

Sir Andrew Burns KCMG
Chairman
The Bar Standards Board
289 High Holborn
London WC1V 7HZ

By email to: futurebartraining@barstandardsboard.org.uk

Dear Sir Andrew

We are all individual members of the Bar of England and Wales. We write to express our disappointment at the contents of the Future Bar Training consultation paper ("*Consultation on the Future of Training for the Bar: Future Routes to Authorisation*") dated October 2016 ("**the Consultation Paper**"). The Consultation Paper is not a sound basis for reforming the BPTC, for the following reasons:

1. It is not guided by a proper understanding of the BSB's statutory objectives of promoting and protecting the public interest. There are just 430 pupillages available every year, but over 1,500 people commencing the BPTC. The BSB's focus should be on ensuring that those with a realistic prospect of obtaining pupillage receive high quality training, at the most efficient cost, in order to equip them to serve the public. Such training should, as far as possible, be provided in a way that keeps costs down, and thus avoids creating unnecessary financial barriers to people from modest income backgrounds who wish to come to the Bar and have the aptitude to do so. There is no public interest in allowing the continuation, for its own sake, of a state of affairs whereby over 1,500 people a year are undertaking an expensive course, in circumstances where many of them do not have any realistic prospect of obtaining pupillage. The cost of the course is financially crippling for many of them, and their presence on the course reduces the quality and level of the training that can be offered to those students who do have a realistic chance of obtaining pupillage. There is likewise no public interest in deterring entry to the profession by men and women of talent and ability. Providing high quality professional training to, and promotion of equality and diversity among, those with a realistic prospect of obtaining pupillage, would plainly not have any material deleterious effect on competition in any market for the provision of legal services, nor would it limit (directly or indirectly) the numbers actually entering the profession; to the contrary, it would improve such competition.
2. It fails to identify the underlying cause of the current problems, namely the fact that BPTC provision has become a self-serving industry that has vastly outgrown its *raison d'être* of training people in preparation for their becoming one of the people who commence providing legal services every year as members of the Bar of England and Wales. As a result of that fundamental mismatch between purpose and reality, a small profession is faced with an impossible challenge of trying to secure the provision of high quality, financially supported training for people with a realistic prospect of entering the profession, in order to both (i) protect and promote the public interest, and (ii) ensure that the Bar remains open to people without wealthy parents.

3. It displays little comprehension of the practical realities of the profession, by supposing that it is practicable for a small profession such as the English Bar to sustain multiple different routes to qualification (this being the BSB's currently "preferred" option, namely the "Option B: managed pathways" option described in the Consultation Paper), while ensuring high quality. The BSB's preference for that option is not based on any research identifying significant numbers of chambers or universities who would be willing and able to develop new routes to qualification. Further, the regulatory costs associated with approving and quality-assuring multiple routes are simply ignored.
4. It fails to provide a balanced and fair presentation of the options for reform. Option A is essentially the 'do nothing' option; Option B is the BSB's "minded to" decision; and Option C is an absurd option which envisages that the BSB would somehow set examinations or other routes to qualification replacing the need for a Law degree or any other formal education in English Law. As for the proposal put forward by the Council of the Inns of Court ("**COIC**") and the Bar Council: that proposal ("**the Bar's Proposal**") is not even mentioned. Instead, Option C is described as the "Bar specialist" option – a description that has unsurprisingly misled some readers of the Consultation Paper into thinking that Option C was the option being proposed by the Bar.

Our endorsement of the Bar's Proposal

Professional regulation should be a co-operative partnership between the profession and its regulator, based on mutual respect. We are surprised that our regulator would initiate a consultation on a set of options for reform whilst ignoring (without any explanation) the option developed by the profession.

