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| <b>Meeting:</b> | BSB Board meeting   | <b>Date:</b> | Thursday 1 December 2022 |
| <b>Title:</b>   | Annual Report to the Board on Bar Training  |              |                          |
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| <b>Paper for:</b> | Decision: <input type="checkbox"/> | Discussion: <input checked="" type="checkbox"/> | Noting: <input type="checkbox"/> | Other: <input type="checkbox"/> (enter text) |
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| <b>Paper relates to the Regulatory Objective (s) highlighted in bold below</b> |   |
| <b>(a)</b>   | <b>protecting and promoting the public interest</b>                               |
| (b)  | supporting the constitutional principle of the rule of law                        |
| (c)  | improving access to justice   |
| <b>(d)</b>   | <b>protecting and promoting the interests of consumers</b>                        |
| (e)  | promoting competition in the provision of services                                |
| <b>(f)</b>   | <b>encouraging an independent, strong, diverse and effective legal profession</b> |
| (g)  | increasing public understanding of citizens' legal rights and duties              |
| <b>(h)</b>   | <b>promoting and maintaining adherence to the professional principles</b>         |
| <input type="checkbox"/>   | Paper does not principally relate to Regulatory Objectives                        |

### Purpose of Report

- To provide the Board with strategic oversight of the operation and outcomes of Bar Training. The report draws together the work of teams from across the organisation.

### Executive Summary

- The report offers an overview of Bar training covering the period from September 2020 to September 2022. It offers the Board insight into how standards in Bar training during both the vocational and pupillage components are set, met, and assured specifically in the following ways:
  - how the four key principles of the Future Bar Training Programme (Flexibility, Accessibility, Affordability and High Standards) have been realised in implementing the programme of training reform;
  - how the principle of maintaining High Standards is key and the other principles need to be understood in that context;
  - how the implementation of reforms has resulted in greater geographical coverage of Bar training as well as reduced costs to students, and a wider range of options for the way the course is delivered;
  - how we continued to assure standards when the implementation of reforms was significantly affected by the coronavirus pandemic in 2020-21;

- (e) how we now have enough data to see significant differential outcomes between vocational Bar training providers and whilst we do not see any indications of a specific risk, we recognise that we must look into this further;
  - (f) what we will do, including by way of continued research and collection of data, and a thematic review of differential outcomes, to look further into what the data may be telling us, and to seek assurance that training providers are supporting students appropriately to achieve their full potential;
  - (g) what lessons we have learned from previous challenges, particularly in relation to online exams and how applying those lessons led to the successful implementation of the new Professional Ethics exam during pupillage;
  - (h) how the Authorisation Framework is functioning well as a tool for authorisation and supervision that ensures consistency of Bar training experience during both the vocational and pupillage components of training; and
  - (i) how we assure consistency and standards of assessment for both the centralised assessments that are set and marked by the BSB's Centralised Examinations Board, and the locally set assessments that are set and marked by the training providers.
3. The paper overall indicates a range and variety of measures of assurance that are in place to give the Board confidence that regulatory oversight of Bar training is being managed in a way that ensures the integrity of delivery by the training providers. Where relevant we indicate where further detail can be found should any Board members wish to explore a particular topic in more depth.

### Recommendations

4. The Board is invited to discuss the report. It is intended for this to be an annual report, so it will be helpful if the Board can advise whether they are content for the present structure and indicative content of the report to be adopted going forward. As this is the first such report, and also covers a period of implementation of major training reform, it may be longer on this occasion than it will need to be in future.

### Background

5. The reforms to Bar training resulting from the Future Bar Training programme have almost all now been implemented and are subject to an ongoing programme of evaluation. The four key principles of reform were flexibility, accessibility, affordability and sustaining high standards. Authorised Education and Training Organisations (AETOs) are authorised on the basis that they can assure us that they can meet the indicators of compliance relating to these principles, as set out in the [Authorisation Framework](#). The annual report will reflect on how well these principles are being realised through the Bar training that is on offer. The report considers vocational training and pupillage/work-based learning separately.
6. As this is the first report to the Board on Bar training, we will reflect on the period from the start of the new vocational Bar training courses in September 2020 up to September 2022. This means that from the outset the new training arrangements will be kept under scrutiny and over time we will be able to develop a longitudinal view supported by research and by the activities of all teams involved in the authorisation, assessment and monitoring of Bar training.

7. There are some recurring narratives that we hear in relation to the regulation of Bar training, which are:
- (a) The vocational AETOs recruit too many students onto their courses that have no hope of passing the exams or obtaining pupillage. In particular, students with a 2:2 undergraduate degree have far less chance of succeeding and the entry requirement should be changed to a 2:1. It is therefore worth remembering three things at the outset:
- Outcome 5 of the LSB’s Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007<sup>1</sup> says that 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).
  - Our Regulatory Objective is to encourage an independent, strong, diverse and effective legal profession. Our Equality Strategy supports this: “We are committing ourselves to ensure that we continue to build a workforce and working environment that is inclusive and reflective of the diversity of society, exemplifying what we expect of the profession. Through the implementation of this enabling strategy, we aim to reduce the inequalities experienced at the Bar. We will set mandatory requirements of the profession to promote equality, diversity and inclusion. We will communicate our expectations clearly and help the profession to meet them by sharing examples of good practice.”<sup>2</sup> Accessibility is a key principle of our Authorisation Framework and we were clear when designing the reforms that the 2:2 minimum entry requirement was a key policy that supported that principle. The responses to our consultation were broadly in agreement that the Bar remain a graduate profession and that the minimum entry requirement remain 2:2. The Education and Training Committee at the time discussed changing the entry requirement to a 2:1 and the impact this would have on the equality and diversity of the Bar. It was noted that there was evidence to suggest that individuals from disadvantaged backgrounds under-achieve at academic work and raising the entry requirement may entrench a disadvantage that might already be present. The Committee agreed that the minimum requirement ought to normally remain a 2:2. This was approved by the Board and issued in a policy statement in 2017<sup>3</sup>.
  - It is tempting to use league tables of exam results as the marker of quality but in reality, there are a range of factors that need to be considered, not least the extent to which an AETO recruits diversely in support of the accessibility principle.

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<sup>1</sup> [https://legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/20140304\\_LSB\\_Education\\_And\\_Training\\_Guidance.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf)

<sup>2</sup> <https://www.barstandardsboard.org.uk/uploads/assets/8ae28ebe-4727-4c73-bcfd162524dcdc1/BSBEquality-Strategy.pdf>

<sup>3</sup> <https://www.barstandardsboard.org.uk/resources/press-releases/bsb-announces-decision-on-the-future-of-bar-training.html>

- (b) Some stakeholders think that we do not do enough to monitor the standards of training delivered by the AETOs. In this context, it is worth remembering that outcome 2 of the LSB’s Guidance says; “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”.
- (c) Our statistical reports show that ethnicity and socio-economic status have a significant impact on students’ performance on the vocational Bar training courses and their ability to obtain pupillage.<sup>4</sup> It is important to remember that the reasons for this are complex, reflect the experience of other regulators and it is the subject of much external research. The Solicitors Regulation Authority has published [statistical research on its new SQE assessments](#) which show a large attainment gap<sup>5</sup> and as such, is undertaking a large [Attainment Gap Research project led by the University of Exeter](#). Three members of BSB staff are taking part in the SRA’s project so we can identify steps that could be taken to make a difference and help to close the attainment gap in our own assessments.
8. We explore these themes in this report and aim to demonstrate to the Board that a wide and varied range of assurance mechanisms and activities are in place, with a great deal of collaboration across the Authorisations, Exams, Supervision and Research teams. That said, we are not complacent and, in particular:
- Next year we will carry out a thematic review of the vocational AETO admissions arrangements and how they ensure that standards are maintained once a student is admitted and what systems are in place to ensure that a student develops to their full potential, whatever their starting point.
  - We are currently embarking on new research to identify which approaches to pupillage recruitment are most successful at generating diverse outcomes, and what the experiences of AETOs are at using different approaches to recruitment of pupils.

## VOCATIONAL COMPONENT

9. The new vocational Bar training courses commenced in September 2020. This was the point at which training reforms developed during the Future Bar Training Programme were fully implemented. Whereas there had previously been a closely prescribed course (the Bar Professional Training Course) and delivery timetable common to all providers, the reforms enabled greater flexibility within a range of permitted pathways, greater accessibility and made the courses more affordable, whilst clearly defining high standards and how they were expected to be met and sustained.

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<sup>4</sup> See our research on differential outcomes published in 2022, and 2017, found on our website here:

<https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/bsb-research-reports.html>

<sup>5</sup> The inaugural exam (SQE November 2021) had a passing rate of 66% for white candidates, while black candidates had the lowest passing rate of all ethnic groups at 39%: [https://sqa.sra.org.uk/docs/default-source/pdfs/reports/final\\_sqe1\\_november\\_2021\\_postassessment\\_report\\_v1-0.pdf?sfvrsn=e864d39d\\_2](https://sqa.sra.org.uk/docs/default-source/pdfs/reports/final_sqe1_november_2021_postassessment_report_v1-0.pdf?sfvrsn=e864d39d_2)

10. The table in **Annex 1** gives an overview of the courses offered by the vocational Bar training providers. Prior to training reform, we authorised eight providers across 15 locations. To date, since training reform, we have authorised [ten providers across 21 locations](#). The Inns of Court College of Advocacy and the University of Hertfordshire are new entrants to the market and The University of Law has introduced five new sites at Manchester, Bristol, Nottingham, Liverpool and Newcastle.
11. The [Authorisation Framework](#) introduced four permitted pathways with five providers being authorised to offer the Bar course in two parts (as part of the “four-step” pathway). Around 5% of students have opted for this pathway in the first two years of availability. However, some providers found that take-up of the two-part course has been less popular than anticipated and have discontinued it, at least for 2022/23. The three-step pathway (with the vocational component delivered in one part) has therefore proved the most popular means of undertaking vocational Bar training. Whilst two providers were authorised to deliver the integrated pathway combining academic and vocational components, only one has seen sufficient demand to deliver it. The apprenticeship pathway has not yet been adopted by any providers.
12. The BSB does not regulate the academic awards of providers, only the elements prescribed that make up Bar training. Academic Awards are a matter for the universities or, in the case of the Inns of Court College of Advocacy, their validating university partner, Kings College London. All providers incorporate vocational Bar training into the academic award of a Postgraduate Diploma; most also offer an LLM which incorporates Bar training. Northumbria University is the only provider to deliver the integrated academic and vocational pathway as an MLaw that incorporates Bar training.
13. It should be noted that whilst for ease of reference, we may still refer to academic years, widely understood as starting in September of each year, there are multiple start dates possible since reforms to Bar training. Whilst most students do still start in September, there is a significant intake in January at a number of providers, and smaller intakes in March and July at some.
14. The proportion of part-time students has decreased over time from 15.5% in 2011/12 to 8.5% in 2021/22, although the number of part-time students has not changed as markedly (for example, there were 208 part-time students enrolling in 2013/14, 160 in 2018/19, and 183 in 2021/22). This percentage change is mainly driven by the increase in the number of overseas students, who are more likely to study the course full-time than UK-domiciled students.

