



REGULATING BARRISTERS

**Engagement Programme –  
Pupillage Gateway Timetable and  
Written Agreements for Pupillage**

**May 2019**

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## Part I: Executive Summary and Introduction

For the last few years the Bar Standards Board (BSB) has been engaged in a review of Bar training which has sought to make training for the Bar more accessible, more affordable and more flexible while maintaining high standards. We have looked at every aspect of training to become a barrister and our review has now largely concluded. Now, to ensure that pupillages are awarded more fairly and that every pupil, and those offering them their pupillage, know what to expect from pupillage, we are considering:

- whether all those recruiting new pupils should be obliged to follow the Pupillage Gateway timetable; and
- whether we should require written agreements for pupillage arrangements and, if so, what terms should be included in those agreements.

If implemented, these requirements would be established as conditions of authorisation for chambers and others offering pupillage as Authorised Education and Training Organisations (AETOs). We anticipate the new requirements would come into force by November 2019.

These changes would not require amendment to our rules so we are not conducting a full public consultation, but we are interested in engaging with key stakeholders and other groups who may be interested in these proposals. The specific points on which we are particularly interested in hearing your views are set out below but the nature of this engagement programme is flexible. We are open to hearing views on any part of our proposals which are of particular interest to you, even where they are outside the remit of our specified discussion points.

We are happy to receive feedback in any form: we will arrange meetings, discuss the issues by telephone or receive email submissions. We will adapt our communication to whatever suits you.

The deadline for responses to the proposals is **31 July 2019**.

## Part II: Gateway timetable proposal

### *What are we proposing?*

1. Currently, the BSB stipulates that [all pupillages must be advertised on the Pupillage Gateway](#). AETOs must apply for a waiver for any exception. However, there is no requirement to adhere to the common Gateway advertising and recruitment timetable. The BSB is proposing to introduce a requirement, by way of a condition of AETO authorisation, that all pupillage recruitment must be in line with the Pupillage Gateway timetable. (Note that we are not proposing that the Gateway must be used for processing pupillage applications). The Bar Council, who manage the Pupillage Gateway, support our decision to consult on this proposal.

### *Gateway timetable proposal*

2. To support the principle of accessibility, it is essential that pupillage opportunities are advertised and recruited to fairly. The current position is that all pupillages must be advertised on a centralised website, which is currently the [Pupillage Gateway](#).
3. AETOs that do not currently use the Gateway to administer the application process can choose whether or not they recruit according to the [Gateway timetable and can advertise and recruit](#) at any time during the year.
4. We are proposing that, for AETOs who administer their recruitment process both off and on the Gateway website, each stage of the advertising and recruitment process should take place in the same time period. The proposed timeline is as follows (with specific dates within these parameters set annually):

<b>For AETOs recruiting on the Gateway</b>	<b>For AETOs recruiting off the Gateway</b>
<b>(1) Late November – publication of advertisements on the Gateway:</b> pupillage providers must register their accounts and submit applications for approval. All approved vacancy advertisements will be published for prospective applicants to browse. Pupillage providers who plan to	<b>(1) Late November – publication of advertisements on the Gateway:</b> pupillage providers must register their accounts and submit their applications for approval. Applications should include details on how applications are to be made (e.g. by post or email address). All approved vacancy advertisements will be

administer their recruitment process through the Gateway must make a payment.	published for prospective applicants to browse.
<b>(2) Early January – applications open:</b> the submissions window for applications opens and applicants can start, edit and submit their applications. Pupillage providers will not have access to the applications until the submissions window closes.	<b>(2) Early January – applications open:</b> the submissions window for applications opens and applicants can send their applications to the AETO.
<b>(3) Early February – applications close:</b> the submissions window for applications closes and no further applications or amendments to applications are allowed. Pupillage providers can begin to download and assess applications and acknowledge receipt of applications.	<b>(3) Early February – applications close:</b> the submissions window for applications closes and no further applications are allowed. Pupillage providers can begin to assess applications and acknowledge receipt of applications.
<b>(4) February to May – shortlisting and interviews:</b> pupillage providers can sift through applications, shortlist applicants and conduct interviews. They can communicate the status of an application with applicants through the Pupillage Gateway.	<b>(4) February to May – shortlisting and interviews:</b> pupillage providers can sift through applications, shortlist applicants and conduct interviews. They can communicate the status of an application with applicants directly (e.g. by post, email or telephone).
<b>(5) Early May – offers made:</b> pupillage providers will make offers through the Gateway system. All offers will be made on the same day at the same time.	<b>Early May – offers made:</b> pupillage providers will make offers of pupillage (e.g. via post or email). All offers will be made on the same day. Pupillage providers are not able to make offers to applicants in advance of this date.

