

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

## **Future Bar Training**

**Consultation on the Future of Training for the Bar:**

**Academic, Vocational and Professional  
Stages of Training**

**July 2015**

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# About this consultation

## Our role in regulating barristers

1. The Bar Standards Board is the regulator of barristers in England and Wales. We are responsible for setting the education and training requirements for those who wish to practise as barristers in England and Wales.
2. We check whether people have satisfied our requirements and if so, we can authorise them to practise as regulated professionals. We are responsible for the Code of Conduct ([the Handbook](#)) which sets out how they must work once they are qualified. We monitor how well barristers are meeting our practising requirements.
3. If they breach the Handbook, we can take enforcement or disciplinary action against them. Through our activity, we protect the public interest and consumers, and help uphold the rule of law and the proper administration of justice. You can find out more about us on [our website](#).
4. Barristers are specialist legal professionals who have a particularly important role in upholding the rule of law and providing access to well-administered justice through our Court system. Barristers' clients rely upon their trustworthy advice and complete integrity.
5. The standards expected of the profession depend upon a high level of intellectual ability, a firm foundation of knowledge and skills, and the confidence to use those in challenging circumstances. So how people become barristers is important to society as a whole, as well as to individuals who might be relying on their services, or thinking of becoming a barrister.

## The Legal and Education Training Review

6. In summer 2013, the Bar Standards Board (BSB), the Solicitors Regulation Authority (SRA)<sup>1</sup> and ILEX Professional Standards (IPS; now called CILEX Regulation)<sup>2</sup> published the [Legal Education and Training Review \(LETR\)](#). This was a large, independent review of the system of training legal professionals in England and Wales.
7. The review recognised many good features in the system for training barristers. But it also looked to the future and recommended reform so that training would be better matched for barristers and clients in 2020 and beyond.

## Our vision

8. In February 2015, we [published an overview](#) which set out our vision for the future of training for the Bar. In that paper, we set out our proposal for standards on entry to the profession to be set by reference to a Professional Statement. We also explained the reasons why we think we should review how we are involved as a regulator in setting education and training requirements for barristers.

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<sup>1</sup> The body responsible for regulating solicitors.

<sup>2</sup> The body responsible for regulating legal executives.

## Building on the Future Bar Training overview

9. This consultation builds on that paper and explores in more detail what we have identified which may need changing in the current system and why. It explores some possible approaches to reform of the system and regulatory requirements. It looks at the three stages of training and considers them in turn.
10. The consultation does not consider the requirements we set for people who are already fully qualified as a different type of lawyer, either here or overseas, and who want to practise as barristers in England and Wales. We will address those requirements once we have decided what to do with the reform of the main training system.

## Continuing Professional Development

11. This consultation is central to our [Future Bar Training](#) programme, which is shaping a new framework for education and training for the Bar in the interests of the public. Continuing Professional Development (CPD) and other training requirements after the point of first authorisation to practise are addressed separately within the programme of reform. You can see our [plans for CPD here](#).

## How we will use this consultation

12. Once we have heard people's views on the possible approaches to the future of training for barristers, we will evaluate those views in relation to our statutory obligations and the other aims we want to achieve.
13. **We will then decide what we think the reformed system should consist of, and present the detail of that for further consultation.** We expect that to be in the spring of 2016. We will then make the necessary changes to our rules and regulations and make practical plans for change.
14. We anticipate that the earliest a new system of education and training for barristers could begin to be implemented would be from autumn 2017 onwards.

## Who should respond to this consultation?

15. Anyone who is interested in doing so. We are seeking contributions from all members of the legal profession – but particularly barristers, training providers and legal academics – and from consumer organisations who may represent the interests of users of barristers' services.
16. We would like to hear from students and young people and from, for example, those bodies which have an interest in promoting equality and diversity and access to the professions.
17. There are a number of different ways of engaging with the consultation process and responding – see the final section of the document for more details.

## Executive Summary

18. **Part 1** of this consultation concerns the Academic stage – the qualifying law degree and non-law degree plus conversion course. We consider the way in which the academic stage may or may not contribute to the achievement of [the Professional Statement](#) requirements, through the concept of “graduateness”.
19. We consider the contentious topic of degree classification and whether to move towards requiring a minimum 2:1 or not. A revised way of expressing what we expect this stage of education to cover is put forward. This moves away from the “eight core subjects” requirement to a new approach.
20. We suggest that by the end of the academic stage of training, students should demonstrate “knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context”. We invite views on that formulation.
21. Finally in this part we discuss how we could make sure that those completing the academic stage have sufficient legal knowledge and understanding to start the next stage of training. We have to be able to protect the public from the risks presented by those with insufficient knowledge and understanding to do the job of barrister in a competent way because they have not gained enough initial knowledge and understanding.
22. We put forward several ways we could do this. We could, for example:
  - a) set out a list of certain legal subjects that all students wanting to become barristers must study, with prescribed detail of what must be covered in each;
  - b) set out certain prescribed subjects, with minimum study-time for each;
  - c) not prescribe any subjects, but set a minimum study-time to be spent on the basic concepts and principles of public and private law as a whole;
  - d) not prescribe detail or study-time, but give guidance as to what would be considered appropriate in either or both case;
  - e) prescribe nothing and give no guidance: if the degree has been awarded by a University that is operating in accordance with the requirements of the quality assurance systems required in UK Universities, and the Office of the Independent Adjudicator for Higher Education, that would suffice for us.
23. **Part 2** of the consultation looks at the vocational stage. It seeks endorsement of the proposition that such a stage of training would not be abandoned. The strengths of the current vocational stage - the BPTC - are identified, as are the many perceived and actual issues with it. These are grouped into four broad areas:
  - preparing barristers for the current and future legal services market;
  - meeting the requirements of the [draft Professional Statement](#), and the student experience of the current BPTC;
  - demonstrating that the Professional Statement requirements have been met: issues with the quality assurance of the current BPTC and assessment outcomes;
  - affordability: the cost of the current BPTC.