## HIGH STANDARDS

### Authorisation

15. All providers of vocational training, whether existing or new, were required to go through a process of authorisation in accordance with the requirements of the Authorisation Framework. This Framework was developed as a key tool for both the Authorisations and Supervision teams to enable us to determine how a training provider will demonstrate that they meet and continue to meet the indicators of compliance in the framework. The Authorisation Framework has already proved to be a valuable and

objective tool with which to authorise and supervise those who deliver training, and, along with the Curriculum and Assessment Strategy, has enabled us to see how well Bar training builds towards attaining the threshold standard and competences set out in the [Professional Statement](#).

16. Providers delivering vocational Bar training must:
  - provide evidence that they meet the requirements of the [Authorisation Framework](#) and continue to do so;
  - deliver the curriculum according to the [Curriculum and Assessment Strategy](#);
  - deliver examinations that are centrally set and marked by the BSB (Civil Litigation and Criminal Litigation); and
  - deliver locally set assessments that must abide by the BSB's common assessment criteria as set out in the Curriculum and Assessment Strategy.
17. In addition, it is a requirement of authorisation that all vocational Bar training providers are registered with the Office for Students, the independent regulator of Higher Education in England, or be regulated by the Higher Education Funding Council for Wales. This provides a degree of assurance in terms of institutional compliance with sector standards and we do not seek to duplicate that regulation; as a risk-based regulator we focus our efforts and resources on Bar training.
18. It should be noted that the launch date for new Bar training courses was September 2020, which was in the middle of the coronavirus pandemic. The Authorisations, Exams and Supervision teams all worked very closely with the AETOs to enable them to launch their courses despite ongoing external restrictions and challenges. Where external forces meant that requirements of the Authorisation Framework could not be met in exactly the way that had been authorised, we enabled appropriate alternative solutions to be put in place through a material change process which enabled us to give proper consideration to requests and to track alternative arrangements while they were in place.
19. After the turbulence of the first year of operation, things began to settle as AETOs went into the second academic year (2021/22) of delivering the new courses. There was still some impact on AETOs, particularly at the start of the academic year, requiring us to assess some further material change requests relating to how assessments were delivered. Again, the Authorisations Team, supported by the Supervision Team and the external examiners, reviewed and approved these changes.

### **Centralised assessments**

20. Candidates attempt BSB centrally set and marked assessments in Civil and Criminal Litigation alongside their AETO-set assessments. The first opportunity to attempt the centralised assessments in Civil and Criminal Litigation for the new courses was in December 2020; whether or not candidates did so was dependent on which pathway they were following and whether the structure of their course had an assessment point in December or at the next opportunity to sit the centralised exams which was in April 2021.

21. Although Professional Ethics is a locally assessed element of the vocational Bar course, the centrally set and assessed Professional Ethics assessment is now attempted during pupillage (see below).
22. The format of the Criminal Litigation assessment did not change with the Future Bar Training reforms.
23. We considered a range of options for the new format of the Civil Litigation exam, which was also to encompass Resolution of Disputes out of Court (formerly a separate provider-set assessment). The overriding objective for the assessment was that it is effective and fit for purpose ie that those who pass it and go on to pupillage are sufficiently qualified and prepared to do so. We introduced an open book element of the assessment (the White Book is permitted) as well as rolling case scenarios in order that the assessment is more reflective of practice. We split the assessment across two papers (taken on different days) to allow for a reliable and valid assessment instrument which covers the breadth of the syllabus material, but which is less intense for candidates than a five-hour exam; consideration of those requiring reasonable adjustments was also paramount in this decision. Candidates attempting the assessment need to achieve the pass standard across all 90 questions on both papers.
24. We have now had six sittings of the new format of the centralised assessment in Civil Litigation – the first was in December 2020. We have assessed 5,251 candidates in total. During this time, the passing rates have varied from 41.3% in August 2021 to 59.6% in April 2022.
25. As with the other centralised assessments, we have ensured that the Civil assessment has met the parameters that we set out to achieve, namely: validity, reliability and fairness. We publish a [Chair's report](#) after each sitting of the Litigation assessments which details the quality assurance processes undertaken, as well as how the passing standard has been set. The report notes the performance of the cohorts at each course provider. The report also sets out the role of the exam board and the operation of the assessment. The independent observer for centralised exams and the independent psychometrician attend each exam board and have approved our processes and methodologies.
26. Each examination paper goes through a lengthy drafting and checking process, and comprises a mixture of new and previously used questions. If a question is reused it has been shown to operate very reliably as an indicator of candidate ability. Examination papers are subjected to a process of standard setting ('the Angoff Method'), to ensure that the standard required to achieve a pass mark is consistent from one sitting of the assessment to the next. Using standard setting, the number of questions a candidate needs to answer correctly in order to pass the assessment may go up or down from one sitting to the next depending on the level of challenge presented by the exam paper as determined by the standard setters – hence there is no fixed pass mark.
27. The whole cohort passing rates for each of the two litigation subjects across the six sittings held to date are as set out in the table below:

|                            | Aug 22 | Apr 22 | Dec 21 | Aug 21 | Apr 21 | Dec 20 |
|----------------------------|--------|--------|--------|--------|--------|--------|
| <b>Civil Litigation</b>    |        |        |        |        |        |        |
| No. of candidates          | 782    | 1,517  | 818    | 738    | 989    | 407    |
| Passing rate               | 46.7%  | 59.6%  | 53.8%  | 41.3%  | 55.5%  | 55.8%  |
|                            |        |        |        |        |        |        |
| <b>Criminal Litigation</b> |        |        |        |        |        |        |
| No. of candidates          | 802    | 1,653  | 824    | 825    | 1,104  | 383    |
| Passing rate               | 52.5%  | 63.7%  | 56.0%  | 42.4%  | 46.2%  | 59.80% |

28. Variations in whole cohort passing rates are to be expected as the mix of candidates will depend on the structure of AETO courses and whether the first sit offered is December or April (by which time students may have had more contact hours), and the balance between those sitting for the first time and those resitting following a previously failed attempt. The December 2020 sitting will have comprised first sit candidates only, as it was the first opportunity to attempt the centrally assessed Bar training examinations. Prior to the August 2022 sitting the BSB did not have clean data from AETOs on the breakdown of first sit or resit candidates within each AETO cohort. For the August 2022 sitting that data was available and indicated that, for each of the Litigation examinations, a preponderance (59%) of candidates were resitting.
29. To date 19 AETO centres have entered candidates for the centralised litigation assessments (there were only 9 in the first sitting in December 2020 as not all AETOs entered candidates for the first sitting; University of Hertfordshire and University of Law Newcastle have yet to enter any candidates as they are new centres). The passing rate achieved by a given cohort at a particular sitting is not a reliable guide as to whether or not that AETO is performing well, for two reasons:
- cohort number can be very small (single figures) producing huge volatility in passing rates;
  - comparing cohorts at the same sitting may not be comparing like with like where one cohort has a high number of resitters, and another is almost entirely made up of first sit candidates.
30. Hence, the preferred method for comparing the performance of the various AETOs, in terms of the passing rates achieved by candidates, is to consider the total number of examination entries at each AETO over the 6 cycles of centralised litigation assessments and to compare this with the number of candidates who have passed at each centre, as set out in the table below:

| <b>Bar Training Criminal and Civil Litigation assessments<br/>December 2020 to August 2022 (6 sittings)</b> |                             |                           |               |
|---|-----------------------------|---------------------------|---------------|
| <b>AETO</b>   | <b>Total no of attempts</b> | <b>Total no of passes</b> | <b>% pass</b> |
| The Inns of Court College of Advocacy   | 339                         | 315                       | 92.92%        |
| University of Law Bristol   | 81                          | 54                        | 66.67%        |
| University of Law Liverpool   | 40                          | 26                        | 65.00%        |
| University of Law Leeds   | 252                         | 163                       | 64.68%        |
| City University   | 1,997                       | 1,246                     | 62.39%        |
| University of Law Manchester  | 237                         | 147                       | 62.03%        |
| University of Law London  | 1,281                       | 705                       | 55.04%        |
| University of Law Nottingham  | 58                          | 31                        | 53.45%        |
| BPP Manchester  | 668                         | 356                       | 53.29%        |
| Cardiff University  | 434                         | 229                       | 52.76%        |
| University of Law Birmingham  | 483                         | 244                       | 50.52%        |
| BPP Leeds   | 266                         | 131                       | 49.25%        |
| BPP London  | 2,428                       | 1,186                     | 48.85%        |
| BPP Bristol   | 171                         | 83                        | 48.54%        |
| University of Northumbria, Newcastle  | 379                         | 175                       | 46.17%        |
| University of the West of England   | 749                         | 330                       | 44.06%        |
| Manchester Metropolitan University  | 165                         | 63                        | 38.18%        |
| BPP Birmingham  | 422                         | 155                       | 36.73%        |
| Nottingham Trent University   | 394                         | 141                       | 35.79%        |
| <b>TOTAL</b>  | <b>10,844</b>               | <b>5,780</b>              |               |

This table aggregates all the attempts by candidates at both the Criminal Litigation and Civil Litigation examinations across all six sittings from December 2020 to August 2022. In total there have been 10,844 Bar training course examination candidate entries, of which 5,780 have been successful (53.3%). As can be seen, 11 AETO centres fall below this overall passing rate, with eight AETO centres failing to achieve a 50% passing rate overall in the centralised assessments since the introduction of the Bar Training course in 2020.