The purpose of the requirement to advertise on the Gateway is to ensure that all potential applicants (including those who do not already have a network of contacts in

the profession)<sup>1</sup> are easily able to search for, and become aware of, pupillages for which they may wish to apply. The centralisation of all pupillage vacancies ensures that the risk of applicants missing certain opportunities is reduced, as they are all advertised in one central place. This creates a fair and transparent system and supports the principle of accessibility. It also has the advantage for those offering pupillage of being able to see the full range of potential candidates.

5. We are proposing to extend this approach further by introducing a requirement that all pupillages must be advertised and recruited according to the Gateway timetable. We think that this proposal would support the principles of accessibility and maintaining high standards without having any negative impact on the principle of affordability or any significant impact upon flexibility.
6. Whilst the current advertising rule ensures transparency and fairness, and encourages further diversity within the profession, problems have emerged regarding the optional adherence to the common recruitment timetable. Earlier or later advertisement on the Gateway may disadvantage certain applicants who are less likely to be aware that these opportunities exist. This potentially excludes candidates from the application phase, which could be a barrier to accessing pupillage opportunities and may disproportionately affect those from lower socio-economic backgrounds.
7. Another issue arising from pupillage providers opting out of the common Gateway timetable is that it can prevent pupils from making informed decisions. Compared to those who send offers according to the Gateway timetable, some pupillage providers who make early offers set a very short deadline by which an applicant must communicate their acceptance or rejection. If the deadline to respond falls before other pupillage providers have sent out offers, the applicant may feel pressure to accept the first offer in haste, leaving them unable to make an informed decision based on all the offers they may receive. Early offers can therefore lead pupils to withdraw their other applications, even if their first-choice organisation has not yet considered their application or come to a decision, or is not yet able to, because they are adhering to the Gateway timetable. This could be another barrier, especially for applicants from lower socio-economic backgrounds who may not have confidence in their ability to secure multiple offers and who may be less likely to take such risks.<sup>2</sup>

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<sup>1</sup> [https://www.barstandardsboard.org.uk/media/1910425/barriers\\_to\\_training\\_for\\_the\\_bar\\_research.pdf](https://www.barstandardsboard.org.uk/media/1910425/barriers_to_training_for_the_bar_research.pdf), page 3

<sup>2</sup>

[https://www.barstandardsboard.org.uk/media/1910429/differential\\_attainment\\_at\\_bptc\\_and\\_pupillage\\_a](https://www.barstandardsboard.org.uk/media/1910429/differential_attainment_at_bptc_and_pupillage_a)

8. In addition, AETOs which use the Gateway timetable may face a competitive disadvantage when compared to those who recruit earlier, as it may be that the best candidates have already been recruited. Introducing a requirement that all AETOs use the same timetable would ensure a consistent and fair approach across the board and allow all AETOs the same opportunity to recruit the best candidates.
9. We are proposing to add a final stage to the Gateway timetable whereby once offers are released, all applicants have a 14-day deadline to communicate acceptance of an offer (if any). Applicants will be able to accept an offer anytime up to the deadline. Adding this final stage could increase consistency and fairness by allowing applicants the same time period to come to a decision. It also avoids the prospect of applicants being pressured into accepting an offer where the AETO has an earlier acceptance deadline than other AETOs, and therefore allows applicants to make informed decisions. We recognise this may not resolve every problem; for example, where offers are rejected on the date of the deadline and the pupillage vacancy needs to be filled. If this 14-day deadline has passed, AETOs should send out second round offers within a reasonable time period. However, second round and further offers will not be included as a separate stage in the mandated timetable.
10. We recognise that mandating advertising and recruitment to the Pupillage Gateway timetable may present some disadvantages. Mandating a set timetable may make the recruitment process less flexible which may disadvantage some AETOs. Firstly, an AETO's own business cycle may differ from the Gateway timetable and secondly, an AETO may have a growth period but then have to wait a year to recruit. If they could have recruited sooner, then potential pupillages may be lost. To address these possible negative impacts, it would remain open for an AETO to apply for a waiver from the requirement in exceptional circumstances.
11. Mandating the Pupillage Gateway timetable may also disadvantage both AETOs and applicants if all interviews must be held in the same limited time frame. This could reduce candidate and AETO choice where interview dates conflict. It may also be difficult for applicants who have other responsibilities (e.g. as carers or if they are in work). Again, AETOs could apply for a waiver from the requirement in exceptional circumstances.

