

**Middle Temple Funding Allocation
Working Group
Information Paper**

1.0 The Group's Agenda

1.1 The Group has been charged by the Middle Temple:-

“to ascertain the views held (and arguments supporting them) as to whether or not the funds which are at present directed by the Inn for the provision of financial support to students prior to qualification for the Bar (being funds which the Inn would be at liberty to allocate elsewhere) should not be limited to pre-qualification scholarships but would be better utilised either wholly or in part for any of the following:

- 1. to fund additional pupillages, or*
 - 2. to provide financial support to newly-qualified barristers in pupillage or in their early years as tenants, or*
 - 3. to subsidise in some other way those aspiring to practise at the Bar,*
- and further to ascertain and report the extent of support for those views within the Inn, and more generally by reference to the other Inns, the Bar Council, and the Specialist Bar Associations.”*

1.2 Accordingly, the Group has embarked on an exercise to establish the facts, and to canvass opinion both within and outside the Inn.

1.3 The Group has carried out an online survey of members of the Inn undertaking the BVC/BPTC in the years 2004 to 2014, both scholars and non-scholars, with a view to establishing how they have fared in terms of securing pupillages and tenancies and at the Bar, and we have canvassed the opinions of interested associations and organisations. The material obtained by the Group to date is summarised below.

1.4 It is now proposed to email the Inn's current membership to canvass the opinions of members more generally.

2.0 The “pot” and current allocation of funds

2.1 The sums awarded by the Middle Temple in the years 2009 to 2014 are shown in Fig.1 below. In that table “Restricted Income” refers to income which is required by the terms of the donations from which it is derived to be used for a particular purpose. “Grant” is a reference to the sums paid by the Inn from its unrestricted income which it is free to dispose of as it thinks fit.

Fig 1

	2014	2013	2012	2011	2010	2009
Grant received from the Inn	552	500	750	750	782	795
Restricted income	346	726	657	468	717	534
Total income	898	1226	1407	1218	1499	1329
Total awards	1084	889	1027	935	900	972

2.2 Currently, the Middle Temple, unlike the other Inns, does not provide awards to support barristers during pupillage, or in early years of practice, but, exceptionally, hardship grants are made to pupils facing unexpected and exceptional hardship. The other Inns do allocate a small percentage of their scholarship funds to provide pupillage awards. The Inns also each provide up to £60,000 p.a. to support the COIC’s matched funding scheme to enable poor chambers to fund pupillages they would not otherwise be able to fund.

2.3 Comparative figures for the four Inns are set out in Fig.2 below:

Fig 2

Inn	Gray’s Inn	Lincoln’s Inn	Inner Temple	Middle Temple
Total scholarships	£800,000	£1,534,000	£1,575,000	£1,000,000
Total Pupillage Awards	£69,500 (of which £49,500 is set aside for publicly funded work)	£25,000	£4,525	£0
Percentage of overall awards	8.7%	1.6%	0.3%	0%
Number of awards	13 (9 of which are for publicly funded)	Up to 40	8	0
Average size of award	£5,346	£833 (based on 30)	£567	0

3.0 Criteria and quantum of scholarship awards

3.1 The Inn's current policy is to award scholarships only to assist during BPTC/GDL courses. Awards are based on merit but quantified according to financial need. A meritorious candidate not in need may receive an award of £500. A needy candidate may receive £18,500. (See Fig.3).

Fig.3: Summary of awards made by 2014 BPTC panels

Panel	A	B	C	D	E	F	G
Number of major scholarships awarded	19	15	17	19	14	15	8
Number of EE's awarded	5	12	12	4	12	11	4
Number of candidates awarded both EE and major scholarship	0	0	12	1	0	9	4
Number of candidates awarded just EE	5	12	0	3	12	2	0
Total £ awarded	£164,000	£141,000	£160,000	£160,000	£151,000	£150,000	£80,000
Average £ per scholar	£8,632	£9,400	£9,412	£8,421	£10,786	£10,000	£10,000
Highest single award	£12,000	£14,000	£15,000	£18,500	£18,500	£17,000	£13,000
Lowest single award	£6,000	£1,000	£500	£1,000	£500	£6,000	£7,000

3.2 No candidate is awarded a scholarship unless judged to be capable of making a successful career at the Bar. On occasions, scholars may be permitted to defer scholarships – e.g. to enable them to work and save up for their course.

3.3 The Inn's scholarship awards are not conditional upon the scholar completing the BPTC, or upon being called to the Bar, or upon obtaining a pupillage. Accordingly, there is no "claw-back".