31. Why might there be a differential in passing rates of over 57% between the Inns of Court College of Advocacy and Nottingham Trent University? Assuming all AETOs are adhering to the minimum entry requirements in terms of academic qualifications and English language proficiency, the differential suggests:
- (a) That the centralised assessments are discriminating effectively between weaker and stronger candidates – the data available to the Centralised Examinations Board on the operation of each exam question helps support this conclusion, and the psychometrician advising the board reports on the reliability of each examination paper as a whole.

- (b) That notwithstanding adherence to the minimum entry requirements for the Bar training course, different AETOs recruit markedly different cohorts of students, depending on their profile, location, marketing and links with communities, both in the UK and overseas. It should, perhaps, not be a surprise that differences in input (in terms of candidate prior educational experience, financial stability, caring responsibilities, and social capital) are, to some extent, reflected in differences in output. Only if candidates were randomly assigned to AETOs would it be possible to draw a conclusion that differential passing rates were perhaps an indicator of an AETO failing to perform. Next year we will carry out a thematic review of the admissions arrangements and how AETOs ensure that standards are maintained once a student is admitted and what systems are in place to ensure that a student develops to their full potential, whatever their starting point. In particular, when the Bar training reforms were introduced, we took the decision to maintain the minimum entry requirement at an undergraduate degree of 2:2. Concern is often expressed about whether this should be increased to a 2:1, particularly with the removal of the BCAT, since prior academic achievement generally correlates with success on the Bar course and progression to pupillage. We know that AETOs (both vocational and pupillage) are conscious of how socio-economic disadvantage can influence prior academic achievement and the knock-on effect this has for diversity at the Bar. For example, BPP is introducing a new foundation course for the Bar school, to support students early on who have a 2:2 degree.
32. A few other points are perhaps worth bearing in mind:
- (a) The table above is in the public domain as it is included in the Centralised Examinations Board Chair's report – hence candidates who have read the report are making an informed choice in opting to undertake Bar training at an AETO where there appears to be only a 35% chance of success in the centralised assessments.
- (b) Students have 5 years to complete vocational Bar training– hence data from many more cycles will be needed until a complete picture is available in terms of passing rates at each AETO centre. Candidates who fail a centralised assessment can resit as many times as permitted under the relevant AETO academic regulations. Candidates with complex health conditions or additional needs may well take longer to work through the system if they have extenuating circumstances on several occasions. This means that those AETOs with a backlog of failing candidates may clear them over time, and the overall passing rates rise accordingly.
- (c) We publish cohort outcomes by provider where overall results reflect combined centralised assessment results and locally-set assessment results but as noted above overall results need to be considered over time to gain a full picture of how students perform at each provider. The latest statistical report will be published shortly and will show progress of the 2020-2021 cohort. The complete picture for the progress of the cohort will be built up over subsequent years until that cohort has reached its maximum period of registration after five years.

- (d) AETOs are subject to a regime of supervision to ensure that they are meeting the terms of their authorisation and will be in a dialogue with the BSB if there are concerns about the level of candidate achievement in either local or centralised assessments – a dialogue supported by the work of the external examiners.
33. We ask the AETOs to give feedback on each of the exams; the consensus is that the exams are well balanced and reflective of the syllabus, the questions are clear and well-constructed, and that the papers are fair in that they have a range of hard, medium and easier questions. We have also been given general feedback on the changes to the Civil Litigation exam; the perception is that the examiners have listened to the AETOs during the settling-in period and that having two papers works well. The new question types have been a welcome development, as has been the opportunity for an open book assessment. We have been praised on our incorporation of dispute resolution as setting questions in this area is not easy.

### Locally set assessments

34. In addition to the centralised assessments, students take a number of assessments that are set and marked by the AETOs (Advocacy, Professional Ethics, Opinion Writing and Legal Research, Drafting, and Conference Skills). To ensure that the assessment process measures student achievement rigorously and fairly, in line with our Curriculum and Assessment Strategy, and the standards and the achievements of students are consistent between AETOs, we appoint a group of external examiners (a combination of practising barristers and academics) who provide us with specialist advice on the consistency of standards of the assessments. You can read more about our external examiners on our [website](#). As noted above, we publish cohort outcomes by provider where overall results reflect combined centralised assessment results and locally-set assessment results. The latest statistical report will be published shortly.
35. As part of the training reforms, we implemented changes to the way that we work with our external examiners. They are now organised into subject groups with a subject lead in each group. We are now seeing the benefits of this team structure. The teams collaborate well, helping to assure consistency of standards across all AETOs. We provide training and guidance to them, which we have been developing and improving, and provide regular opportunities for them to share good practice and learning.
36. As well as individual reports to AETOs, themes emerging from reviews by the external examiners have been shared with AETOs. Overall, the quality of assessments is high across AETOs. In most cases they are appropriately challenging and in line with the Curriculum and Assessment Strategy and the Professional Statement. Generally, marking, second marking and moderation processes at AETOs are robust. Where individual areas of concern were identified, external examiners and the Supervision Team worked with AETOs to address issues raised and set actions where needed.
37. As explained above, AETOs deliver their courses through a range of cohort start dates and pathways. That means that there is a wide range of academic calendars, and our external examiner teams need to plan their time accordingly. In some cases, AETOs have not given external examiners sufficient time to review materials and the scheduling of some assessment boards has been problematic. In a couple of cases, this has meant

that results have not been released to students when they should have been. We expect improvements this year.

38. There were some initial inconsistencies in relation to interpretation of Legal Research and Opinion Writing in the Curriculum and Assessment Strategy. The Subject Lead reported on this and the matters were then resolved.
39. As responsibility for assessment of Professional Ethics during the vocational component moved from the BSB to AETOs, the external examiner team had a particular focus on ensuring consistent standards across AETOs, when there was a wide variety of assessment formats. The team worked with AETOs to ensure consistency of standards, whilst giving AETOs the freedom to create their own approach to assessment. AETOs told us that they have particularly welcomed the flexibility that the reforms have given to embed the teaching of ethics across the Bar course.

### **Risk assessment and monitoring of standards in the delivery of courses**

40. The reform of the Bar training rules has, as described in this report, led to more flexibility and affordability (eg in the delivery of the new pathways), accessibility (eg through the authorisation of new AETOs and new locations for existing AETOs and the introduction of different cohort start dates) and removal of some of the prescription that we used to impose (eg in relation to class sizes). This means less homogeneity and AETOs differ as follows:
  - they each have their own Academic Regulations;
  - locally set assessments are delivered and assessed based on individual academic timetables;
  - some offer part-time provision in addition to full-time;
  - some have larger overseas cohorts than others; and
  - some are multi-site with hundreds of students whereas others are single site with less than 100 students.
41. We continue to have an annual programme of supervision activity that is conducted by external examiners in relation to the assessments that are set and marked by the AETOs and all AETOs submit an annual self-evaluation report to us, which includes reports on the outcome of their own internal and external quality assurance mechanisms.
42. Whereas we used to conduct Supervision visits to each AETO annually, we have now moved to a risk-based approach to our supervision activity and now prioritise our visits, and what we cover during those visits, according to our assessment of risk. We have developed AETO risk profiles. Through these profiles, we capture:
  - inherent risk, for example based on size and range of locations; and
  - control risks, for example based on information that we have collected through our external examiner reports, reviews conducted by the Supervision Team, the self-evaluation reports and other information that we have received from students or other stakeholders.

43. The risk profiles address areas such as governance and administration, quality assurance processes, risk identification and management, programme delivery and assessment procedures. We are continuing to refine the profiles so that we ensure that we are focussing on the most important risks.
44. Each AETO now has a fully populated risk profile. Currently we have two AETOs which are assessed as High Risk, and seven Low Risk (the University of Hertfordshire is delivering the course for the first time this year and the risk profile for this AETO will be developed during the course of this year). We review each profile every quarter to ensure that our information is up to date.
45. We have conducted Supervision visits to the AETOs assessed as High Risk. Risks were elevated as a result of information reported by external examiners and students in the following areas:
  - Communication issues within the AETO.
  - Communication between the AETO and students.
  - Lack of standardised practice in internal moderation activity across more than one subject area, indicating a systemic issue with the AETO's adherence to its moderation policies and procedures.
46. We set and monitored actions relating to quality assurance policies and procedures, communication strategies, internal system review and monitoring. Each action set has a timescale. The aim is to lower the risk level from High to Medium Risk or lower.
47. The fact that we do not conduct visits to all AETOs annually does not reduce the amount of supervisory engagement that we have with the AETOs; it simply means that it is more targeted to risk. As explained above, there is still an annual cycle of reflective reviews and external examiner assurance, which regularly results in further engagement with senior management at the AETOs to address risks and monitor actions. This is in addition to engagement by the BSB's centralised examinations team. Authorisation and Supervision Teams meet quarterly with AETOs to identify and manage risk and share good practice.

## **FLEXIBILITY AND ACCESSIBILITY**

### **Authorisation**

48. As noted above, there is now more flexibility in how AETOs choose to deliver vocational Bar training. In October 2022, we were able to hold an in-person forum with all AETOs together with external examiners, to reflect on the first two years of the reforms. AETOs were particularly positive about the flexibility that our reforms created, enabling them to be more creative in the delivery of the courses, helping them to promote high standards, in the interests of preparing students for a career at the Bar or elsewhere. For example, some AETOs have developed assessments that utilise the same brief across more than one subject area (Advocacy and Conference Skills) and this has involved cross-subject external examiner oversight in order to ensure the integrity of assessment. AETOs are reflecting on what has worked well and feel that as they enter a more stable period, this creativity will continue to evolve.

49. In order to facilitate the two-part model of course delivery, we introduced another sit of the centralised exams in Civil and Criminal Litigation, alongside the traditional assessment timings of April and August. The December sit allows AETOs to enter students enrolling in September for a first attempt at Criminal Litigation and Civil Litigation assessments if they wish. This additional sit supports flexibility in the way courses can be delivered, and can be seen to support accessibility as students have a wider choice of assessment points. We also removed the prescription that assessments must be passed within three attempts.