24. The proper role of the regulator at this stage of training is discussed, and then three possible future approaches to how we regulate this stage are explored:
  - continuous improvement of the current arrangements;
  - allowing any training programme that demonstrates the achievement of the outcomes that the Professional Statement requires;
  - specifying and controlling only the final stage of training, following achievement of key outcomes determined by assessment.
25. We discuss and invite views on the advantages and disadvantages of each approach and point out that the “way forward” might be a hybrid of the approaches.
26. **Part 3** of the consultation covers pupillage and essentially has the same structure as Part 2. We describe the current arrangements, their strengths and weaknesses. The issues which are likely to need resolving are then identified and grouped into four main areas:
  - recruitment and selection of pupils and access to pupillage;
  - structure of pupillage and the pupil experience;
  - meeting the required standards as set out in the Professional Statement;
  - the regulator’s role.
27. We seek endorsement of the fundamental requirement for work/practice-based training prior to authorisation, and seek views on several principles we would almost certainly wish to advance irrespective of any new system:
  - flexibility;
  - the pre-eminence of the Professional Statement, and
  - a different (better) balance in the relationship between pupils, supervisors and the regulator.
28. Finally, we set out broadly speaking three very similar approaches to resolution of those issues:
  - continuous improvement of the current arrangements;
  - approval of any pupillage scheme proposed by pupillage training organisations (PTOs) that demonstrate the achievement of the standards set out in the Professional Statement;
  - authorisation of candidates on the basis of their own evidence of having met the requirements of the Professional Statement; with possible final independent external assessment.
29. Again, we discuss and invite views on the advantages and disadvantages of each approach and point out that the “way forward” might be a hybrid of the approaches.

30. **Part 4** invites views on our approach to the collection, analysis and publication of key data, in support of our regulatory activity in this area irrespective of the final design of a new system.
31. **Part 5** explains how to respond to the consultation and points out that if a respondent has an interest in only one of the three stages a response on that is welcome; and that there are many ways to engage with the consultation process.

# Background to the current training system

32. In the [current training system for barristers](#), we set out requirements in relation to three key stages of learning before the point at which we issue a full practising certificate for a barrister - authorisation.
33. This is a system which has broadly been in place for many decades. It underwent considerable review between 2008 and 2011. The specifics of the current system have been in place since 2010. It is currently the only route to qualification for the vast majority of intending barristers: few exemptions and waivers are granted.

**Fig 1: Our current training requirements**



34. There have been many changes to the overall context of our training system in the past decade. The system of higher education in the UK has changed, most notably in respect of the numbers of people entering university and gaining degrees or professional qualifications, and also in respect of how higher education is financed.
35. People pursuing university qualifications now take on substantial financial burdens to do so. Higher education institutions are financed both publicly as well as privately and continue to compete in a global market for students.

## The legal services market

36. The legal services market in the UK has also changed considerably. Many barriers to the development of the market have been overcome and the domestic and global value of the sector has grown considerably in the last decade. In contrast, public funding of legal services has diminished very substantially and may do further still. The changes in legal aid have particular implications for training in the future. There may be fewer opportunities for training, especially in the professional stage.
37. Digital technology is having far-reaching impact on how the public access professional services and in turn on how legal professionals work. The adoption of information and communication technologies means the nature of relationships with clients and with others in the justice system is changing.

## Changes in the regulation of the legal services market

38. How the legal services market is regulated has also changed significantly since 2007. Since the [Legal Services Act of 2007 \(LSA07\)](#), there has been a new structure for regulating legal professionals and for giving consumers redress. Different approaches are required of those who regulate the legal professions.
39. Regulators have been required to deregulate, to allow more freedoms in how legal professionals provide services to clients, through, for example, different business models.

