track, and the Records Team have been performing outstandingly well in relation to the annual Authorisation to Practise exercise.

Vanessa Davies
Director General BSB
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