## Outcomes

50. The BSB has a statutory duty to encourage an independent, strong, diverse, and effective legal profession and accessibility was one of the four key principles of training reform. Previous BSB research has identified that ethnicity and socio-economic status have a significant impact on students' performance on the vocational Bar training courses and their ability to obtain pupillage.<sup>6</sup>
51. The new course does not appear to correlate with any standout changes in the proportions enrolling by demographic (see **Annex 2**). For the variables we have good data on, there is a continuation of longer-term trends seen throughout the years of the BPTC.
52. Each year, we publish a report on [key statistics](#) relating to vocational Bar training and progression to pupillage. These reports contain a lot of data about student demographics, and performance and this year we have decided to restructure the reports, in particular to provide more accessible information for prospective students that they can use to help inform them about their choice of AETO and their chances of success in obtaining pupillage. We are in the process of finalising these new reports for publication and reviewing the content of our website and how it is presented.
53. In August 2022 we published research on [vocational AETOs' approaches to equality and diversity](#), variations in policies and practices between providers, and their overall approach to compliance with the Public Sector Equality Duty and the Equality Act 2010. We also published research on [student experiences of equality and diversity](#).
54. Equality and diversity policies and support initiatives are generally set centrally by universities rather than by the department law schools running the Bar courses. The BSB sets minimum requirements for the provision of Bar training in its Authorisation Framework and its regulatory role is limited to ensuring that those requirements have been met. This analysis was used to develop our evidence base about AETOs' approaches to equality and diversity and their implementation on the Bar training courses.

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<sup>6</sup> See our research on differential outcomes published in 2022, and 2017, found on our website here: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/bsb-research-reports.html>

55. The findings of this study were used to inform our [Research and Evaluation Strategy](#) and will be considered as part of our wider work on equality and diversity. As noted above, next year we will carry out a thematic review of the admissions arrangements and how AETOs ensure that standards are maintained once a student is admitted and what systems are in place to ensure that a student develops to their full potential, whatever their starting point.
56. We see it as a positive that the range of AETOs encompasses a wide range of student demographics; it is integral to the principle of accessibility that this remains the case, as was the decision to retain a 2:2 degree as a minimum entry requirement. The interaction of the key principles means that we also seek to ensure that this accessibility does not come at a cost to the assurance of High Standards. We seek to ensure that a student develops to their full potential, whatever their starting point, by using the mechanisms of the authorisation process and supervision activities to determine that AETOs have in place appropriate support in place for students who may have a lower starting point, so that they are enabled to develop to their full potential.

### Apprenticeships

57. The apprenticeship pathway was approved in principle as part of our Bar training reforms in 2019 but is not yet available to students. The employed Bar often tells us that they are looking to develop paralegal staff and therefore this is a potentially attractive alternative to the current pathway. There is a growing interest from both the employed and self-employed Bar, as well as the vocational AETOs, who all see the potential it has to increase accessibility and affordability, and consequently diversity at the Bar. We are currently working with interested parties to test whether it will be feasible to introduce this pathway.

### AETO Computer-Based Testing

58. We authorise AETOs to provide computer-based testing (CBT) for exams taken at the vocational stage. AETOs wishing to do so were subject to a light-touch authorisation process to ensure that their provision was in line with [our parameters](#). The parameters prompt AETOs to demonstrate how their CBT systems are accessible throughout the students' interaction with them, including: whether the technical requirements match what most students may have at home, whether there are opportunities for students to familiarise themselves with the platform and test their device's compatibility, how the system can facilitate a range of reasonable adjustments, and whether the system is compatible with assistive technology.
59. We have not prescribed how AETOs balance CBT and pen-and-paper exams beyond stating that AETOs may not exclusively offer online assessment except in cases of emergency; pen-and-paper exams must still be offered to candidates for whom CBT is not accessible (eg due to specific adjustments or lack of appropriate digital access). Some AETOs have offered their students a free choice; others use either CBT or pen-and-paper as the default option, but offer the other mode of assessment to candidates who require it. In order to ensure that AETOs had considered accessibility when deciding these policies, all AETOs (including those not offering CBT exams) were required to submit an Equality Impact Assessment (EIA) explaining how their policies surrounding

mode of assessment may impact on accessibility for various groups and addressing issues such as how they will meet the needs of candidates unable to be accommodated through their default mode of assessment.

### Civil Litigation examination

60. The Civil Litigation exam increased in length from that of the BPTC exam from 75 to 90 questions to fully cover the additional syllabus area (dispute resolution, which was previously a separate, provider-assessed subject). In order to ensure that there would be no adverse impact in terms of accessibility for students with disabilities, we split the exam across two papers, taken on different days.

## AFFORDABILITY

### Fees

61. The BSB collects a per capita fee from all AETOs in line with full cost recovery principles. The original fee of £870 was reduced to £705 in 2021 when it became clear that enrolment figures had been underestimated and remained buoyant despite the impact of the pandemic. We expect AETOs to pass any saving on to students.
62. AETOs charge different fees for their Bar training courses. Some also have different fees for UK domiciled students and overseas students. BPP and The University of Law also have different fees for students attending their London centres and their regional centres. Fees can all be found on our [AETO information sheet](#).
63. The cost of courses for the three-step pathway for UK domiciled students in the 2022/23 academic year ranges from £12,200 at Nottingham Trent University (NTU), who has the same fee for overseas students, to £18,700 at Cardiff University. For overseas students on the three-step pathway, the course fees ranged from £12,200 (NTU) to £20,700 (Cardiff University) (**see Annex 3**).
64. The four-step pathway was introduced to provide students with the opportunity to take the knowledge-based part of the course first, before committing financially to the skills-based training. As noted above, only three AETOs are now offering offer the four-step pathway. For this, the fees for Part 1 ranged from £1,895 at the Inns of Court College of Advocacy (ICCA) to £3,075 at the University of Northumbria, Newcastle (UNN). The fees for Part 2 ranged from £9,225 at UNN to £12,095 at the ICCA.
65. The data indicates that there is greater affordability in comparison to the fees charged for the old BPTC. The cost of training had been increasing above inflation, with large increases from the latter half of the 1990s all the way up to the first half of the 2010s. Allowing for adjustments in inflation, prices for Bar training courses across AETOs in London are now more in line with those last seen around 2000/01 and are more in line with those seen around 2011/12 outside of London.
66. The implementation of the new courses from 2020/21 onwards saw a drop in the fees charged across the majority of providers, saving students almost £4,000 in tuition fees in 2020/21 compared to 2019/20 after adjusting for inflation (and around £3,000 in tuition fees when not adjusting for inflation).

67. This is a simple average across all course providers, and does not account for what the average student would pay, as some providers have more students than others. When weighting the average tuition fee with regard to the number of students at each provider in the relevant year, the average student in 2019/20 would have paid around £18,700 in tuition fees when adjusting for inflation (to 2022/23 prices), compared to an average of around £13,500 in 2020/21, and around £14,000 in 2021/22 (when not adjusting for inflation, the figures for 2019/20, 2020/21, and 2021/22 are £17,200, £13,100, and £13,500 respectively).

## ROLE OF THE INNS OF COURT DURING THE VOCATIONAL COMPONENT

### HIGH STANDARDS

68. The Inns of Court play several important roles in the education and training of barristers, which are set out in a [Memorandum of Understanding](#) (MoU) and data share agreement that was signed as part of the Bar training reforms.
69. Anyone starting a vocational Bar training course must become a Student Member of an Inn. The Inns are responsible for student conduct prior to Call. The Inns are responsible for conducting “fit and proper person” checks to make sure that only suitable individuals become Student Members and, ultimately, practising barristers. This now includes conducting a criminal records check prior to Call. These checks are conducted through an accredited “umbrella body”. They bring the Bar into line with checks conducted in other legal professions and ensures high standards at point of entry to the profession.
- The Inns provide Qualifying Sessions for those undertaking the vocational component of Bar training.
  - The Inns Call students to the Bar once the vocational component has been successfully completed. Only those Called to the Bar may call themselves “barristers” (although only those who successfully complete the pupillage component may apply to us to become practising barristers).
70. In general, we are looking to build on our constructive and positive relationship with the Inns as an important stakeholder. Regular engagement takes place at both Director and staff levels, and through various policy development projects.
71. As part of our regular cycle of engagement, the Inns provide us with an annual self-evaluation report in which they reflect on how they have met their obligations under the MoU, and any matters for consideration by the BSB. We recently met with them to review particular themes from the last report, which are included below.

72. Under the data share arrangements, the Inns receive data about enrolments (needed to plan for Qualifying Sessions and DBS checks) and results (needed to plan for Call). Providing this data on a timely basis has provided some challenges since the introduction of the new MyBar platform for capturing student data from the vocational AETOs, and the more varied course timetables. Work is in progress to improve these processes for the current year.
73. As part of the reforms, we specified a new framework of Qualifying Sessions, which must cover five themes that better reflect the Professional Statement. The Inns have appointed internal and external observers to support high standards of delivery. We have discussed with the Inns adjusting the frequency of the cycle of external observation to ensure that it is proportionate. We have also sought feedback from students through the student liaison group that we have established. Broadly, the new framework seems to be working well.

### **FLEXIBILITY, ACCESSIBILITY AND AFFORDABILITY**

74. Through the MoU, we sought to ensure that more Qualifying Sessions were made available outside London. This reflected feedback from students about making them more accessible and affordable for students, as well as helping them become integrated in the Circuits. The ability to do this was impacted by the pandemic, as the sessions moved online when they could not be held in person. The Inns and students have reflected on the benefits and disadvantages of including some online sessions. For example, they enabled the Inns to book a more varied selection of speakers than is usually possible, but in-person networking opportunities remain important to students.
75. A number of overseas students did not travel to London during the pandemic because of travel restrictions, and they have not done so subsequently. We worked with Inns to determine where general waivers may be needed in relation to certain country-specific problems. In particular, we needed to be flexible to cater for certain overseas students who were unable to travel to the UK and were not, in local law, permitted to post identity documents from their respective jurisdictions. We have also considered a small number of waivers to reflect individual reasonable adjustments that were needed.
76. The Inns have questioned the proportionality of the DBS checks for so many non-domiciled, unregistered barristers who do not plan to practice in England and Wales. We have committed to evaluating this policy next year.
77. The Inns are responsible for the conduct of Bar students. This includes some students who start pupillage without having attended their Call ceremony (which is permitted). During the pandemic, a number of students were allowed to progress to pupillage whilst awaiting their vocational exam results because of the disruption to exams at that time, which meant that a larger number of pupils were subject to the Inns' conduct regime than the BSB's. This was agreed with the Inns through a [side letter to the MoU](#).