## Regulators' obligations

40. Regulators are also obliged to work in accordance with “better regulation principles”, which means (amongst other things) being targeted, accountable, transparent and risk-based. And we are obliged to uphold the statutory regulatory objectives and the professional principles of the LSA07:
  - protecting and promoting the public interest;
  - supporting the constitutional principle of the rule of law;
  - improving access to justice;
  - protecting and promoting the interests of consumers;
  - promoting competition in the provision of services;
  - encouraging an independent, strong, diverse and effective legal profession;
  - increasing public understanding of a citizen's legal rights and duties; and
  - promoting and maintaining adherence (by authorised persons) to the professional principles:

### The “Professional Principles”

Authorised persons:

- a) should act with independence and integrity;
- b) should maintain proper standards of work;
- c) should act in the best interests of their clients;
- d) should comply with their duty to the court to act with independence in the interest of justice; and
- e) should keep the affairs of clients confidential.

41. The changes described, the general statutory requirements and the LSA regulatory objectives all mean that we need to make sure that barristers themselves are well-equipped to adapt to a new and evolving environment, whilst continuing to serve the public to their traditional high standards.

## Our role as a regulator and what we need to achieve in reforming training for the Bar

42. The new approach to regulation statutorily required of us means that we need to focus more clearly on the competence that barristers are expected to achieve at the point we authorise them to practise.
43. We think therefore that we need to look more at the outcome, and less at the process of training for barristers. This could mean that we become more permissive about the specific nature of training, allowing a variety of models as long as they can be shown to meet the required outcome.
44. If we encourage the development of more pathways to qualification this may assist in achieving better results in our aim to promote diversity in the profession and in access to it.
45. We need to make sure that our regulatory requirements strike the right balance in the education and training system for the future.
46. We have set out a separate note in Appendix A, which explains in more detail our regulatory approach to education and training. Our oversight regulator, the Legal Services Board, has issued statutory guidance for us, set out below:

### Statutory guidance from the Legal Services Board:

- education and training requirements must focus on what an individual must know, understand and be able to do at the point of authorisation;
- providers of education and training have the flexibility to determine how to deliver training, education and experience that meets the outcomes required;
- standards are set which find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements;
- regulators should strive to balance obligations for education and training between the individual and the entity, both at the point of entry and ongoing;
- regulators should not place inappropriate direct or indirect restrictions on the numbers entering the profession.

## The number of barristers authorised to practise

47. Any new system needs to comply with this guidance, unless there are very good reasons otherwise. In addition, a new system needs to be one which the market can adapt to provide education and training in an economically viable way. This is particularly important as the profession of barrister is not a large one:

*In 2015 only 15,327 barristers were authorised to practise, as against, for example, 132,520 practising solicitors.*

## What we have achieved so far ...

48. In our consideration of future training for the Bar to inform this consultation paper
- a) we have considered carefully the ground covered in the LETR and its relevant recommendations;
  - b) we have carried out empirical research of our own or used that carried out by others since 2015, for example in focus groups of students, recently qualified barristers, experienced barristers, providers of legal education and training;
  - c) we have also learnt from the work that other legal services regulators are carrying out in a similar field, and looked at how other professions prepare for practice. Some, but not all, of the evidence we have used is in the public domain and is referenced in Appendix E at the end of this consultation; and
  - d) we have published an open consultation on a Professional Statement, which will in future provide the basis on which we define our requirements for authorising a barrister to practise.

## The Professional Statement

49. [The Professional Statement](#) sets out the knowledge, skills and attributes of a competent barrister. It will be supported by a more detailed description of the minimum standard (or “threshold”) that a newly qualified barrister needs to achieve.
50. The Professional Statement:
- will help us to understand the minimum standard required for those called to the Bar;
  - will help us to develop new qualifications; and
  - will help us to revise existing qualifications.

Our [draft Professional Statement](#) has been drawn up with input from:

- consumers;
- the profession, including students;
- education providers; and
- the legal academic community.

51. Overall, any new approach to education and training must allow us to reassure the public that the standards set out in the Professional Statement have been met, before we authorise a barrister to practise.
52. Barristers must be able to provide a proper service to a client whilst serving the wider public interest and upholding the rule of law. And they must know, understand and respect the limits of their own professional competence.
53. Our approach must also acknowledge that relatively small numbers of people train to become barristers and the market in education and training must be able to adapt in an efficient way to any changes we propose.

### **The details of our consultation**

54. The main body of this consultation looks at the three stages of the current system, using the evidence we have gathered in the last two years of what aspects of the current system seem to be helping us provide that reassurance, and what aspects may need changing.
55. For each stage of the system, we ask respondents to the consultation to tell us if they think we have identified correctly or exhaustively the things which may not be working well in the current system. We explore possible new approaches and invite views on the approaches we set out as well as further suggestions: it is unlikely we have thought of every possibility.
56. It is important to note that we are not currently contemplating abandoning a fundamentally “three stage” approach to qualifying and becoming authorised as a barrister. But we do want to review in depth what happens within, between and across those three stages and our involvement at each point. We hope this is clear in this consultation.