4.0 Costs of the BPTC

4.1 Course fees currently range between £9,000 and £19,000. (The BPTC website, however, refers to a maximum of £18,175). The fees for courses starting in autumn

2015 will range from £13,000 (Northumbria) to £18,500 (BPP and University of Law). These fees include a fee levied by the BSB, just increased to £550.

5.0 Living Expenses During BPTC

5.1 The following guidance for students undertaking degree courses is given by the following sample of universities:-

City University - £11,500 to £22,000 pa (“essentials”)

Nottingham University – minimum £9,840 (“basic living expenses”)

Liverpool University - £6,000 to £8,000 (“daily living expenses including accommodation”)

5.2 The Middle Temple Young Barristers’ Association (“MTYBA”) estimate that even those living exceptionally frugally will have an expenditure (in London) of £1,100 per month (assuming a room in a shared house at a rent of £498.33 p.m. – MTYBA consider £600 p.m. to be more realistic).

6.0 Other sources of funding during BPTC

6.1 The survey results for scholars, unsuccessful applicants, and non-applicants refer to family, other work, loans, scholarships, gifts, state benefits, savings. Some chambers allow a drawdown on a pupillage award during BPTC, but few students will have obtained pupillage at this stage.

7.0 Is the present allocation policy providing value?

7.1 The questionnaire was sent to 4488 members who had enrolled on the BVC/BPTC in the years 2004 – 2014. 1347 responses were received – a 30% response – of which 1031 had completed the BVC/BPTC. Of the remaining 316 responses, 279 were still undertaking the BPTC, and 37 did not complete the course.

7.2 The survey shows that of the 441 scholars who completed the BVC/BPTC in the years **2004 to 2014** (and who responded to the survey) 264 (62%) have secured pupillage and 170 (39%) have secured a tenancy – see the table in Fig.4 below.

7.3 The table in Fig.4 analyses the responses from those 1031 Bar Course completers. It divides the responses into three categories: those who obtained scholarships, those who applied for scholarships but were unsuccessful, and those who did not apply.

The data include all responses, and so includes those who have only recently completed the Bar Course and so who could not yet be in tenancy. The absolute rates for success in finding a tenancy are therefore rather understated for the sample; but the relative comparisons between the three categories should nevertheless remain valid. It should be noted that with regard to the data relating to those who obtained pupillage, it is increasingly common for people to apply over successive years before obtaining one. This means that the pupillage figures for those who have recently completed the BPTC are quite low, but if the same cohort was examined in a few years the numbers of those who obtained pupillage would have increased.

The figures for conversion to pupillage and then to tenancy can reasonably be compared between the three categories, but we think that the absolute figures for conversion to tenancy almost certainly overstate the true position for the population of all those who take the Bar Course. This is because our sample of responders will be skewed towards those who remain at the Bar, who we think will have been more likely to respond to the questionnaire than those no longer at the Bar.

Even amongst those who responded to the consultation, only 23% of those who completed the Bar course obtained a tenancy.

Fig 4	Applied scholarship for and obtained scholarships	Scholarship applied for but not awarded	Didn't apply for scholarship	Total
Number completing Bar course 2004-2014	441	201	389	1031
Number applying for pupillage	426	181	243	850
Number securing pupillage	264	65	75	405
Number securing tenancy	170	30	40	240
Numbers obtaining pupillage as a percentage of those who applied for pupillage	62%	36%	31%	48%
Type of pupillage obtained (as a percentage of the whole)				
Publicly funded work	38%	34%	50%	40%
Mixed	35%	43%	36%	37%
Privately funded work	27%	23%	14%	24%
Progression rate from				
Bar course completion to pupillage	60%	32%	20%	39%
Pupillage to tenancy	64%	46%	53%	59%
Bar course completion to tenancy	39%	15%	10%	23%

7.4 By comparing the conversion rates from BVC/BPTC to pupillage, and from pupillage to tenancy, as between the three different categories (scholars/unsuccessful applicants/non-applicants) one can see that those who were awarded MT scholarships have fared better than those who were not. We take comfort from this as it suggests that awards are going to those most likely to succeed, though there may be some element of success being partly as a result of receiving an award.

7.5 The survey also showed (Fig. 5) that of the 250 scholars in the cohort 2004 to 2011, 159 (64%) obtained pupillage. 133 (53%) secured a tenancy, and 113 (45%) are still in practice.