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[analysis.pdf](#), page 25. Applicants from lower socio-economic backgrounds have a reduced chance of obtaining pupillage meaning they are more likely to be concerned about this.

12. In summary, our proposal is to make it mandatory for the timetable of all pupillage advertisement and recruitment to match the Pupillage Gateway timetable. The relevant dates would be fixed in line with the Gateway timetable, and all pupillage providers would be required to adhere to them. This would ensure a fairer, more consistent system for pupillage recruitment in the future, supporting the principle of accessibility to Bar training.
13. Our proposal is to introduce the requirement in November 2019. It would be established as a condition of [AETO authorisation](#).
14. We are interested in hearing your views on all aspects of this proposal. In particular we should like to know **whether you believe the BSB should make it a mandatory condition of AETO authorisation that all pupillage providers are required to recruit in line with all stages of the Pupillage Gateway timetable, or whether there is any other way to ensure candidates are aware vacancies exist and can make informed decisions**. In addition, we are interested in your thoughts on our proposal to add another step to the Gateway timetable, **namely a 14-day deadline for applicants to respond to offers**.
15. We are also interested in gathering views on **whether it is feasible to require compliance with the Gateway timetable from November 2019**, and finally **any general comments you may have about the proposed timetable**.



## Part III: Written pupillage agreements

### *What are we proposing?*

16. Currently, there is no requirement for written agreements to be in place between AETOs and pupils. We are proposing to introduce a mandatory requirement for written agreements to be drafted and signed upon commencement of pupillage.<sup>3</sup> This would be established as a condition of AETO authorisation.

### *Written pupillage agreements*

17. The purpose of introducing written terms is to help AETOs, pupil supervisors and pupils to understand their obligations, and to make the pupillage experience across the Bar more consistent. A number of the proposed terms reflect [BSB Handbook](#) requirements, but some of the BSB Handbook requirements currently only apply to chambers and not AETOs at the employed Bar and we therefore propose to apply them consistently.
18. We also have evidence to suggest that some pupils are at risk of inappropriate behaviours and written terms, with clear policies setting out the course of action to be taken should inappropriate behaviour occur, is a way to address this.<sup>4</sup>
19. Broadly, the proposed terms have been designed to:
- Address issues that have arisen with pupillages in the past;
  - Be consistent with the new [Bar Qualification Rules in the BSB Handbook](#); and
  - Be consistent with the new [Authorisation Framework](#) for pupillage and the [Bar Qualification Manual](#).
20. The proposed terms are set out as outcomes in Annex A and are split into three sections: the duties of the AETO, the duties of the pupil and details of the pupillage. It will be for the AETO to draft specific wording that meets these outcomes. Most of the

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<sup>3</sup> Where an AETO is not a legal entity, it is proposed that as a condition of AETO authorisation a pupillage agreement must either be between the pupil and an associated legal entity of the AETO (e.g. a service company incorporated by members of chambers) or be between the pupil and a person/body of appropriate seniority at the AETO (e.g. a Head of Chambers/Management or Pupillage Committee). It is proposed that the intended means of entering into an agreement must be made clear at the application stage and approved by the BSB as part of the authorisation process. It is also proposed that as a condition of AETO authorisation, any change in the intended means of entering into an agreement must be notified to and approved by the BSB in advance.

<sup>4</sup> [https://www.barstandardsboard.org.uk/media/1773934/women\\_at\\_the\\_bar\\_-\\_full\\_report\\_-\\_final\\_12\\_07\\_16.pdf](https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf), page 40

terms reflect existing requirements in the BSB Handbook, Authorisation Framework and Bar Qualification Manual, but there are also some additional terms which are set out in italics. Where the purpose of the term is not necessarily self-evident, we identify what problem it seeks to resolve and explain why the term was felt necessary.