We note that on 1 December 2016 the BSB agreed to extend the consultation deadline from 23 December 2016 until 31 January 2017 to include consultation on the Bar's Proposal.¹ We welcome that step. Nevertheless, we wish to express that, in our view, it was unacceptable that the three options originally set out in the Consultation Paper did not even mention the Bar's Proposal, which has the support of all four Inns, and has been endorsed by many stakeholders from the profession, including the Bar Council.² The Inns are educational charities and are currently the main source of non-family financial support for students undertaking the BPTC. Both the Inns and the Bar Council are well qualified to address the questions raised in the present Consultation paper; indeed, as self-employed practitioners, we depend upon members of these bodies to represent our views to you, our regulator.

We support the Bar's Proposal and in particular the following key aspects of that proposal:

- i) no change to the academic stage of training and no change to pupillage;
- ii) introduction of a two-part structure for the BPTC;

¹ https://www.barstandardsboard.org.uk/media/1798993/bptc_coic_bar_council_proposal_final_dec_2016.pdf

² http://www.barcouncil.org.uk/media/400507/the_future_of_training_for_the_bar.pdf

- iii) the possibility for students to opt for self-study at home using textbooks for the first part of the BPTC (the knowledge-based exams) with no compulsory attendance requirements for any teaching sessions; and
- iv) the requirement that all students pass the knowledge-based exams in Part 1 before progressing to skills-based training in Part 2 with a focus upon advocacy training and minimum compulsory attendance at teaching/practice sessions.

The Bar's Proposal represents a practicable and realistic way forward. It would simultaneously: (a) reduce the overall costs of qualification; (b) focus the Bar's training resources on those students with a good prospect of securing a pupillage, enabling substantial financial assistance to be provided to those students from modest income backgrounds who pass Part I; and (c) allow the Part II course to develop as a very high quality course benefiting from strong and active support from the practising Bar, which will genuinely equip students with the skills they need in order to practise effectively in the English courts. The Bar's Proposal is flexible, accessible and affordable (in accordance with three of the BSB's "*fundamental principles*" referred to in the Consultation Paper), and would *raise* standards (thus going further than the fourth fundamental principle of "*sustaining high standards*").

It is our firm view that, in order for the Bar's Proposal to achieve its intended effects in remedying the problems with the current arrangements, it should be implemented as a replacement to (and not as a "managed pathway" representing an optional alternative to) the current BPTC. Otherwise the likelihood is that there will simply be a continuation of the *status quo*, and the twin problems of cost and quality associated with the current BPTC arrangement would remain unsolved.

Summary of the most serious flaws of the three BSB proposals

Both COIC and the Bar Council will be issuing comprehensive responses to the three BSB proposals. In this letter we set out the most serious flaws of the three BSB proposals.

Option A, "Evolutionary approach": This option is broadly the same as the present system, the problems with which are well known. This option would do nothing to reduce the costs of qualifying as a barrister or to reduce the number of students incurring those costs without a real prospect of securing a pupillage.

Option B, "Managed Pathways": This approach contemplates a plethora of pathways to the Bar, which would not be limited to the four sub-options proposed by the BSB as follows:

Option B(i): Sequential training: (1) academic; (2) vocational; (3) work-based learning.

- This pathway is the same as Option A, as to which see the above concerns.

Option B(ii): (1) Academic and vocational training combined; (2) work-based learning.

- This pathway invites the creation by universities of law degree courses which combine the content now covered by a qualifying law degree or GDL with the BPTC course content.
- Universities are already able to take this approach: Northumbria Law School

has already done so, but there is no evidence of interest from other universities.

- That lack of interest is not surprising. Given the small size of the Bar, many university law degree courses have only one or two, if any, students on them who will eventually come to the Bar. Accordingly, it makes more sense for universities to focus on providing broad-based academic law courses that equip students well for whichever career choices they subsequently make, whether within or outside the legal profession.
- It would be wrong to encourage students to lock themselves into a career path earlier than is appropriate. This sub-option may increase the number of student undertaking vocational training without the prospect of pupillage.
- It would also be wrong to encourage students from lower income backgrounds who have excellent A-level results to choose a university based on trying to reduce their costs of fulfilling the BPTC requirements. Prestigious university law departments at places such as Oxford, Cambridge, London, Nottingham, etc., are very unlikely to be interested in offering vocational/professional education as part of their law degree courses.