Fig. 5

Number of respondents who completed the Bar Course 2004-2011	250	
Number who secured pupillage	159	64%
Number who secured tenancy	133	54%
Number who are still in practice	113	45%

7.6 A significant number of scholars responding to the survey in answer to the question “If you had not obtained the scholarship, do you think that it would have made any difference to the choices you made going forward in your career?” stated that without a scholarship they would have made a different career choice – see Fig. 6

Fig. 6

Would have done course part-time	25	10%
Would not have made a difference to choices	86	34%
Would have taken a year out	42	17%
Would have opted for an alternative career	37	15%
Answered ‘Other’	60	24%

(Some examples of ‘Other’ responses:

- *Although I would have continued along the same path without the scholarship (straight into the full-time BPTC) I would have had to arrange a much larger loan with far higher rates of interest.*
- *I am studying part time, I may have reconsidered the bar, the recognition was as important (and more important long term) as the funding.*
- *I can’t say absolutely it would have made a difference to my actions, but it certainly would have given me pause for thought. It would have increased the financial commitment necessary, and it would have made me think twice about my prospects of success in respect of pupillage and tenancy.*

- *I decided to take the BPTC part time so that I could afford it, without the scholarship I would have had to go into debt and there was no guarantee that I would have been able to find a loan provider that would be willing to give me a loan.*
- *I did the course part time and worked alongside to pay for the rest of the course as I was repeatedly refused a loan. It is highly likely therefore I would have either had to take a year out or pursue an alternative career.)*

7.7 COMBAR canvassed the responses of 42 of its membership under three years call. Of those, 40 obtained scholarships (from one or other of the four Inns), 17 (42%) stated that they would not or probably would not have pursued a career at the Bar if they had not been awarded a scholarship, 7 (17.5%) stated that it would have been extremely difficult for them to persevere in their ambition, and 16 (40%) stated that the absence of a scholarship would not have deterred them from persevering. However, 50% of the latter group already had obtained pupillage and they were either able to draw down on their pupillage award for their BPTC year or felt sufficiently secure, with the pupillage, to invest in the BPTC regardless of the scholarship.

7.8 Some students also value a scholarship for the prestige (food for their CVs) and because, in their belief, the award of a scholarship may assist in securing a pupillage. The award of a scholarship is also seen as providing the individual with confidence that he/she has been assessed as being capable of succeeding at the Bar so that it is worth investing in a Bar course.

8.0 **Contraction of the Bar**

8.1 We are not aware of significant current concerns, in this respect, from those engaged in privately funded work.

8.2 It is of very serious concern for the Criminal Bar. We have no overall statistics, but it is clear that the Criminal Bar is contracting, with experienced practitioners leaving, the number of pupillages reducing, and recruitment falling.

A copy of Chapter 5 of the Rivlin Report (the Criminal Justice Reform Group report “Criminal Justice, Advocacy and the Bar” – March 2015) is attached at Annex 1. The

full report is on the Bar Council website at [http://www.barcouncil.org.uk/media/342215/rivlin_report_final_march_2015 .pdf](http://www.barcouncil.org.uk/media/342215/rivlin_report_final_march_2015.pdf).

Particular reference should be made to paragraphs 5.1 to 5.8 and to the statistical data in footnote 30.

- 8.3 Our survey indicates that of the 73 respondees within the cohort 2004 to 2012 who secured tenancies engaged in publicly-funded work, 11 (15%) have left the self-employed Bar for financial reasons.

(One of the Working Group reports that:-

- there were approximately 100 members of the Junior Bar who were seconded to the SFO in 2014 of whom 10 are known to have taken permanent posts with the SFO, and others have expressed a desire to do the same;
- others are on secondment to the FCA, CPS, GMC etc;
- one large criminal set has lost at least 5 of its most junior tenants in the last 2 years.)

- 8.4 We have received other reports of criminal practitioners, including established ones, leaving the Bar, and of a number of predominantly publicly-funded chambers "*folding*".

- 8.5 We are currently lacking in information in relation to the Family Bar.

9.0 Pupillage awards and living expenses

- 9.1 At one time major scholarships were awarded by the Inn (generally in annual sums paid over 3 years) only to fund members in pupillage and their early years. The Middle Temple converted these awards to scholarships to cover BVC/BPTC when the rule was introduced, in 2003, that all pupillages had to be funded.

- 9.2 The minimum pupillage award which, of course, is payable by Chambers, is now £12,000. Pupillage awards in the larger civil sets are likely to be adequate or more than adequate to sustain the recipients during pupillage.

- 9.3 COMBAR reports that funding during pupillage and the early years of practice is not a particular concern among junior COMBAR members. A similar report has been received from the Chancery Bar Association. But the same does not apply to anyone in receipt of only a minimum award.
- 9.4 The minimum value was set, in 2003, at £10,000. This was increased to £12,000 in 2011. This has not kept step with inflation (see Fig 7).