# Part 1: The Academic stage

## How it works in the current system

57. Under the current system, the academic stage is the first stage of training for qualification as a barrister. It consists of:

### Either

A Qualifying Law Degree (QLD)	Passed at (at least) lower second class (2:2) honours
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### Or

A UK degree in another subject	Passed at (at least) lower second class honours (or an overseas equivalent), followed by an approved conversion course.
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58. Currently, the requirements for a qualification to be approved as either a QLD or a conversion course are set out in the [Joint Statement of the Law Society and the General Council of the Bar](#), which was issued in 1999 (before the Law Society and the Bar Council delegated their regulatory responsibilities to the Solicitors Regulation Authority and the Bar Standards Board respectively).
59. All students must have completed (or have been exempted by a regulator from) the academic stage before embarking upon the vocational stage (currently the Bar Professional Training Course; see figure 1 above).
60. Under the present arrangements, students must study certain subjects that began as a list of what were regarded as “core” over 40 years ago, plus some that have been added since then in an *ad hoc* manner. The list of required subjects contains things that some barristers may never use (for example Trusts, crime) and does not contain other subjects which are of great importance.

## Our thoughts

61. It is hard to find concrete evidence that knowledge of most of the *required* subjects is any more “essential” than knowledge of many other subjects. These arrangements tend to give prominence to the *acquisition* of knowledge, rather than understanding of principles and concepts and the development of transferable intellectual and legal skills.
62. As you will see below, that sits uncomfortably with the proposed Professional Statement, which requires a balance between knowledge, conceptual understanding and legal skills.

## Applying the Professional Statement to the Academic Stage

63. The following elements of our [draft] Professional Statement are ones which barristers could appropriately acquire in whole or in part, during the academic stage:

- 1.1 Have a knowledge and understanding of the key concepts and principles of public and private law.
- 1.5 Employ effective research skills in all subjects relevant to their work.
- 1.6 Apply effective analytical and evaluative skills. (...)
- 2.4 Respond appropriately to the needs and sensitivities of those from diverse backgrounds and circumstances. (...)
- 4.1 Act with the utmost integrity and independence at all times, in the interest of justice, representing clients with courage, perseverance and fearlessness.(...)
- 4.7 Adopt a reflective approach to their work, enabling them to correct and admit if they have made mistakes.
- 4.8 Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to develop their knowledge and skills.

64. We have therefore considered whether the current requirements of the academic stage are both necessary and sufficient to make sure that barristers possess these competencies.

## Intellectual abilities required from a barrister

65. One of the current requirements of the academic stage is a degree awarded at at least lower second-class honours. This is particularly relevant to paragraph 1.5 of the Professional Statement (“Employ effective research skills in all subjects relevant to their work”) and 1.6 (“effective analytical and evaluative skills”) but a requirement for a certain level of intellectual ability underlies many other elements.
66. Many intellectual abilities required by a barrister are transferable and not specific to law. They include literacy, understanding (as distinct from ability to memorise), logical thinking, the ability to identify and articulate clear arguments (drawing on such facts as are relevant) that apply to the issue in hand, and the sense of justice and integrity that underlies professionalism. Essential to this is the capacity to engage in independent thought and analysis and to be reflective (paragraphs 4.7 and 4.8).

## What about second class degrees?

67. We believe that the possession of an **upper** second-class degree, whether in law or another subject, provides good evidence that an individual possesses these abilities, provided that they have been refreshed and reinforced at later stages of training.
68. When considering whether a lower second-class degree is sufficient, or whether an upper second-class degree should be required, we have considered:
- the example of [guidance on degree classification](#) set out in the current Quality Assurance Agency (QAA): the body which at present monitors quality systems and standards in UK higher education;
  - the [Law Subject Benchmark Statement](#) (published in 2007 and with a revision expected in 2015; extract reproduced in Appendix C to this consultation paper).
69. We note, in particular, that a student must have displayed some analytical ability in order to be awarded an upper second, but that there is apparently a lesser requirement for this in a lower second.

## Upper second class compared to lower second class

70. Of course, a student who is ultimately awarded a lower second-class degree may well have been awarded upper second-class level marks (and so demonstrated upper second-class ability) in some subjects, and vice versa.
71. However, we believe that there is a significantly **lower risk** that an individual with an upper second-class degree would **not** possess the relevant intellectual abilities than that an individual with a lower second-class degree would not possess them.
72. Evidence shows that graduates with an upper second-class degree are much more likely successfully to qualify for practice as barristers than those with lower second-class degrees.

**However, we do not treat this as a relevant factor – it is not the purpose of the regulator to restrict those who may not successfully qualify, but to make sure that those who do succeed in qualifying are ultimately competent to practise.**

## The possibility of grade inflation over time

73. Judging by the proportion of 2.1 degrees awarded now, as compared to 30 years ago, it is likely that a certain amount of “grade inflation” has taken place since the lower second-class standard was first required, over 30 years ago.<sup>3</sup>

If it is thought that a lower second-class standard was appropriate to demonstrate the required intellectual ability then, this may be an indication that an upper second-class standard is needed to demonstrate the required intellectual ability now.

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<sup>3</sup> Indeed, the Higher Education Statistics Agency (HESA) recently reported that 70% of graduates achieved at least a 2.1 in 2013/14 compared with 63% in 2009-10.