## PUPILLAGE COMPONENT

78. Pupillage numbers have fluctuated over the past two years as a result of the pandemic.

| Calendar year | Pupillages |
|---------------|------------|
| 2018          | 522        |
| 2019          | 504        |
| 2020          | 400        |
| 2021          | 577        |

We were pleased to see that pupillage numbers bounced back strongly after the dip that was caused by the pandemic. Data for 2022 is not yet available as this is the peak season for registering pupillages but the [Bar Council's latest report on pupillage recruitment](#) supports this.

79. Obtaining a pupillage is very competitive. Of the UK/EU domiciled vocational training graduates, 36% of those who enrolled on the course from 2016/17 to 2019/20 had started pupillage by November 2022 – the relevant figure for those that had passed the course was 45%. There are quite wide differences in the proportion gaining pupillage when disaggregating by first degree classification also – when looking at UK domiciled graduates of the Bar training course only, of those enrolled between 2016/17-2019/20, around 62% of those with a first class degree had gained pupillage as of November 2022, compared to 41% of those with a 2:1 degree, and 13% of those with a 2:2 degree.
80. About 18% of practising barristers are in the employed Bar but only 10% of pupillages are delivered there. Typically around 18 organisations in the employed Bar are delivering pupillage each year and a significant proportion of these pupillages are in the Crown Prosecution Service and the Government Legal Department. We are keen to encourage more employers to consider taking pupils and have recently done some work with BACFI (the specialist Bar association for barristers employed in commerce, finance and industry) to promote more. We recently ran an information evening together with BACFI and have created some tailored guidance on our [website](#) for those in the employed Bar who are considering becoming authorised to deliver pupillage.

## HIGH STANDARDS

### Strengthening standards through the new Authorisation Framework

81. The Authorisation Framework is as crucial a tool in terms of pupillage for the Authorisations and Supervision teams as it is for vocational Bar training. All organisations previously authorised as Pupillage Training Organisations need to go through a process of authorisation to become pupillage AETOs if they wish to continue to deliver pupillage in the future. Despite the size of this project, and the challenges associated with authorising 346 organisations, it is critically important to ensure that all AETOs meet the expected standards consistently at the point of authorisation and are held to account against the requirements through our supervision activity.

82. There have been considerable challenges for the Authorisations team in keeping this project on track given the high and increasing volumes of incoming business as usual and, in common with the rest of the organisation, the adverse impact of the cyber-attack. We have however set out a plan for completion of the project that is on track for the end of 2022 and with follow up activities in 2023.
83. The process of authorisation is currently ongoing but by the end of 2022 we expect to have issued decisions to all organisations who have submitted a complete application. The decision may be to authorise, to conditionally authorise, or, in the rare instances where we have serious concerns about suitability, to continue to engage with them until we are either satisfied that they are suitable to become an AETO, or we decide that they are not suitable to progress to AETO status at this time.
84. There are currently 71 out of a total of 348 existing pupillage training organisations who have not yet submitted an application despite numerous reminders. Any existing pupillage provider who has not yet submitted an AETO application will be sent one final reminder to prompt them to complete an application before 31 December 2022. If they do not do so, a check will be run on the CRM to confirm whether they have any current pupillages. If they do, their Pupillage Training Organisation status will be extended until the end of that pupillage and will then be terminated. They will only be able to continue offering pupillages if they apply for, and are granted, AETO status. Any existing pupillage provider who does not submit an application before 31 December 2022 and does not have current pupillages at that time will have their PTO status terminated from 1 January 2023.
85. Whatever stage of authorisation a pupillage provider is currently at, all are already expected to deliver pupillage in accordance with the Professional Statement and the Curriculum and Assessment Strategy.

### Professional Ethics assessments

86. As part of training reforms, the assessment of Professional Ethics was split between the vocational component and the pupillage component; vocational AETOs provide tuition in, and assessment of, Ethics to a foundation level. The centralised exam in pupillage assesses learning outcomes at the threshold standard (the standard described in the [Professional Statement](#) as required on “day one” of practice). The research published in 2016 by UCL’s Centre for Ethics and Law<sup>7</sup> on the ethical knowledge and skills acquired by new advocates gave a compelling argument for our continued scrutiny of ethics. The report stated that “the reinforcement of [the foundation in Professional Ethics laid during the BPTC/LPC] during pupillage/training contracts and post-qualification training is insufficiently robust or frequent to enable confident ethical practice amongst new advocates.”

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<sup>7</sup> [The Ethical Capabilities of New Advocates](#)

87. The purpose of the Professional Ethics pupillage assessment is to:
- distinguish between pupils who are ready to receive their Full Practising Certificate and those who are not yet ready;
  - safeguard the public by ensuring that those who are authorised to practise (by having received their Full Practising Certificates) have fulfilled the ethical requirements set out in the Professional Statement;
  - ensure a strong, ethical profession.
88. We considered a range of options for the new exam and decided to continue to use the format we had employed for the centralised Ethics exam taken on the old BPTC, albeit with access to the Handbook and a new way of marking. The short answer question (SAQ) format of the exam has proved itself to be a valid and reliable assessment and has thus supported the high standards principle of Future Bar Training.
89. By introducing a centralised exam to be taken during pupillage, we were in effect taking on the role that providers hold in the vocational component; we could not expect chambers and other pupillage providers to deliver the exams, so we sought a delivery partner to enable us to offer the exams through computer-based testing (CBT). We needed to enable pupils a choice as to whether to take exams on their own devices at home or on a computer at a test centre. We also needed a solution that would allow for pen and paper exams where a pupil's needs were best served by that format.
90. When writing our invitation to tender for the contract to supply CBT exams, and in our selection process, we were fully cognisant of the issues which arose in the August 2020 BPTC exams. In May 2021, we published [Professor Huxley-Binns' independent review](#) of those exams, as well as our [Action Plan](#) to ensure that we acted upon the review recommendations.
91. As per the Action Plan, we ensured that time was built into the project planning to allow for a pilot and review period before the new arrangements went live. We undertook a mini-pilot of the marking process in order to better understand how the new mark scheme would work in practice. We also undertook another pilot in November 2021 which allowed test-takers to review and give feedback on the candidate guidance issued to them before sitting an exam, the system check process, the log-in and identification process and experience the exam interface either in a test centre or a remotely proctored environment. We also used the answers submitted by candidates to allow the markers to experience the marking interface and to finetune the marking process. We organised a seminar for pupil supervisors several months before the first exam so they could be fully appraised of the assessment, our quality assurance processes, the materials available for candidates and thus be better able to help their pupils prepare for the exam.
92. We have now had three sittings of the assessment (April, July and October 2022). We have not yet had any candidates who required a third sit (which would entail payment as only the first and second sit fees are covered by the profession). All three assessment sessions have run smoothly and to plan; we have trusted teams of markers and standard setters who were fully trained in the new systems before we went live; direct communications with pupils has been helpful as we have been able to assist with queries and allay any concerns. The numbers taking the assessment will increase next

year (there are about 230 pupils eligible to sit in January) and we are fully prepared for the greater workload.

93. We have a very good working relationship with our CBT supplier and meet weekly. We also gave a presentation at our CBT supplier's conference about the way in which we use the platform and also delivered a webinar to other clients of our supplier.
94. We met with the Pupil Liaison Group in June to hear their thoughts on the assessment. Pupils spoke about the relevance of the subject matter to their pupillages, the open-book nature of the exam being more reflective of practice than a closed-book assessment and agreed that questions of professional ethics arose often in pupillage. Members of the Liaison Group who had not taken the exam commented that they wished there had been more of a focus on professional ethics during vocational training as it was surprising how often they needed to consider ethical issues. After the July and October exams we asked pupils to provide us with specific feedback on the assessment; in July, the overwhelming majority thought that the exam was at the right level of difficulty for a barrister at their level of training and all respondents thought that the scenarios used in the exam were relevant to the experience of early years practitioners.
95. We have ensured that the Ethics assessment has met the parameters that we set out to achieve, namely: validity, reliability and fairness. We publish a [Chair's Report](#) after each sitting of the assessment which details the quality assurance processes undertaken, as well as how the passing standard has been set. The report also sets out the marking processes, the role of the exam board and the operation of the assessment. The independent observer for centralised exams and the independent psychometrician attend each exam board and have approved our processes and methodologies.
96. The setting and marking of the pupillage component of the Professional Ethics assessment is overseen by the CEB, on behalf of the Bar Standards Board. Examinations are normally offered three times per year and there is no limit on the number of attempts by candidates. We expect pupillage providers to specify in their written agreement with pupils what will happen if the pupil has not passed the exam by the time the pupillage is due to finish.
97. The Professional Ethics questions consist of scenarios set within professional practice, each of which requires the candidate to engage with one or more issues, applying ethical principles in order to identify, critically analyse and address the matters raised, and to reach an appropriate resolution of those issues. Candidates are required to provide responses in the form of narrative prose and to apply their knowledge of ethical principles and, using the provisions of the BSB Handbook, guidance, and other syllabus materials, provide comprehensive analysis and sound reasoning in their answers.
98. The BSB does not prescribe any programme of prior study by way of preparation for the examination. A practice assessment that candidates can use for developmental purposes is provided on the BSB website, along with an example mark scheme, and guidance on the grading system. Examination papers are standard set to ensure an appropriate and consistent level of challenge is offered to candidates.

99. To date there have been three sittings of the assessment and the outcomes were as follows (however, we have not yet held the exam board for the October sit):

|   | <b>Apr-22</b> | <b>Jul-22</b>    |
|---|---------------|------------------|
| Candidates first sitting                          | 112           | 21               |
| Candidates resitting                              | 0             | 4                |
| Total Number of Candidates sitting                | 112           | 25               |
| First Sitting candidates passing                  | 112           | 19               |
| Resitting candidates passing                      | N/A           | 4                |
| First sit candidates failing                      | 5             | 2                |
| Resitting candidates failing                      | N/A           | 0                |
| Total number of candidates to date                | 112           | 132 <sup>8</sup> |
| <b>Total number of candidates passing to date</b> | <b>107</b>    | <b>130</b>       |

100. The above table shows that four candidates from the April 2022 sit were resitting in August 2022, and each was graded 'Competent'. The result is that there remains one candidate from April 2022 with an unredeemed 'Not Competent' grading and two first sit candidates from the August 200 sitting graded 'Not Competent'. Just under 95% of all attempts at the assessment to date have resulted in a 'Competent' grading.