Option B(iii): (1) Academic training; (2) vocational and work-based learning combined.

- This pathway would prematurely begin the assessment of pupils by introducing a combination of pupillage/vocational training before basic skills training has been delivered.
- It would be burdensome on chambers and self-employed pupil supervisors to deliver, or manage the delivery of, vocational and work-based learning to centrally set assessment standards during pupillage. Such approaches would also be highly disruptive to the pupillage experience in a set of chambers. It is therefore unlikely that many, if any, chambers would wish to adopt such a model.
- The proposal would therefore involve the BSB incurring substantial regulatory cost in developing a framework for approving alternative “pathways” that would benefit only a very small number of people each year.
- There is also good reason to be concerned about whether the vocational and work-based learning provided to the students would meet consistent quality standards and would properly equip pupils with the set of foundational skills they need to be able to practice competently in the English courts.

Option B(iv): Modular training: Academic, vocational and work-based learning combined.

- There is a complete lack of information about how this pathway could function in practice.
- The same concerns as expressed above in relation to Option B(iii) are also applicable to this option.

In addition to the concerns noted above in relation to each of the four suggested pathways, Option B has little to commend it and we advocate strongly against it for the following reasons:

- i) it incorrectly shifts the focus from reform of the BPTC to reform of the delivery of the academic/pupillage stages;

- ii) creating multiple pathways is unnecessary given the small number of pupillages available;
- iii) it complicates Chambers' recruitment and pupillage processes and adds to confusion amongst applicants about routes to the Bar; and
- iv) the costs to the of BSB regulating numerous pathways risks raising the cost of qualifying as a barrister (since relevant regulatory costs are presently passed onto students as part of the BPTC fee).

Option C, "Bar Specialist Approach": This approach is the most radical and unappealing of the three proposals, in that it eliminates the requirement for a law degree or GDL at all, requiring instead a 2:2 degree in any subject + a "qualifying exam" + vocational skills training/assessment + pupillage. The qualifying exam(s) would aim somehow to simultaneously assess all seven compulsory subjects presently covered by a qualifying law degree/GDL and vocational knowledge from the present BPTC syllabus. As to this approach:

- i) it is inconceivable that a single exam, or even a series of exams within a short period, could adequately assess all of these topics;
- ii) students who already have what is now a qualifying law degree or GDL will waste time revising for an unnecessary further exam and may also incur additional costs;
- iii) it would be inordinately difficult and expensive for the BSB to set and mark an examination capable of testing all the foundational areas of legal knowledge;
- iv) there are already a range of flexible options for enabling students who did not study Law at university to acquire the requisite foundational legal knowledge. Those options include not only the GDL (full-time and part-time), but also the Open University and 'senior status' law degree programmes offered by various universities (as 2-year full-time courses, or on a part-time basis, or via home study); and
- v) any attempt to alter the system such that barristers need not have knowledge of all seven compulsory academic subjects is vehemently opposed given that this may mean barristers would not have rights of audience in all courts.

Conclusion

The current BPTC arrangements shame the profession and are not in the public interest. They do nothing to improve the quality of legal services, nor to increase choice for consumers, nor to reduce the costs of legal services, nor to benefit equality and diversity in the profession.

It is now essential that the BSB look beyond the 'special pleadings' of BPTC providers, and focus on the public interest in the context of a small profession committed to the highest standards. We firmly believe that the Bar's Proposal represents a realistic way forward, and we urge the BSB to now engage properly with that proposal and to consult on its implementation.

Yours sincerely

[Alphabetical order list of signatories and their chambers/employer]

Alan Bates, Barrister, Monckton Chambers, London

Sarah Bousfield, Barrister, 39 Essex Chambers, London

Charlotte Thomas, Barrister, Brick Court Chambers, London

CC:

(1) Sir Michael Pitt, Chairman, Legal Services Board

(2) Andrew Langdon QC, Chairman, Bar Council

(3) The Rt. Hon. Sir Oliver Heald QC MP, Minister of State for Courts and Justice