Fig. 7

Date	Index	Amount to maintain purchasing power	Revised award value	Present value of award	Revised award value
2003	179.4	10,000		10,000	
2004	185.1	10,318		9,692	
2005	188.5	10,508		9,517	
2006	196.0	10,926		9,153	
2007	203.2	11,327		8,829	
2008	204.3	11,388		8,781	
2009	208.4	11,617		8,608	
2010	216.9	12,091		8,271	
2011	225.9	12,593	12,000	7,941	12,000
2012	231.5	12,905	12,297	7,749	11,710
2013	236.2	13,167	12,547	7,595	11,477
2014	238.6	13,301	12,674	7,519	11,361

- 9.5 The MTYBA report that HMRC tax any income including any element of the pupillage award which is received in the second 6 months of pupillage.
- 9.6 Living expenses during pupillage will not be less than during the BPTC course – See Section 5 above. The Working Group has been informed that it is not uncommon for those with a minimum pupillage award in London to be in receipt of Housing Benefit.
- 9.7 However, as an additional financial burden, the aspiring barrister who took out a loan to complete the BPTC will also be required to commence loan repayments. To quote from MTYBA’s submission to us:-

5. *If someone has borrowed \$25,000² in order to complete the BPTC, they will be making loan repayments of £544.96 per month³ for a term of five years starting from six months after the BPTC has been*

completed⁴. Those who have taken out unsecured loans which are not designed to fund study, tend to face higher repayment rates. Meeting these repayments is an important factor influencing the route that anyone who has been called to the bar chooses to take.

²The Maximum amount that could be borrowed from HSBC and NatWest in the past. Metro Bank now offer a similar amount to those studying at the University of Law.

³Evidence supplied by a member of MTYBA who borrowed in 2011 when the HSBC Bar Loan scheme still existed.

⁴Although "repayment holidays" have been possible in the past there is no such option at present.

9.8 We have also been provided with evidence of a loan of £25,000 taken out in 2011 payable at 7% above base rate with a maximum repayment period of 5 years. Of course, funding through credit cards will attract even higher rates of interest.

9.9 Our survey indicates that sources of support, apart from their pupillage award, included family, loans, other work, scholarship, gift, benefits, and savings.

10.0 Views expressed

10.1 We have yet to complete our canvass of opinions as to the allocation of funds. We do not attempt, in this paper, to summarise the opinions which we have received. However, we include at Annex 2, a copy of the submission made to us by Master Hochhauser on behalf of the Inn's Education and Training Committee. We include this because of that committee's special position in relation to scholarships, but make the point that it is the challenge to those views which has given rise to the setting up of our Working Group.

10.2 We understand that the Kalisher Trust is now providing, or had decided to provide, only post-qualification financial support.

10.3 It is material to note that the currently proposed reforms to the vocational stage of training may well affect the views of members as to how best to support aspiring barristers.

11.0 Suggested means of easing the financial strain on, and/or providing financial support to aspiring barristers (other than non-refundable grants as at present)

Various suggestions have been made to us:-

- Reducing the cost of the BPTC or whatever pre-qualification course is substituted for it, (for example, by purchasing places on the BPTC in bulk – which is what some firms of solicitors do) and/or limiting the sum which the Inn will contribute to the BPTC (though not the amount paid as subsistence);
- Addressing the issues raised in the Rivlin Report in relation to young tenants working for nothing or not being paid;
- Re-allocating resources currently allocated to the library;
- Spending less money on consultants and more on scholarships;
- Better-off chambers should support the less well-off and there should be shared pupillages;
- Limiting scholarships to students who have already obtained pupillage, and using the funds thereby “*freed*” to provide post-qualification support;
- Provide part-time pupillages, if necessary over 18 months or more, to enable the pupil to work part-time in some other employment;
- Switch from grants to loans, either interest-bearing or interest-free; repayments could then be re-cycled – or to a mix of grants and loans;
- In conjunction with a bank, provide loans (possibly guaranteed by the Inn and/or with the Inn paying the interest) at all stages – BPTC, pupillage, early years;
- Buying students’ loans at a discount (the Government is proposing to sell them) and provide the students with easier terms;
- Acting as guarantor for “rents”;
- Enhancing the existing “pot” via further endowments;
- Encouraging more employers to provide funded pupillages either themselves or through links with chambers.

12.0 Options available to the Inn acting on its own

12.1 The options if this “pot” is not increased, appear to be to:-

- Maintain the present policy; or

- Allocate, on the basis of need, some or all of the unrestricted funds to provide financial support
 - (a) during pupillage; or
 - (b) during early years; or
 - (c) during qualification and (a) and (b) i.e. all three periods.

12.2 It is material to note that though it may be tempting to seek to increase the “pot” and enhance the sums awarded to students for the BPTC on the grounds of “need”, there is the risk that as things currently stand the Inn will find itself simply enhancing the providers’ profits.