21. We are proposing that AETOs will of course be able to add further terms if they wish, provided they are not unfair and/or unduly onerous. We are also proposing that agreements must reflect any relevant legislation, such as the obligations of both the AETO and the pupil under the General Data Protection Regulation and the Data Protection Act 2018. If the pupillage is at the employed Bar, then the proposed agreement will not affect the employed status of the pupil, or the obligations of either the AETO or the pupil in relation to employment and related law. Finally, in the event of a breach of the proposed agreement, the BSB could take appropriate action on the basis that either BSB Handbook requirements or conditions of AETO authorisation have been breached.
  
22. During our engagement process, we will be interested in hearing your views on **whether the BSB should make it a mandatory condition of AETO authorisation that all pupillage providers are required to use written agreements for pupillage**. We are also interested in gathering views on **whether the proposed outcomes set out in Annex A are appropriate and clear, and indeed whether you have any other views relating to this proposal which you would like to express**.

## **Part IV: About this engagement programme and how to engage with us**

23. Both the requirements we are seeking views on will, if adopted, be conditions of AETO authorisation, and not changes to the rules in the BSB Handbook. For this reason, we are not following the usual consultation format. We want to engage with those who are most interested in these issues and obtain useful feedback on the proposals. We will be arranging meetings with key representative bodies and sending out surveys to others who may be interested in our proposed changes – namely BPTC students, recent and current pupils and current and potential future AETOs – to enable them to engage. If you have not been contacted and wish to engage with us, please contact us using the contact details below.
24. However you engage with us, we will want to document your views and we may make your views public. If you do not want to be named in any public document, please let us know.
25. We will be happy to receive views (in any format) until **31 July 2019**. You do not need to wait until the deadline to respond to the proposals.
26. Please send your views, or otherwise get in touch, as follows:  
**Email:** ProfessionalStandards@BarStandardsBoard.org.uk  
**Tel:** 020 7611 1444  
**Postal Address:**  
Professional Standards Team,  
The Bar Standards Board,  
289-293 High Holborn,  
London,  
WC1V 7HZ.

## **Annex A: Proposed outcomes for pupillage written agreements**

The outcomes which we are proposing that AETOs will be required to seek in their written agreements are below. Most of the outcomes reflect existing requirements in the BSB Handbook, Authorisation Framework and Bar Qualification Manual, but there are also some additional terms which are set out in italics. It will be for the AETO to draft the terms, provided the following outcomes are met.

### **Agreement outcomes: duties of the AETO**

AETOs must ensure that:

#### **General terms**

1. The pupillage is conducted in a manner which is fair and equitable, including the fair distribution of training opportunities to the pupil (Rule C110.3.i of the BSB Handbook);
2. Pupil supervisors are appropriately trained and registered with the BSB by the AETO (Authorisation Framework and Bar Qualification Manual Part 2 C2);
3. The pupil is covered by insurance (either that of the AETO or a pupil supervisor) for all legal services supplied to the public (Rules C76-77 of the BSB Handbook);
4. *The AETO and pupil supervisors promptly provide the pupil with all necessary assistance in complying with their regulatory obligations e.g. registering their pupillage with the BSB, applying for any necessary waivers and obtaining a provisional practising certificate;*
5. Throughout the pupillage, the BSB is promptly notified of any material changes to the pupillage e.g. change in the date of commencement or expected completion, or change of pupil supervisor<sup>5</sup> (Authorisation Framework);
6. Where a pupil ceases to be a pupil at the AETO for whatever reason, to provide the pupil on request with copies of their training records which apply to the period of pupillage completed at the AETO (Bar Qualification Manual Part 2 C5); and

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<sup>5</sup> Both the AETO and the pupil are required to ensure that the BSB is promptly notified.