### **Curriculum and Assessment Strategy: competence in advocacy and negotiation skills**

101. We are currently working with academics, the Inns and the Circuits to implement the final reforms to the Curriculum and Assessment Strategy, which are in relation to Advocacy and Negotiation Skills training and assessment during pupillage. This work has been delayed due to the knock-on effects of the pandemic and the cyber-attack. We anticipate that these changes will be implemented from 2024, but will need a focussed project plan in collaboration with the Inns to deliver that, and there is a risk that negotiation skills (which is an entirely new assessment) will not be implemented until 2025. In the meantime, pupils are required to complete the current advocacy course prior to applying for a provisional practising certificate, and competence in negotiation is reflected in the Professional Statement and continues to be assessed by pupil supervisors as part of pupillage. Therefore, the delay should not pose a risk in terms of assurance that standards have been met, as there is an existing process in place for confirmation and sign-off.

### **Standards of training**

102. The process of authorising all AETOs under the new Authorisation Framework has resulted in a significant amount of engagement with AETOs. The Supervision Team has worked with the Authorisations Team where AETOs have previously been assessed as high risk for delivery of pupillage.

<sup>8</sup> There have been 132 unique candidates to date. One of the five 'Not Competent' candidates in Apr-22 had extenuating circumstances, and so was recorded as a first sitter again in Jul-22.

103. The typical reasons that things go wrong in pupillage are as follows:
- Robust policies and processes are crucial in making sure that pupillages are successful, particularly in relation to having a clear training plan and robust feedback mechanisms. When these are absent, or not working well, it can be very hard for pupils to understand how they are progressing in relation to the competences in the Professional Statement.
  - AETOs should have arrangements in place so that both they and their pupils know what to do if a pupillage is not going well. Pupils should have people other than their pupil supervisor to turn to if necessary.
  - The pandemic has accelerated the trend towards more remote working, both within AETOs, and with clients and cases. AETOs need to keep under review how effective pupillage training can be sustained, how pupil supervisors engage with pupils and how training may need to be adapted to address different skills that may be needed.
104. The transition to authorisation under the new Authorisation Framework and implementation of the Professional Statement to assess competence (replacing the more task-oriented checklists) have helped to raise standards in these areas and the Supervision Team find that is typically those who not yet completed authorisation that are more likely to fail in these areas.
105. We regularly present at the pupil supervisor training delivered by some of the Inns and Circuits to ensure that pupil supervisors understand the regulatory requirements, and would welcome the opportunity to do so at others. These forums provide an opportunity for us to meet pupil supervisors and share examples of good practice, as well as the common themes seen by the Supervision Team when things go wrong.
106. Based on the numbers of reports that we receive from pupils, pupils seem to be more confident in approaching the BSB when their concerns cannot be resolved internally. The Bar Council encourages pupils that contact their pupillage helpline to contact us so that we can take regulatory action.

## **FLEXIBILITY**

### **Centralised exams**

107. We offer pupils three opportunities to take the Professional Ethics exam. In 2022, these were scheduled for April, July and October. From 2023 onwards we will move to an examination calendar of sittings in January, April and July, thus affording the majority who start their pupillages in the autumn three opportunities to sit during their 12-month pupillage. We expect pupils to have undertaken a minimum of three months' pupillage before first attempting an assessment<sup>9</sup>; this is to allow time for discussions regarding ethical matters with their supervisors, and to review the preparation materials offered by external organisations if pupils so wish.

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<sup>9</sup> However, if a pupil has a reduced pupillage, they can sit at the first opportunity during their pupillage.

## ACCESSIBILITY

### Barriers to diversity in recruitment

108. We have published various research reports since 2017 which show that both ethnicity and socio-economic status are strongly linked with success at obtaining pupillage. Qualitative research with students also shows that students view the Bar as largely the preserve of an elite, privileged group and that a number of barriers disadvantage certain groups. Prior academic attainment was identified as the most common criteria for sifting applicants, which has the potential to favour those from more privileged backgrounds. Our annual Key Statistics reports have also shown that students from minority ethnic backgrounds are less successful than white students at obtaining pupillage.
109. We are currently embarking on new research to identify which approaches to pupillage recruitment are most successful at generating diverse outcomes, and what the experiences of AETOs are at using different approaches to recruitment of pupils.
110. The drivers behind differential outcomes in professional training are likely to be wide-ranging, covering early life experience, primary/secondary education and higher education, as well as the vocational and work-based components of training for the Bar. As such, research into approaches to pupillage recruitment will not be able to provide a complete picture of the reasons for the outcomes observed in previous research. However, it will provide additional evidence to help improve the knowledge of the BSB around factors contributing to the issues highlighted in previous research and statistics and to enable us to share good practice that meets the Equality priority in our strategic plan – promoting diversity and inclusion at the Bar and the BSB and the profession's ability to serve diverse customers.

### Centralised exams

111. All Ethics candidates take their assessments via computer-based testing<sup>10</sup> (either at a test centre or at home). We learnt many lessons from our experience with online testing in August 2020. We took these into account when, in December 2020, we issued an invitation to tender to supply online assessments (amongst other examinations solutions). The invitation clearly set out our requirements, particularly regarding the integrity of the assessments and accessibility for candidates. In writing the invitation, and in our selection process, we put equality and diversity at the forefront of our plans. We ensured that our supplier had an accessibility expert on their team.
112. In writing the EIA for the assessment, we consulted widely, and had input from the BSB's Equality and Access to Justice team, as well as the E&AJ officer network, the APEX member with responsibility for E&D, the Religion and Belief Taskforce, the Disability Taskforce and the Race Equality Taskforce. We sought input from the pupil liaison group. We also engaged with the Thomas Pocklington Trust as we needed to better appreciate any issues for visually impaired candidates.

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<sup>10</sup> Pen and paper exams are available for candidates who require this as a reasonable adjustment.

113. We are committed to providing supportive and fair opportunities to all candidates taking exams, and offer adjustments relating to disability, short- or long-term medical conditions and different arrangements for other reasons (eg someone who covers their head for religious reasons may request that their identity is checked in a separate room or specify the gender of the person checking their identity). We manage the adjustments that pupils need during the exam; we are able to communicate directly with them about their adjustment and other needs. Information about [how to request adjustments is available on our website](#), along with our [adjustments and other arrangements policy](#). We ask pupils to submit documentary evidence supporting their reasonable adjustments; they do not need to re-submit their evidence if they need to take the exam again.
114. We have agreed, and have given, every adjustment that we have been asked for. The majority of these have been additional time and additional breaks for dyslexic candidates; we also had one candidate who used screen reading software.
115. Breaks are permitted for all candidates. Our chosen test delivery system is compatible with screen reading software for candidates with visual impairments sitting in test centres.
116. We continue to ensure that examination dates and times do not clash with important religious dates.
117. As well as adverse impacts on those with protected characteristics, we also considered adverse impacts on candidates from lower socio-economic backgrounds. Pupils from this group could be adversely impacted by travel costs if they choose to sit in person. We ensured, through our invitation to tender, that our CBT supplier had good coverage nationally. We noted that some candidates may struggle to afford a smart mobile device so removed the requirement that one was used as a secondary device for invigilation purposes.

#### **Resource implications / Impacts on other teams / departments or projects**

118. Producing this report is an ongoing and considerable commitment from all teams involved each year. It would be helpful for the Board to consider whether this use of resources is something it wishes to continue.

#### **Equality and Diversity**

119. Training reforms were subject to Equality Impact Assessments and any changes or developments to Bar training will be subject to further EIAs.

#### **Risk implications**

120. Risk is embedded in everything we do and is reflected in this report where relevant.

## **Communications and Stakeholder Engagement**

121. We make considerable efforts to engage with and learn from our stakeholders. The Authorisation Framework was developed through a process of iterative engagement and is the stronger for it. We meet quarterly with all our vocational AETOs; in line with the recommendations of the Huxley-Binns report previously noted, we have established student and pupil liaison groups, and we attend and present at pupil supervisor training sessions.

## Bar training pathways offered across AETOs from 2020/21-2022/23

| Provider                               | 2020/21 |        |     |           | 2021/22 |        |     |           | 2022/23 |        |     |           |
|--|---------|--------|-----|-----------|---------|--------|-----|-----------|---------|--------|-----|-----------|
|  | 3-step  | 4-step | LLM | Part Time | 3-step  | 4-step | LLM | Part Time | 3-step  | 4-step | LLM | Part Time |
| BPP Birmingham                         | X       | X      | X   |           | X       | X      | X   |           | X       |        | X   |           |
| BPP Bristol                            | X       | X      | X   |           | X       | X      | X   |           | X       |        | X   |           |
| BPP Leeds                              | X       | X      | X   |           | X       | X      | X   |           | X       |        | X   |           |
| BPP London                             | X       | X      | X   | X         | X       | X      | X   | X         | X       |        | X   | X         |
| BPP Manchester                         | X       | X      | X   |           | X       | X      | X   |           | X       |        | X   |           |
| Cardiff                                | X       |        | X   |           | X       |        | X   |           | X       |        | X   |           |
| City Law School                        | X       |        | X   | X         | X       |        | X   | X         | X       |        | X   | X         |
| Hertfordshire                          |         |        |     |           |         |        |     |           | X       |        | X   |           |
| The Inns of Court College of Advocacy  | X       | X      |     |           | X       | X      |     |           | X       | X      |     |           |
| Manchester Metropolitan University     | X       |        |     | X         | X       |        |     | X         | X       |        | X   | X         |
| Nottingham Trent                       | X       |        |     |           | X       |        | X   |           | X       |        | X   |           |
| University of Law Birmingham           | X       | X      | X   | X         | X       |        | X   | X         | X       |        | X   | X         |
| University of Law Bristol              | X       | X      | X   |           | X       |        | X   |           | X       |        | X   |           |
| University of Law Leeds                | X       | X      | X   | X         | X       |        | X   | X         | X       |        | X   | X         |
| University of Law Liverpool            | X       | X      | X   |           | X       |        | X   |           | X       |        | X   |           |
| University of Law London               | X       | X      | X   | X         | X       |        | X   | X         | X       |        | X   | X         |
| University of Law Manchester           | X       | X      | X   |           | X       |        | X   |           | X       |        | X   |           |
| University of Law Nottingham           | X       | X      | X   |           | X       |        | X   |           | X       |        | X   |           |
| University of Northumbria at Newcastle | X       |        |     | X         | X       |        |     | X         | X       | X      | X   | X         |
| University of the West of England      | X       | X      | X   |           | X       | X      | X   |           | X       | X      | X   |           |