12.3 There is the option to increase the “pot” by re-allocating resources currently allocated elsewhere or through increased endowments, in order to create a separate fund to provide post-qualification support.

12.3 There is the further option of exploring a change of policy from the making of grants to the making of loans or the provision of guarantees, or to a mix of all those methods of providing funding.

12.5 Other suggestions referred to in Section 11 could not be accomplished by the Inn acting on its own.

13.0 Programme

13.1 Master Treasurer is planning an open discussion meeting of the Inn on 15 July 2015. Therefore we require responses, giving us your opinions in relation to the issues raised in our terms of reference (see Section 1.1 above) and any suggested solutions you may have in relation to the many difficulties referred to in this paper to be emailed to Sally Yorke at S.Yorke@middletemple.org.uk by 12 June 2015. Our target is to produce an interim report by 1 July 2015, incorporating, amongst other things, the responses received as a result of this canvass. It is intended to circulate that interim report in time for the meeting planned for 15 July.

14. Thanks

- 14.1 Many thanks for taking the trouble to read this paper and for responding to our plea for your assistance.

David Blunt QC

28 May 2015

Annex 1

Chapter 5: The Very Junior Bar

Introduction

5.1 The criminal Bar faces a huge challenge in recruiting and retaining candidates who are (i) the most talented and (ii) from a diverse range of backgrounds. Recruitment is problematic due to the high cost of training combined with the risk involved in investing in a career at the criminal bar in the current climate. Retention is an increasing problem as criminal practitioners' work is diminishing, particularly at the more junior end, and legal aid cuts have reduced fees for work that is offered¹. Recent Bar Council research suggests that members of the junior criminal bar are the most likely to leave self-employed practice, with the most commonly cited reasons being insufficient earnings or uncertainty about future earnings.²

Background

5.2 The BPTC is expensive³ and is not highly regarded by practitioners. Around 1700 students on the course each year pass, but most of these will not secure pupillage. As the overall number of BPTC graduates increases, the number of pupillages available falls.⁴ In 2014 fewer than 425 pupillages were available. Criminal pupillages in particular are reducing year on year as chambers can no longer afford, or are too cautious, to take pupils on, feeling unable to guarantee that sufficient work will be available for their junior tenants. This is a serious problem indeed, and it must be urgently addressed if the criminal Bar is to survive.

5.3 The cost of training and the insecurity of an unsustainable income once qualified impacts particularly on those from lower socio-economic backgrounds. Those without access to funds are less able to take the financial risk in aiming for a career at the Bar or in surviving the first few years of practice with substantial debt. The Bar is therefore likely to miss out on this talent, with a knock-on effect for the future of a diverse judiciary.

¹ From 2007- 2013 Crown Court Legal Aid defence fees were reduced by 21%- Bar Council's October 2013 response to the Governments "Transforming Legal Aid: Next Steps" consultation.

² The Bar Council's 'Change of Status' survey 2013/14 –between 1/1/2013 and 31/12/14, there were 598 respondents (approximately a 20% response rate), of which 119 barristers changed their practising status to transfer to the employed Bar or other legal or non-legal employment. 65% (55) of these were less than 8 years call, of which 51% were in criminal practice and 8% in mixed criminal practice. 74% cited income as the main factor to influence their decision to change practising status.

³ Fees for the full-time one year BPTC commencing 2014 at BPP are £17,980 in London and £14,690 in Leeds and Manchester.

⁴ The number of first six pupillages registered with the Bar Standards Board has fallen each year since 2011: 2011 - 444, 2012 - 435, 2013- 431 and 2014 - 422.

5.4 As BPTC fees have increased at a faster rate than scholarships from the Inns, it appears that the large scholarship sums being paid by the Inns to prospective barristers may be increasingly going directly to the BPTC providers, with little if anything left over to go towards living costs during the BPTC year.

5.5 The work available to junior criminal practitioners is being significantly eroded by solicitor advocates, solicitors' agents and McKenzie friends. For junior level work, solicitors often believe it makes better financial sense to use in-house advocates or agents who are not qualified barristers or solicitors, rather than to instruct a junior barrister.

5.6 The emergence of Higher Court Advocates is impacting on the overall standard of advocacy at court.⁵ That, in turn, drives down standards at the self-employed Bar. Those considering the criminal Bar are presented with the possibly more attractive alternative of paid employment as a solicitor, with little short or medium term benefit perceived from being a barrister in independent practice.