7. *The pupil is provided with copies of, or made aware of how to access, the written policies set out in the appendix below (Authorisation Framework).*

### **Training programme**

8. The AETO and pupil supervisors provide the pupil with a written description of the training programme which enables the pupil to meet the competences in the BSB's Professional Statement and is included as a Schedule to the agreement (Authorisation Framework). *In particular, the written description of the training programme must provide details of:*
- What training the pupil will undertake in the non-practising and practising periods (Authorisation Framework);
  - Which pupil supervisor will supervise the pupil in the non-practising and practising periods (Bar Qualification Manual Part 2 C2 and C3);
  - How the pupil will be supervised in the non-practising and practising periods, including a minimum amount of contact time (Authorisation Framework);
  - How frequently appraisals/performance reviews will be conducted (Authorisation Framework);
  - The compulsory advocacy course (and from the academic year 2021/22, the compulsory negotiation course) which the pupil must complete prior to starting the practising period (Curriculum and Assessment Strategy);
  - (From the academic year 2021/22) the compulsory professional ethics examination which the pupil must pass prior to completing pupillage. The training programme must state whether the AETO will pay for second or subsequent resits<sup>6</sup>, and the course of action to be taken if the pupil has not passed the examination/compulsory courses before the pupillage is due to be completed (Curriculum and Assessment Strategy);
  - Where a pupil will be doing a period of pupillage at another AETO, details of the other AETO, the length of the period of pupillage at the other AETO, what training the pupil will undertake, which pupil supervisor will supervise the pupil, how the pupil will be supervised and assessed and arrangements for the pupil supervisor to certify that the period of pupillage at the other AETO has been satisfactorily completed (Authorisation Framework);

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<sup>6</sup> The examination and first resit will be funded from the practising certificate fee. Subsequent resits will be charged to the AETO or pupil.

- *The course of action to be taken if, for an extended period of time, the pupil takes sickness or other absence from training or there is no appropriate pupil supervisor, and there is a risk the competences in the BSB's Professional Statement will not be met (including notifying the BSB so that special provision can be made where necessary)*<sup>7</sup> (Bar Qualification Manual Part 2 C3); and
- How final assessment against the competences in the BSB's Professional Statement will be conducted (Authorisation Framework).

### **Certification of completion**

9. *The course of action to be taken if the pupil does not pass a final assessment against the competences in the BSB's Professional Statement must be set out in writing.*
10. Pupil supervisors give the required notification to the BSB on satisfactory completion of a final assessment against the competences in the BSB's Professional Statement (Bar Qualification Manual Part 2 C5).

### **Pupillage funding**

11. The Pupillage Funding Rules (Rules C113-118 of the BSB Handbook) are complied with. In particular, the agreement must:
  - Provide details of the minimum amount to be paid each month, whether this will be paid in advance or in arrears, when/how this payment will be made and who in the AETO is responsible for ensuring that this is done;
  - Provide details of the AETO's policy on reimbursing expenses for travel and compulsory courses;
  - If the AETO is a chambers, provide that either the AETO/self-employed barristers in chambers will pay the pupil for anything which because of its value warrants payment in addition to their pupillage award, or that the pupil is receiving a pupillage award or remuneration in lieu of payment for any individual item (Rule C116 of the BSB Handbook);

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<sup>7</sup> The rationale for this term is to ensure that pupils who need to take sickness or special absence from training are treated fairly in relation to completion of pupillage. In deciding whether an extension to pupillage is required, the key focus for AETOs should not be to look at the number of days or weeks a pupil has been absent from training, but whether the pupil has met the competences set out in the BSB's [Professional Statement](#) by their date of completion.

- Provide that the agreed funding arrangements do not apply where a pupil (i) is doing a period of pupillage at another AETO, or (ii) ceases to be a pupil at the AETO for whatever reason; and
- State who is responsible for any tax/National Insurance/VAT payments.

### **Agreement terms: duties of the pupil**

Pupils must ensure that:

12. Prior to starting the non-practising period, they provide clear documentary evidence to their AETO that they have satisfactorily completed academic and vocational training components, are a member of an Inn, have obtained immigration visas (where relevant) and registered their pupillage with the BSB (Authorisation Framework);
13. Throughout pupillage, they keep adequate training records (particularly to assist their final assessment against the competences in the BSB's Professional Statement) (Authorisation Framework);
14. Throughout pupillage, any necessary waivers from the BSB Handbook have been granted by the BSB, and that the BSB is promptly notified of any material changes to the pupillage e.g. change in the date of commencement or expected completion, or change of pupil supervisor<sup>8</sup> (Authorisation Framework);
15. During the non-practising period, they do not provide legal services as a barrister. The exception is doing a noting brief (taking notes in a trial) with the permission of their pupil supervisor, Head of Chambers or Head of Legal Practice (Rule S11 of the BSB Handbook);
16. Prior to starting the practising period, they have registered with the Information Commissioner's Office (if the pupil is at a chambers)<sup>9</sup>, been called to the Bar<sup>10</sup> and obtained a provisional practising certificate from the BSB; and

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<sup>8</sup> Both the AETO and the pupil are required to ensure that the BSB is promptly notified.