### Degree classification: differences by domicile, ethnicity and disability

74. There is a considerable gap between the proportion of white British students receiving a first class or upper second class honours degree classification compared to UK-domiciled students who identify themselves to be of black and minority ethnic (BME) descent. In 2012/13, 57.1% of UK-domiciled BME students received a degree of this standard, compared with 73.2% of white British students – a gap of 16.1%<sup>4</sup>.
75. A disabled student is also more likely to be awarded a lower second class degree
76. Any proposal to raise the standard of degree that we require would need to include measures to make sure that these groups were not disadvantaged to a disproportionate extent, for instance by allowing alternative means by which the standard may be demonstrated.
77. We think that the above raises the following questions, on which views are sought:

- QA1: Does possession of a lower second class degree provide good evidence that an individual possesses the intellectual abilities that are consistent with those described in the draft Professional Statement (paragraph 63 above)?
- QA2a: If an individual does not hold a degree, or the degree that they hold was not passed at the required level, are there alternative means by which these abilities can be demonstrated?
- QA2b: If so, how?
- QA3: Are there any other issues in relation to intellectual abilities and degree classification, as set out above in paras 65 to 74, which we have failed to identify?

### A barrister's legal knowledge and understanding

78. The legal knowledge and understanding obtained at the academic stage are particularly relevant to paragraph 1.1 of the [draft] Professional Statement (“Have a knowledge and understanding of the key concepts and principles of public and private law.”)
79. However, legal knowledge and understanding are also required as a foundation for many other elements. For example, a barrister will not be able to act “in the interests of justice” (paragraph 4.1 of the draft Professional Statement) without knowledge and understanding of theoretical aspects and social dimensions of the law and how these relate to concrete and practical legal contexts and problems.

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<sup>4</sup> [Degree attainment gaps. Equality Challenge Unit](#). Accessed 20 May 2015.

80. Students at the academic stage of training are unlikely to know precisely what area of law they will practise in and so it is unrealistic for Professional Statement element 1.2 (“Have a knowledge and understanding of the law and procedure relevant to their area(s) of practice”) to be achieved at this stage. However, it is appropriate for them to have achieved the knowledge and understanding specified at paragraph 1.1, which will also underpin the acquisition of the knowledge and understanding specified at paragraph 1.2.

### Understanding English and Welsh law

81. Students completing the academic stage need to have an understanding of the two main branches of English and Welsh law, ie public law and private law. The former would normally include basic concepts and principles of criminal, constitutional, administrative and human rights law, while the latter would normally include basic concepts and principles of contract, tort and property law.

### The context

82. We consider that a substantial amount of this should be taught within the context in which it best makes sense and/or helps students to understand the fundamentals of “law” as distinct from any particular law or branch of law. These contexts include:

<b>Institutional</b>	Domestic, European and international legal systems.	Students need a basic understanding of UK court structures and the interaction with European and international legal institutions (the difference between the Court of Justice of the European Union and the European Court of Human Rights, for example).
<b>Social</b>	The relationship between “law in the books” and “law in action”, including access to justice.	Students need to understand that law does not operate in a vacuum. When giving advice, for example, lawyers need to be sensitive to the range of clients they may encounter and their different social circumstances.
<b>Theoretical</b>	For example, debates about whether law is grounded in morality, principles or sets of rules; the relationship between fairness, justice and law.	
<b>Transnational</b>	Students need to develop an understanding of the place of the UK and UK law in an increasingly global context.	Law is becoming globalised along with much else in modern life. Students should have some understanding, where relevant, of the international dimensions of the subjects they are studying.

83. A new approach would be that, by the end of the academic stage of training, students should demonstrate ***knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context.***

QA4: Do you agree that “knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context” provides an essential foundation for the legal knowledge and understanding that our [draft] Professional Statement requires? Please tell us why or why not.

### The law degree

84. Implicit in the above thinking is our understanding that any law degree (and, by extension, a graduate conversion course) will incorporate a full range of legal skills as set out in the [QAA Law Benchmark Statement](#) (see Appendix C).
85. The ability to apply these skills in a reasonably sophisticated way to areas of law studied at degree level (evidence for which would be an upper or lower second, depending on the view taken as to the appropriate threshold) should enable all intending barristers entering pupillage (the third stage of training, see figure 1 above) to learn any area of law and apply their skills to it in order to act competently for their clients.
86. We think that, as now, an approved UK law degree will satisfy the academic stage, provided that it is passed at whatever level is decided is required to demonstrate the required intellectual ability (ie whether that is a lower or upper second class degree is to be decided). Instead of the current requirement to cover a specified list of “foundation subjects”, the requirement would be as set out in paragraphs 82 and 83.

### Alternatives to a law degree

87. However, there will be other ways of obtaining this knowledge than a law degree, including the current pathway of a non-law degree plus the Graduate Diploma in Law. We think it remains possible to demonstrate the required knowledge and understanding through such alternative means, provided that the student has also demonstrated the required intellectual ability, either through a non-law degree passed at the required level or otherwise.
88. We will continue to need to make sure that those completing the academic stage have sufficient legal knowledge and understanding to start the next stage of training, as we have to be able to protect the public from the risks presented by those with insufficient knowledge and understanding to do the job of barrister in a competent way. There are however varying, more or less prescribed, ways in which we could help make sure this safeguard is provided.