5.7 The junior Bar's vulnerability in earning capacity is exacerbated because they often work for little or no fee. We deplore any manifestation of this. Poorly paid or free magistrate's court work is sometimes used as a bargaining tool by chambers for receiving Crown Court briefs. For example, in some instances a firm of solicitors will require a Magistrates' Court appearance to be covered by a barrister for free so that the Crown Court brief will remain with the same chambers. In these circumstances the junior barrister will not benefit from the Crown Court brief and their work is simply unpaid. Often, even travel costs are not reimbursed. In some cases, the fee is paid but the non-reimbursed travel costs are higher than the fee – with the result that even when paid, the junior barrister is still out of pocket.

5.8 Moreover, very junior barristers also find that any relatively small fees for magistrates' court work are often not chased by chambers. This is driven by inequity in the market, because the fees come from solicitors rather than the LAA. Some chambers choose not to harm relations with a solicitor that provides Crown Court briefs by chasing aged debt. Such difficulties are likely to increase following the recent further cuts to solicitors' fees in Magistrates' Court cases.

5.9 New funding arrangements aimed at reducing costs impact on the training of junior practitioners. This has significant implications for the excellent reputation that the Bar currently enjoys. Increasingly, the most junior members of the criminal Bar are struggling to secure the experience that they need to become specialist advocates. The traditional model where junior barristers learn through being led by a QC, or a senior

⁵ Sir Bill Jeffrey review: Independent Criminal Advocacy in England and Wales- recommendations 1-5.

junior, is being curtailed, as fewer cases are granted funding for two advocates.⁶ Very junior barristers cannot expect to be briefed as full juniors in such cases, but juniors of a few years call can. In the previous chapter, we have learned what is happening in these cases.

5.10 As specialist advocates at the top of the criminal Bar begin to retire, within the current environment they may not be replaced. In the medium to long term the standard of advocacy in the most serious criminal cases will decline significantly. This may also lead to a significant diminution in the Bar's ability to earn via foreign transactions: it is right to consider that the commercial Bar's attraction to foreign litigants is believed to be largely based on the incorruptibility of the Judiciary and the dedication of the CJS to justice for all, but we venture to suggest that this may also stem from the reputation of the criminal courts.

The future

5.11 Whilst we recognise that the Regulator does not wish to cap numbers on the BPTC,⁷ we fear that commercial providers are using the system to make money from people with no realistic prospect of pupillage. This should not happen. A solution could be achieved by raising the standards of entry on to the course, to prevent those with no realistic chance of a career at the Bar from undertaking it.

5.12 We acknowledge those who have previously considered this issue, most notably Lord Neuberger in his *Entry to the Bar Working Party Report*.⁸ He wished to keep the pool of candidates as wide as possible for as long as possible in the hope that this would assist diversity. However, there is still no evidence to demonstrate whether this does, in fact, assist diversity at the Bar. In any event, to encourage anybody, but especially those likely to have higher levels of debt, to undertake an extremely expensive course with little chance of success is worse than irresponsible. Diversity issues are better tackled by considering the selection criteria applied by chambers when recruiting pupils.

5.13 As the current BCAT does not provide an effective filter,⁹ the BSB should instead introduce a basic level test, possibly including an interview plan that has the effect of ensuring that those on the course possess the necessary skills, including soft skills, that would enable them to secure pupillage. A more thorough investigation into

⁶ A higher level of need must now be demonstrated in this form:

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/5138-eng.doc>.

⁷ To do so would require a change to the Legal Services Act. The Office of Fair Trading is opposed to controlling numbers.

⁸ Lord Neuberger's *Entry to the Bar Working Party Report 2007*

<http://www.barcouncil.org.uk/media/164103/finalreportneuberger.pdf>.

⁹ The BCAT was introduced in 2012 and the pass rate is 98% (Bar Standard Board figures).

what skills are required and how they can be assessed would need to be carried out, alongside an impact assessment to ensure that these processes did not exclude certain groups. This might also improve the experience of those on the course; current feedback from students suggests the low calibre and poor communication skills of some students has a negative impact on their learning experience.¹⁰

5.14 At present, most students undertake the BPTC without being able to properly assess their career prospects. The BPTC providers do not publish success rates in terms of pupillage or other employment¹¹ nor do they explain their own selection procedures. They should be required to do both by the BSB. This would enable them to share responsibility for the student's decision to seek the qualification, and would mean that they could make a more informed choice.

5.15 It is currently proposed that the Bar course is split into two parts.¹² The first part must be sufficiently difficult to pass to prevent students without the necessary skills from being able to embark on the second part. This would mean that those who realistically will never secure pupillage would not be enticed into greater debt with false hopes. It should also enable the standard of advocacy training in Part 2 to be raised, as only the most talented students would progress to this stage. If Part 2 became smaller, then we would hope that advocacy could be taught by the Inns and/or the Circuits, thereby (i) easing the financial burden on students, (ii) providing a higher quality of training, and (iii) providing the different specialist Bars with an ability to influence the practice of juniors in other fields. Pupils would no doubt be taught some of their advocacy by experienced practitioners, and civil practitioners could input their skills into paper exercises, resulting in a higher quality of training for all.