The three-step pathway includes the vocational Bar training being taken as a one-part course, and the four-step pathway includes the two-part vocational Bar training course. The number of providers offering the four-step pathway over time has decreased, and this appears to be due to demand. Relatively few students appear to be taking the course in this way, and the number

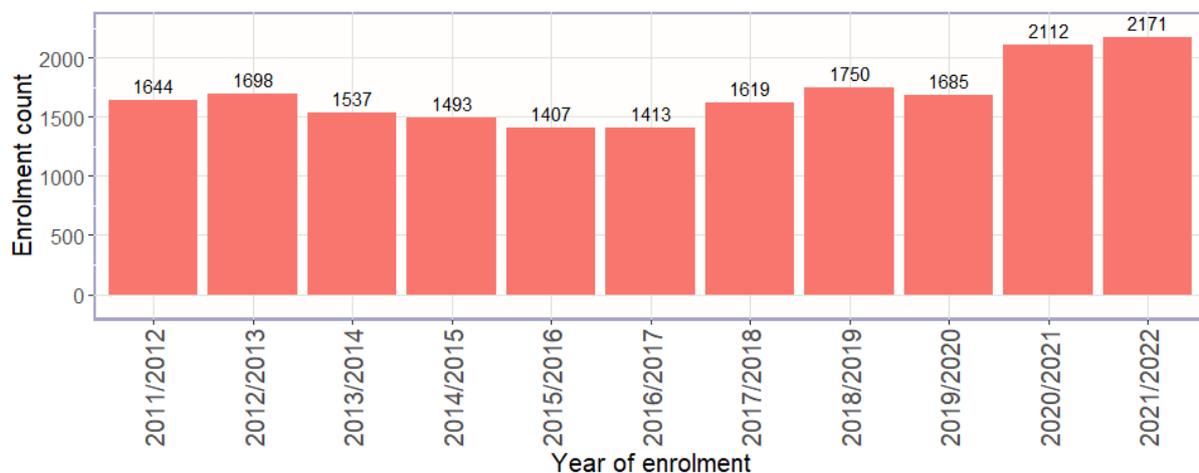
decreased in 2021/22 compared to 2020/21. This was largely caused by City Law School ceasing to offer the course in the four-step format from 2021/22 onwards. The table below gives a summary of enrolment at providers that have offered pathways other than the three step one by year.

### Number of students enrolling by pathway at providers offering pathways other than the three-step one

| Year of enrolment | Training provider                 | Three-step pathway | Four-step pathway | Integrated academic and vocational pathway | Grand Total |
|-------------------|-----------------------------------|--------------------|-------------------|--|-------------|
| 2020/2021         | <b>Total - all providers</b>      | <b>1921</b>        | <b>150</b>        | <b>41</b>                                  | <b>2112</b> |
|                   | BPP London                        | 487                | 7                 |  | 494         |
|                   | BPP Manchester                    | 138                | 2                 |  | 140         |
|                   | City Law School                   | 332                | 56                |  | 388         |
|                   | Inns of Court College of Advocacy |                    | 85                |  | 85          |
|                   | University of Northumbria         | 48                 |                   | 41   | 89          |
|                   | <b>Total - all providers</b>      | <b>2026</b>        | <b>127</b>        | <b>18</b>                                  | <b>2171</b> |
| 2021/2022         | <b>Total - all providers</b>      | <b>2026</b>        | <b>127</b>        | <b>18</b>                                  | <b>2171</b> |
|                   | BPP Birmingham                    | 81                 | 1                 |  | 82          |
|                   | BPP London                        | 434                | 3                 |  | 437         |
|                   | BPP Manchester                    | 126                | 2                 |  | 128         |
|                   | Inns of Court College of Advocacy |                    | 120               |  | 120         |
|                   | University of Northumbria         | 42                 | 1                 | 18   | 61          |
|                   | University of the West of England | 115                |                   |  | 115         |

Enrolment figures have increased compared to the numbers enrolled on the former Bar Professional Training Courses (BPTC). In 2021/22 around 400 more students enrolled on Bar training courses than in the year of the BPTC with the greatest number of students (2018/19).

### Enrolments by year



While students on the new Bar training courses appear to start the course most frequently in and around September, there are many students who have enrolled in and around January, and this number increased in 2022 compared to 2021. This is shown in the chart below.

**Enrolments on Bar training by month and year**

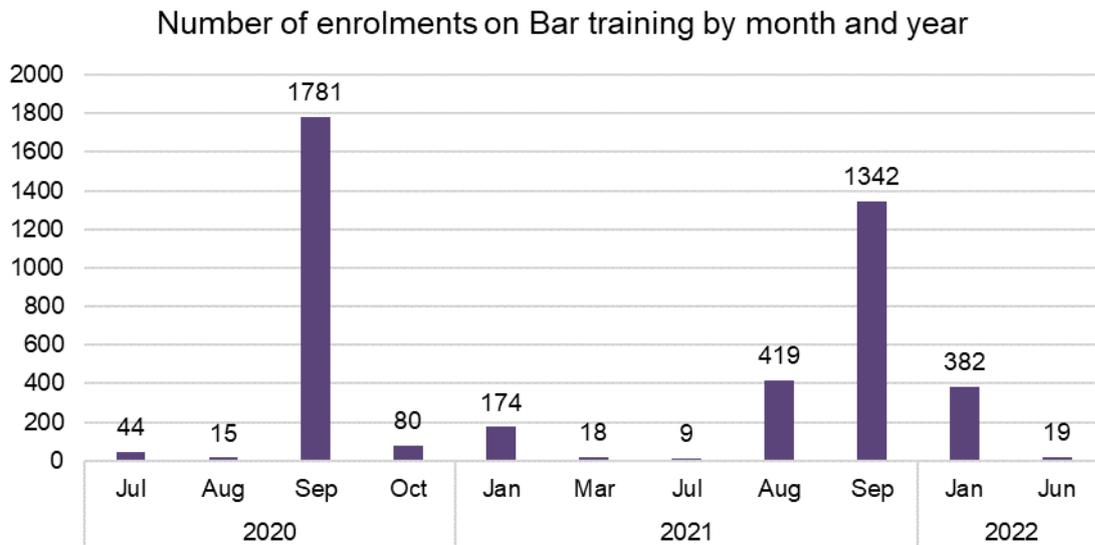


Chart 3 shows the number of students enrolling in 2020/21 and 2021/22 by the type of training pathway they were on. The four-step pathway grew in popularity very slightly from 2020/21 to 2021/22 from 5.1% of students to 5.9%.

**Enrolment on different pathways on Bar training courses for 2020/21 and 2021/22**

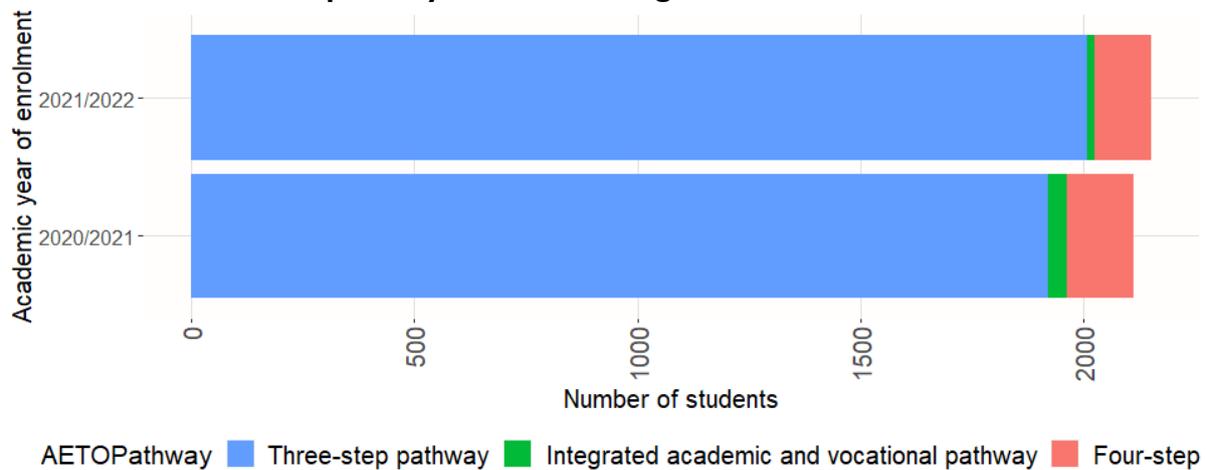
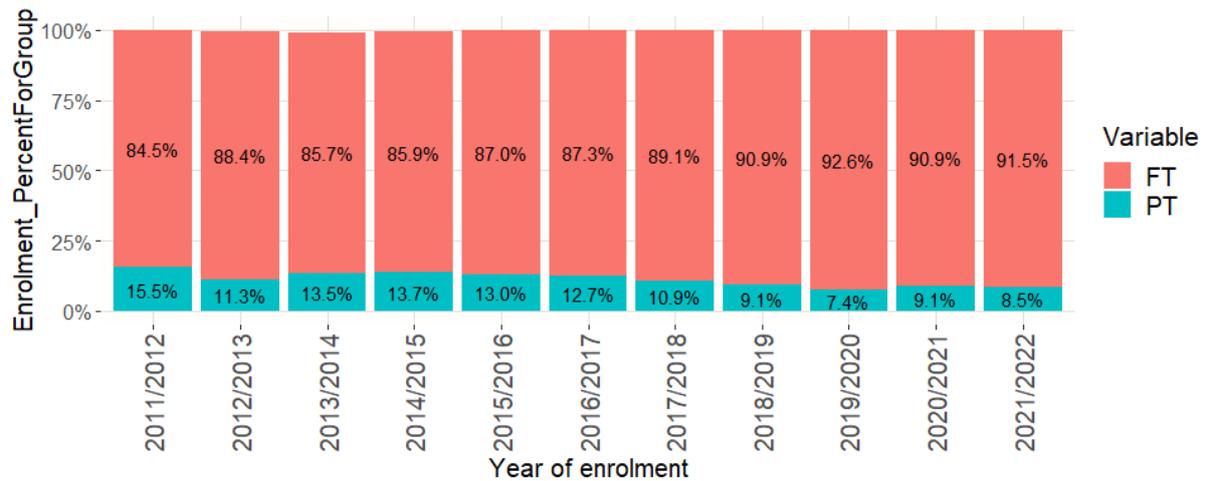


Chart 4 shows enrolments for each academic year by study mode (whether a student was full-time or part-time). The proportion of part-time students has decreased over time from 15.5% in 2011/12 to 8.5% in 2021/22, although the number of part-time students has not changed as markedly (for example, there were 208 part-time students enrolling in 2013/14, 160 in 2018/19, and 183 in 2021/22).