### The approach we could take

89. If the formulation in paragraph 83 above is adopted, we could, for example,
- a) set out a list of certain legal subjects that all students wanting to become barristers must study, with prescribed detail of what must be covered in each;
  - b) set out certain prescribed subjects, with minimum study-time for each;
  - c) not prescribe any subjects, but set a minimum study-time to be spent on the basic concepts and principles of public and private law as a whole;
  - d) not prescribe detail or study-time, but give guidance as to what would be considered appropriate for one or both of those;
  - e) prescribe nothing and give no guidance: if the degree has been awarded by a University that is operating in accordance with the with the requirements of the quality assurance systems in UK Universities, and the Office of the Independent Adjudicator for Higher Education, that will suffice for us.

QA5: Assuming you agree with the formulation in paragraph 83, which of the above ways (a to e) do you think we should use to make sure that those seeking to be barristers and completing the academic stage have sufficient legal knowledge and understanding to progress towards full qualification as a barrister? Please explain the reason why you have chosen these.

QA6: Would your answer be different if a student had taken a non-law degree plus a GDL?

QA7: Are there any other ways of doing this that we have not identified?

## Conclusion to Part 1: The Academic stage

90. The work of a barrister is intellectually demanding. In the interests of the client and the public, we must have confidence in the ability of a barrister to deploy intellectual skills effectively.
91. A barrister must also possess a general understanding of law, and of the legal system in order to deliver an effective service to the client, serve the public interest and protect the rule of law.
92. We want to make sure the requirements we make as a regulator are set appropriately. We need them:
- to clearly address attributes we expect of a barrister entering practice as specified in the draft Professional Statement;
  - to not present an unnecessary barrier to entry to the profession;
  - to not be so prescriptive as to narrow the approach to teaching and learning unnecessarily;
  - to be consistent with our wider approach to regulation, as set out in Appendix A;
  - to assist us in fulfilling our duties in respect of the statutory regulatory objectives (see also paragraph 40 above): for example, in encouraging an independent, strong, diverse and effective legal profession.

**QA8:** Are there any other issues associated with the academic stage of training that we have not identified and to which, given our role as a regulator of barristers, we should be turning our minds?

## Part 2: The Vocational Stage

### The purpose of vocational training

93. Barristers provide a specialist service that is vital to the interests of the client, the public interest and the rule of law. Effective advocacy in writing and orally (for example before judges in Courts) and high ethical standards are central to that service and to our requirements for qualification as a barrister.
94. Candidates are currently called to the Bar (and invested with the title of barrister) on completion of vocational training. They are not entitled to practise with that title until our pupillage requirements have been fulfilled.
95. Vocational training equips barristers with foundation skills for becoming effective advocates and with other knowledge and attributes required for professional practice. It serves as a bridge between the education provided at the academic stage and the final, on the job stage of training before authorisation to practise.
96. Currently vocational training aims to make sure that prospective barristers:
  - develop the core skills for advocacy practice;
  - have and can demonstrate the required knowledge and understanding of rules relating to procedure and evidence;
  - have and can demonstrate the necessary standard of professional conduct, judgement and ethics.

### The BSB does not propose to abandon a vocational stage of training

**QV1: Do you agree that some form of vocational training is needed to bridge the gap between an academic stage and a professional stage?**

### What we learnt from our focus groups

97. The focus groups we ran in 2015 (see our Focus Group Research Report in Appendix D) indicated a good degree of consensus over what the vocational stage should be achieving. First and foremost, an ethical understanding and approach need to be foremost during the training, allowing candidates to demonstrate an awareness of the ethical considerations across their work and an ability to recognise and deal with ethical concerns, especially conflicts.

98. There was also a good degree of consensus on the further attributes individuals should possess by the end of the vocational training process: they need to be confident but self-aware; resilient, committed, creative and persuasive. They need clarity of thought and good judgement.

The cross-section of participants also broadly agreed on the nature of knowledge and understanding that needed to be achieved in vocational training. This included:

- a) **procedural and substantive law:** both criminal and civil and perhaps also family (not currently part of the compulsory BPTC syllabus). Individuals should learn both fundamental principles and how to apply them effectively; Alternative Dispute Resolution (ADR) should also be covered;
- b) **social awareness**, including an understanding of equality and diversity issues: this was thought to be essential to understand, communicate effectively with and represent clients;
- c) **how commercial practice works**, and what compliance and other professional obligations are; future market developments.

### Desired skills

99. Our empirical research also showed that there was broad agreement that the vocational stage of training should create a strong foundation of skills in a number of areas, which are then built upon during work-place learning or pupillage.

100. In order of priority of the views of our focus group participants, the desired skills were:

<b>Technical skills required for practice</b>	Oral and written advocacy, legal research, analytical skills, drafting, opinion writing, interviewing, conference and negotiation.  Advocacy was the most strongly emphasised of these.
<b>Excellent verbal and written communication</b>	This is essential and needs to be developed across all practice areas
<b>Problem solving</b>	Individuals need to have the ability to use the breadth of their knowledge and skills to devise practical workable solutions based on client needs
<b>Learning</b>	Individuals need to be capable learners, independent and self-reflective, recognising that they will need to continue learning throughout a lifetime of practice and must therefore have the knowledge and confidence to research and seek help in support of their own learning.  They also need to be able to demonstrate professionalism in managing time and stress effectively and the capability to work as part of a team.