5.16 There are encouraging signs that the Inns of Court may be about to make this happen. COIC met recently and approved the final report of the Inns College Working Group. This will be provided to the inns for their consideration (in March 2015). In particular, COIC invited the Inns to approve the creation of the Inns of Court College of Advocacy, and approve in principle a commitment to develop (through the College) online resources to support a reformed BPTC. These commitments will necessarily be subject to approval by the Inns and financing this project (either externally or internally), and the decision of the BSB to adopt the proposals.

5.17 Ideally, the Bar would return to a system where those applying for the BPTC would know whether they had pupillage or not. At present, around two thirds of those

¹⁰ See for example an article published in the Guardian in December 2014 by a BPTC graduate: <http://www.theguardian.com/law/2014/dec/18/why-we-must-raise-the-bar-to-becoming-a-barrister>.

¹¹ In spring 2015 the Bar Standards Board intends to publish statistics on the comparative pass rates and (as far as their data permits) pupillage success rates of students on the BPTC across the various providers. There is no obligation on the BPTC providers to publish such information.

¹² The BSB has indicated that they favour a more flexible approach to training, with a Bar course that is delivered in two parts: (i) knowledge based and (ii) practical.

who secure pupillage, do so either during or after their BPTC year¹³. Pupillage should not, itself, be a requirement for the BPTC, but students without it must understand the risk they are taking. That requires the cooperation of the entire profession, and moves in this direction should now be pursued. The Bar Council is already looking at encouraging earlier pupillage selection by chambers to enable those undertaking the BPTC course to do so with a clearer idea of their career path.¹⁴ This could prevent some of the most talented students from choosing a more secure route in to criminal practice, such as a training contract with a solicitor's firm.

5.18 The Inns of Court education departments should consider focusing their student activities at undergraduate or GDL level, in order to prepare students for pupillage applications before they embark on the BPTC, and to ensure that those intending to pursue a career at the Bar are aware of the difficulties and costs involved. If students can secure pupillage pre-BPTC then this removes part of the risk of self-funding the course and prevents the course from being only undertaken by those who can 'afford that risk'.

5.19 The BPTC content should be reviewed to ensure that it addresses any gaps identified by the profession and better prepares candidates for practice, i.e. that it reflects skills needed to pursue a career at the Bar.¹⁵ At present, at least parts of the profession have an unclear picture of what qualities are required when people begin pupillage and what chambers need to add by way of the pupillage itself. The profession needs to identify the skills required at each stage, so that the BPTC can be focused on what is actually needed pre-pupillage.¹⁶

5.20 The BPTC should include modules that can be accessed by other legal professions, so that those who pass part of the course have qualifications that can be used even if they do not secure pupillage. This is in line with the Jeffrey recommendations on the standards of Crown Court advocacy.¹⁷

5.21 We understand that some chambers do specifically offer 18 months pupillages. These are clear and entirely transparent arrangements between the chambers and the barrister. The Bar Council should issue guidance, however, on what are known as 'Third Six Pupillages', asking chambers to make a decision as quickly as practically possible on whether or not to offer a tenancy to a pupil. They should not be used as a way to extend the period during which a junior barrister is working for little money and without the

¹³ *Bar Barometer* March 2014 (page 81)

http://www.barcouncil.org.uk/media/287767/bar_barometer_report_updated_-_june_2014_.pdf

¹⁴ Report on the timing of pupillage selection, Bar Council's Social Mobility Committee February 2015.

¹⁵ We acknowledge the work of Legal Education and Training Review (LETR), but we are suggesting a further detailed review of the course content.

¹⁶ As part of its Future Bar Training program, the Bar Standards Board is currently writing Competency Statements, in consultation with the profession, that will describe what skills and knowledge a barrister should possess on completion of pupillage.

¹⁷ Sir Bill Jeffrey review: Independent Criminal Advocacy in England and Wales- recommendations 2&3

security of a tenancy or any voting rights in chambers. They are not part of pupillage and, since they are unregulated, there are no minimum guaranteed earnings during this time.

5.22 The term 'Third Six Pupillage' has no regulatory meaning. A more appropriate term should replace it that reflects the fact that the barrister will be fully qualified, have a full practicing certificate and be covered by their own insurance.

5.23 We are particularly anxious that the Bar Council should issue guidance on the fair treatment of junior members of the Bar, recognising the highly vulnerable position of those who are hoping to secure tenancy, or who are in their first years of practice. We have heard of promising young barristers who have chosen to leave their chambers because they feel excluded or exploited by more senior members. We recommend that junior members of the Bar are included in chambers' management committees, and are given practical training in, for example, submitting bills and practice-building.