**Proportion of all students by study mode and year of enrolment**

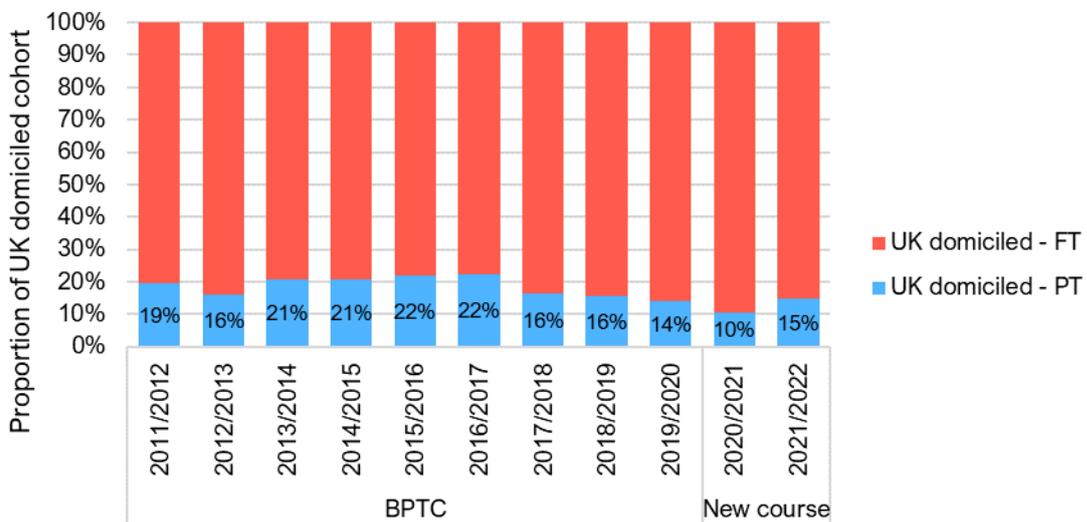


The trend is related to an increase in the number of overseas students, who are more likely to study the course full-time than UK domiciled students.

The proportions of UK-domiciled students studying part-time showed less of a reduction, as can be seen in Chart 5 below.

**Part-time students**

**Enrolment by study mode for UK domiciled students only**



## Demographic data

1. **Age** – the age profile of those on the new course is similar to that seen on the BPTC. In 2021/22, around 75 per cent of those that enrolled were aged under 25, 19 per cent were age 25-34 and the rest were aged over 35. This is very similar to that seen from 2015/16-2019/20 on the BPTC.
2. **Disability** - Overall, the proportion of those with a declared disability has remained relatively stable over time, fluctuating at around 10% of students.
3. **Domicile** - The proportion students who are ordinarily domiciled overseas prior to enrolment was around 45 per cent in 2020/21 and 2021/22. This is a similar figure to that seen in latter years of the BPTC (around 48% in 2018/19 and 2019/20).
4. **Ethnicity** - The majority of overseas domiciled students who enrolled throughout the BPTC, and on the new course, have been from Asian ethnic backgrounds (around 80-85% of overseas students when excluding those that have not provided information).
5. For UK domiciled students, the new course has seen a consolidation of a trend seen throughout the years of the BPTC, which was an increase in the proportion of students from minority ethnic backgrounds over time. Throughout the years of the BPTC the proportion of UK domiciled students from a minority ethnic background increased from around 25 per cent to around 40 per cent (when excluding those not providing ethnicity information). The proportion of such students seen on the new course has remained at around 40 per cent. Increases were seen on the BPTC across all of the following ethnic groups – Asian/Asian British, Black/Black British, Mixed/Multiple Ethnic Backgrounds, and those from Other minority ethnic backgrounds. This is shown in the table below, which shows a snapshot of years from 2011/12 onwards.

### Ethnicity of UK domiciled Bar training students over time

| Course and enrolment year | Percentage of UK domiciled enrolment - excluding those that did not provide information on ethnicity |                     |                              |                    |                                  |       |
|---------------------------|--|---------------------|------------------------------|--------------------|----------------------------------|-------|
|                           | Asian/Asian British  | Black/Black British | Mixed/Multiple ethnic groups | Other ethnic group | Minority ethnic background total | White |
| BPTC_2011/2012            | 12.1%  | 7.7%                | 3.3%                         | 1.4%               | 24.5%                            | 75.5% |
| BPTC_2015/2016            | 20.7%  | 8.7%                | 4.9%                         | 2.6%               | 36.8%                            | 63.2% |
| BPTC_2019/2020            | 18.6%  | 10.3%               | 5.2%                         | 1.7%               | 35.7%                            | 64.3% |
| New course_2020/2021      | 18.3%  | 13.4%               | 6.1%                         | 2.5%               | 40.4%                            | 59.6% |
| New course_2021/2022      | 22.2%  | 10.3%               | 6.9%                         | 2.7%               | 42.0%                            | 58.0% |

6. **Gender** – The proportion of students enrolling by gender appears to be in line with that seen in the latter years of the BPTC, with females representing just over half of all students enrolling each year.

7. **Type of school attended** - The proportions of those attending fee-paying schools does not appear to have changed markedly on the new course compared to the BPTC. The proportions involved are still substantially higher than that seen in the UK population. The underlying rate for undergraduate degree entrants in the UK is around 10 per cent<sup>1</sup>, which compares to around 39 per cent of bar training students enrolling in 2021/22, when excluding those not providing information. A greater proportion of overseas domiciled students have attended a fee-paying school in comparison to UK domiciled students (in 2020/21 around 52% vs 29% when excluding those not providing information).

### Academic history

8. Degree institution attended – The proportion of students who attended Oxbridge, and the proportion who attended a Russell Group university enrolling on the new Bar training courses appears to be broadly in line with that seen on the BPTC. The proportion of both together is around 50 per cent of UK domiciled students.
9. First degree classification - Enrolment by first degree classification on the new Bar training course has shown a continuation of trends seen on the BPTC, with a reduction in the proportion of those with a lower second class degree seen over time (particularly for overseas students), and an increase in the proportion of those enrolling with a first class degree. Both of these trends are seen in the table below. These trends could be suggestive of trends seen in awarding of degrees, student selection by AETOs, or a belief amongst prospective students that having higher degree classifications is necessary to enter into a career at the Bar – it is difficult to infer exactly what the causes of these trends may be.

### Domicile of Bar training students over time

| Domicile | Course and enrolment year | A: First class | B: Upper second class | C: Lower second class | D: Other | E: Third |
|----------|---------------------------|----------------|-----------------------|-----------------------|----------|----------|
| Overseas | BPTC_2011/2012            | 2%             | 42%                   | 47%                   | 9%       | 0%       |
|          | BPTC_2019/2020            | 12%            | 60%                   | 26%                   | 2%       | 0%       |
|          | New course_2021/2022      | 14%            | 54%                   | 32%                   | 0%       | 0%       |
| UK       | BPTC_2011/2012            | 21%            | 60%                   | 16%                   | 3%       | 0%       |
|          | BPTC_2019/2020            | 32%            | 58%                   | 7%                    | 3%       | 0%       |
|          | New course_2021/2022      | 38%            | 55%                   | 8%                    | 0%       | 0%       |

<sup>1</sup> Higher Education Statistics Agency: Widening participation summary: UK Performance Indicators. <https://www.hesa.ac.uk/data-and-analysis/performance-indicators/widening-participation-summary> (accessed 16 September 2022)

## Fees

1. The table below details the cost of training for the 2022/23 academic year taken from the websites of the AETOs. Part 1 and Part 2 relate to the costs for training where students undertake vocational training in two separate parts, with both parts needing to be passed to complete the course.

## Cost of Bar training for 2022/23 entry – inclusive of BSB fee

| Provider                                  | Domicile | 3-step pathway | 4-step pathway           |                          | Final Year of BPTC<br>(2019/20) – non<br>inflation adjusted |
|---|----------|----------------|--------------------------|--------------------------|---|
|   |          | Bar training   | Bar training<br>(part 1) | Bar training<br>(part 2) |   |
| <b>BPP London</b>                         | Overseas | £16,151        |                          |                          | £19,070   |
| <b>BPP London</b>                         | UK       | £15,151        |                          |                          | £19,070   |
| <b>BPP Non-London</b>                     | Overseas | £15,121        |                          |                          | £15,680   |
| <b>BPP Non-London</b>                     | UK       | £14,121        |                          |                          | £15,680   |
| <b>Cardiff University</b>                 | Overseas | £20,700        |                          |                          | £16,650   |
| <b>Cardiff University</b>                 | UK       | £18,700        |                          |                          | £16,650   |
| <b>City Law School</b>                    | All      | £16,340        |                          |                          | £18,500   |
| <b>Inns of Court College of Advocacy</b>  | All      | £13,990        | £1,895                   | £12,095                  | -   |
| <b>Manchester Metropolitan University</b> | All      | £12,870        |                          |                          | £15,500   |
| <b>Nottingham Trent University</b>        | All      | £12,200        |                          |                          | £15,200   |
| <b>University of Northumbria</b>          | All      | £12,300        | £3,075                   | £9,225                   | £15,000   |
| <b>University of Law London</b>           | All      | £14,000        |                          |                          | £18,735   |
| <b>University of Law Non-London</b>       | All      | £12,700        |                          |                          | £15,485   |
| <b>University of the West of England</b>  | All      | £13,500        | £3,000                   | £10,500                  | £15,000   |

- The chart below shows the average fees charged at London vs non-London providers from 1990/91 onwards. It is clear to see that the course from 2020/21 onwards is less expensive than the BPTC was, after adjusting for inflation to 2022/23 prices. Prices for Bar training across AETOs in London are now more in line with those last seen around 2000/01, and are more in line with those seen around 2011/12 for AETOs based outside of London, after adjusting for inflation for both.

**Inflation adjusted cost of vocational Bar training courses over time – average for London and non-London training providers**