101. We think there is considerable read-across from the features identified above and those captured in the Professional Statement. Advocacy is, and is likely to remain, the distinguishing feature of a barrister and his or her regulatory framework, as opposed to any other legal professional.
102. Advocacy skills must be properly embedded and demonstrably sufficient to be deployed effectively and over time in real-life, unpredictable situations. We have received consistent feedback to indicate the importance of advocacy training for the BPTC, and the [Jeffrey Review of Criminal Advocacy](#), for example, attached great significance to the level and quality of pre-qualification training in advocacy for the Bar.

### The Bar Professional Training Course (BPTC)

103. The Bar Professional Training Course (BPTC) currently fulfils the vocational training requirements of training for the Bar. It is administered as a single course that addresses the development of the above vocational capabilities collectively. We prescribe its syllabus, content and structure, and the methods of course delivery and assessment of progress and final outcome in considerable detail.
104. The market for Bar training was opened in 1997, having previously been delivered exclusively by the Inns of Court School of Law (now City Law School). Since then, the course has been delivered in a number of locations around the UK (Leeds, Manchester, Newcastle, Birmingham, Nottingham, Cardiff, Bristol), as well as through a number of providers in London, initially as the Bar Vocational Course (BVC).
105. The BPTC was introduced in 2010, following a thorough [review of the BVC in 2008](#). We introduced our own assessments for knowledge-based subjects in 2011, where previously the course providers had set their own.
106. Our centralised assessments were reviewed in 2014/15, following three years of operation. The review has confirmed that centralised assessment, which we now operate in three areas only, can ensure consistent standards in a diverse market of training provision.

### The Bar Course Aptitude Test (BCAT)

107. We introduced a [Bar Course Aptitude Test \(BCAT\)](#) in 2013, to determine whether prospective BPTC students possess the aptitude to complete the course successfully. It was introduced as a result of concerns that candidates were committing to considerable expense without a clear enough understanding of their own prospects on a demanding course, and moreover that candidates' experience of training was being held back by a lack of ability amongst fellow trainees.
108. The effectiveness of the BCAT is currently being assessed, in light of evidence from the first three years of its implementation.

109. We cannot impose restrictions, directly or indirectly, to limit the numbers of candidates entering the training that prepares them specifically (some would say solely) for the Bar. In the past five years, the number of candidates entering the training has varied annually between 1,500 and 1,800.
110. Candidates are warned about the risks of investing in training that so narrowly qualifies them for a profession in which less than a third of that number of opportunities are available each year.

### Overseas candidates

111. A significant proportion of candidates (typically a third of the cohort in recent years) are from overseas, and most return to practise in their own jurisdictions.

Only a small proportion of these overseas candidates compete for pupillage places in England or Wales. A very small number of UK candidates undertake the BPTC without the intention of entering practice here (for example, pursuing other career objectives, such as research or teaching).

### Private and public training providers

112. The opening of the market for vocational training for the Bar since 1997 has created a mix of public and private funded providers operating in an increasingly dynamic marketplace. Private provision accounted for 46% of all candidates enrolled in 2014/15. The mixed economy of providers has created both new opportunities and risks.
113. In 2014/15, all providers of the BPTC have university status, though providers without university designation have previously been contracted<sup>5</sup>. Universities are monitored currently by the Quality Assurance Agency and engage with the Office of the Independent Adjudicator in relation to student complaints.

### The small number of barristers being authorised

114. We authorise fewer than 500 newly qualified barristers each year.
115. This represents broadly the number of opportunities for people to obtain work-place training to complete the regulatory authorisation requirements (pupillage) and enter subsequent employment as a barristers, or tenancy as a self-employed barrister.
116. We do not have any direct control over this market and there is no “workforce planning” or system of quotas for any of the legal professions in the way that there is, for example, in relation to the medical professions. Ultimately fluctuations in the size of the Bar are market-led: the Bar, like any profession, will usually always grow to satisfy consumer demand.

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<sup>5</sup> BPP College acquired university status in 2013, previously having Taught Degree Awarding Powers (TDAP); Kaplan UK licensed its BPTC course from Nottingham Trent University, which awarded its own postgraduate qualification to Kaplan candidates.

### The role of the regulator in vocational training for the Bar

117. We are not as such a regulator of organisations and institutions which provide vocational education and training. Our current relationship with those that do is a contractual one. We must as a regulator nevertheless make sure that barristers are competent at the point we authorise them to practise, in order to protect the public from the risks associated with them not being so.
118. A system of vocational training is necessary to make sure that standards are achieved and also to support access to the profession for those who wish to join it. We need to make sure that the extent of our involvement is proportionate and targeted to these aims and to the achievement of the regulatory objectives.
119. We do not want regulation to impose unnecessary cost on learners or the profession - not least as that may constrain the diversity of people joining the profession. And ultimately, the costs of training get passed on to clients of barristers, whether they are private individuals or the taxpayer. We also have statutory duties to take a risk-based approach and to promote economic growth, as well as to promote equality and diversity.