<sup>9</sup> A pupil at a chambers will be required to register with the Information Commissioner's Office (ICO) if they process personal data on behalf of their clients. A fee must be paid to the ICO to register. A pupil at another organisation – for example, a law firm – will not be required to register with the ICO, as the organisation will be responsible for processing personal data and already registered with the ICO. Please refer to the ICO's website [here](#) for further information.

<sup>10</sup> Pupils will normally have been called to the Bar before commencing the non-practising period of pupillage ([Bar Qualification Manual Part 2C](#)).

17. During the practising period, they do not provide legal services as a barrister without the permission of their pupil supervisor, Head of Chambers or Head of Legal Practice (Rule S19 of the BSB Handbook).

### **Agreement terms: details of the pupillage**

The agreement must state:

18. *The required notice period for the pupil to withdraw from the pupillage prior to the pupil starting the non-practising period;*
19. *Any conditions which must be fulfilled prior to the pupil starting the non-practising period e.g. required achievement in vocational training;*
20. The date of commencement, length of the non-practising and practising periods and the date of expected completion (Authorisation Framework and Bar Qualification Manual Part 2C C2 and C3);
21. The name of the pupil supervisor(s) ( Bar Qualification Manual Part 2C C2 and C3);
22. *The minimum training hours which may be required of a pupil, whether a pupil may be expected to do additional training hours; and*
23. The required notice period for the AETO or the pupil to withdraw during pupillage. If the AETO withdraws during pupillage, the AETO must promptly notify the BSB and use their best endeavours to identify another AETO where the pupil(s) can complete their training (Authorisation Framework and Bar Qualification Manual Part 2 C3).

### **Appendix**

The written policies which AETOs must provide pupils with copies of or otherwise make available are as follows:

24. ***A written absence from training policy*** which (i) states as a minimum that pupils are entitled to four weeks' absence from training per annum i.e. 20 days in addition to Bank Holidays and (ii) includes provisions on sickness and other absence from training (Bar Qualification Manual Part 2 C3);



25. A **written complaints and grievances policy** which (i) states that pupils have a right to complain and (ii) sets out the procedure for dealing with complaints and grievances (Authorisation Framework);
26. A **written anti-harassment policy** which (i) states harassment will not be tolerated or condoned, and that pupils have a right to complain if it occurs (Rule C110.3.j of the BSB Handbook) and (ii) sets out the procedure for dealing with complaints of harassment;
27. A **written reasonable adjustments policy** aimed at supporting pupils among others (Rule C110.3.m of the BSB Handbook) which sets out the procedure for requesting reasonable adjustments;
28. A **written disciplinary policy** which states (i) the conditions under which the AETO may suspend or terminate the pupillage for disciplinary reasons, (ii) the required notice period (if any), (iii) the method for the pupil to appeal the decision of the AETO and (iv) whether the AETO may seek repayment from a pupil in the case of misconduct (in accordance with Rule C115 of the BSB Handbook). *This written policy must set out what the AETO regards as disciplinary action and misconduct for the purposes of the policy e.g. breaches of the AETO's policies or rules, breaches of the written agreement for pupillage and/or BSB disciplinary findings; and*
29. A **written recruitment policy** which provides details of any recruitment process for tenancy or employment following the completion of pupillage, including any additional period of training, assessment or probation<sup>11</sup> (Authorisation Framework).

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<sup>11</sup> This written policy should clearly set out the process which pupils should expect to follow if they wish to apply for tenancy or employed position at the AETO once pupillage has ended. The AETO is under no obligation to offer a tenancy or employed position; however, a written policy will ensure pupils have a clear understanding of what their likely options will be once the pupillage is complete.