5.24 We request that the Inns of Court, Circuits and Heads of Chambers be pro-active in encouraging and supporting the very junior Bar. As to the Circuits and chambers, more pupillages should be made available, even if a strong, immediate economic case cannot be made out for them. As to the Inns, we greatly welcome, for example, their important 'Pupillage Matched Funding Scheme' aimed at increasing the number of pupillages available. We also take note of and encourage the suggestion that they might make use of their under-used library spaces to provide 'hot-desking' facilities for junior members of the Bar who are not based in London.¹⁸

5.25 By way of contrast, whilst not discouraging chambers from taking on pupils for criminal work, the Bar Council should alert chambers to the fact that it is bad practice to operate as 'pupillage factories', routinely taking on several pupils and third six pupils knowing that few if any have a realistic chance of securing a tenancy in chambers. Internal competition in such circumstances does not necessarily increase diversity; it simply adds another layer of risk to people who will already be unsure about their decision to enter a profession with huge debt and poor prospects of early repayment.

5.26 The government should introduce minimum fees and rules on travel expenses for Magistrates' Court work so that the junior Bar are more fairly treated. Further, the BSB should regulate to ensure that sacrificing the interest of junior tenants for the sake of a relationship with solicitors from which more senior members primarily benefit is understood to be misconduct.

¹⁸ This idea was suggested by Lord Judge in a speech at Middle Temple delivered in July 2014

Annex 2

EDUCATION AND TRAINING COMMITTEE

Dear David,

The Education and Training Committee has been asked for its views with regard to financial support for entrants to the profession.

We welcome the Inn's efforts to put the allocation of its funding for entrants to the profession on a sound analytical footing, supported by the excellent work which the Scholarships Officer, Sally Yorke, is currently undertaking in cooperation with your working group.

The financial obstacles for students to put themselves through the academic, vocational, and professional stages of training and its effect on diversity at the Bar are well known. The cost of training, coupled with the risk of failure to find pupillage, will prevent many who have the aptitude for the Bar from trying. Those from disadvantaged backgrounds will be over-represented in the group who cannot afford that risk. As a result, there is a real danger that the Bar will become less, rather than more, diverse.

We feel strongly that financial support is needed at the earliest possible stage, namely the Bar Professional Training Course ('BPTC'). It is true that many who undertake that course will not be able to proceed further as they will fail to get a pupillage, but it is also true that many (though of course by no means all) of those who fail to get a pupillage would make competent and successful barristers, were the market different. Our view is that the Inn, through the scholarship system, needs to ensure that those of merit who would otherwise be unable to afford or who would find it too difficult to afford the BPTC, can undertake that stage of training and thus be in a position to compete for pupillages.

It has been suggested that not all scholars succeed in obtaining a pupillage and that therefore a certain proportion of the scholarship funds is wasted. We would argue that while it is not possible to predict with certainty at that early stage who will find favour with the pupillage providers' selection panels, the Inn's interviewing panels aim to identify those who are likely to succeed. We are confident that the figures arising from the survey conducted on behalf of your working group, once they have been analysed, will show a higher success rate among scholars than among non-scholars, even though that success rate is certainly not 100%.

With regard to the next stage of training, it is acknowledged that the minimum pupillage award of £12,000 is insufficient. When compulsory funding was introduced in 2003, the minimum award was £10,000. In 2009, this was raised to £12,000. However, according to the cost of living index the original award was the equivalent of £13,301 at the end of 2014 (see attached figures provided by the Inn's Director of Finance). This means that many pupils are struggling to cope financially. The Scholarships and Prizes Sub-Committee has begun to consider whether it might be possible to provide a degree of financial support to those pupils, if only until the prescribed minimum award is increased by the BSB, without a significant adverse effect on the BPTC scholarships.

We note that it has also been proposed that practitioners in the early years of practice should be supported by the Inn. Although this had not been discussed either by the Education and Training Committee or the Scholarships and Prizes Committee, our immediate response would be that that would be much more problematic: the Inn cannot possibly make up for cuts in legal aid, nor can it reliably assess in which cases a new practitioner's hardship is caused by the system of payment or by lack of competence.

In other words, we support a policy which allows those of merit to compete in the market, but there comes a time when that market will have to take over. It would be difficult to develop a system of support post-qualification which does not distort that market.

We hope this brief summary of our views is helpful. If you and the working group would like us to elaborate on any of the points raised at this stage, we would be happy to do so.

Best wishes,

Andrew Hochhauser QC
Chairman, Education and Training Committee
17 April 2015