### Issues we have identified with the current vocational training system and the BPTC

120. Overall, the current system of legal education and training was considered to work well enough for those who progress into the legal professions ([LETR, 2013](#)), and the emphasis on vocational and practical training for the Bar was applauded in the review. Evidence from our own monitoring indicates that BVC and more recently BPTC graduates who secure pupillage are better prepared than in the more distant past.
121. But vocational training needs to equip barristers to serve clients and the public interest and the rule of law not only for the present but also for the future. The empirical evidence we and others have gathered (see for example our Focus Group Research Report in Appendix D or research undertaken by the Inns of Court) points to a number of concerns which we need to address in order to achieve our aims.
122. We have grouped the issues we have identified with the current vocational training system into four broad areas. In each case we ask those responding to this consultation whether they think we have identified the issues correctly, and whether, in relation to the area in question, there are further issues we have not talked about which we should take into account.
123. **We do not set out at this point possible approaches to resolving the issues identified at the vocational stage. Those are dealt with subsequently, and your views sought, from paragraph 163 onwards.**

## Preparing barristers for the current and future legal services market

124. The rapidly changing nature of the market for barristers' and other legal professionals' services has been described in many other places and so is not repeated at length here. (Much detail can be found in [a report issued by the Legal Services Consumer Panel](#): see Appendix E of this consultation).

### Important changes

125. The following key features of the changing landscape are illustrations and not an exhaustive list of changes which have implications for vocational training, but they may well be amongst the most important:

- a) reductions in volume of traditional court-based work, especially in the publicly funded spheres;
- b) increased complexity and seriousness of cases which do come to court;
- c) increases in face-to-face as well as online and alternative dispute resolution services;
- d) increased numbers of litigants in person in the courts and tribunals;
- e) moves in some areas of law towards more inquisitorial and less adversarial systems in courts;
- f) increased use of digital technology in the justice process as well as legal services more generally;
- g) a growing unregulated market in the provision of legal services;
- h) "unbundling" and "DIY law": less reliance on end to end provision of services from legal professionals, with consumers undertaking parts of the legal process themselves;
- i) an increasingly global market for legal services;
- j) a breaking down of regulatory barriers: for example, barristers may now conduct litigation and work in and own "firms" which were historically the preserve of solicitors;
- k) increased specialisation; and
- l) continuing fluctuations in the profile of the Bar (for example the publicly-funded sector shrinking as other sectors grow).

126. The current BPTC is relatively structured and prescribed in both content and delivery. Responding to even only one of the above features of the changing market under the current system can take time to achieve, even when there is consensus on change amongst the relevant decision makers and those with an interest in the relevant issue.
127. No part of the required content of the course specifically seeks to equip students with a knowledge or familiarity with the legal services market or drivers of change in it.
128. There is currently limited coverage of commercial awareness, business or marketing skills, and compliance matters beyond our requirements (for example VAT, taxation, National Insurance matters for the self-employed).
129. The small scale of the provision, for some 1500 students annually across eight institutions, may make investment in adaptation and change economically unfeasible and there are few incentives to innovate.

**QV2:** Do you think the features of the changing legal services market which we have identified are the ones which have the main impact on vocational training for barristers?

**QV3:** Are there any other features of the legal services market now and in the future which you think will have an impact on vocational training for barristers?

## Meeting the requirements of the (draft) Professional Statement: issues with the structure, content and delivery, and the “student experience” of the current BPTC.

130. The Professional Statement sets out the knowledge, skills and attributes of a barrister and, together with the threshold standards, describes what is to be expected of a barrister at the point of authorisation.
131. Vocational training currently takes an intending barrister to a point two thirds of the journey to his or her destination as a new practitioner. This section of the consultation document considers how well suited the current arrangements for the BPTC are to delivering the requirements of the Professional Statement.
132. It focuses on the content, structure and delivery of the course, and the “student experience”; consideration of the assessment of the course comes in the subsequent section. Again, we would like to know if we have identified the issues correctly and if there are others we should be considering.

### A changing market for vocational training

133. Since 1997, the vocational training has been delivered by a number of higher education institutions, across England and Wales. Recently, liberalisation of the university sector and the introduction of student fees at undergraduate level has substantially changed and diversified the market. The BVC and then BPTC were designed in the context of a more uniform higher education system and with a significantly different funding situation.
134. The syllabus, learning outcomes and the modes of delivery of the BPTC are controlled by us, and are laid down in detail in the [Bar Professional Training Course: Course Specification Requirements and Guidance](#) (previously known as the “Blue Book”):
135. The BPTC seeks to provide a broad general base of training in three key areas:
  - knowledge of procedure and evidence as relevant to the work of a barrister as currently (and to some extent historically) defined;
  - skills, especially in oral and written advocacy in court room settings and giving of written and oral advice; and finally
  - ethics, with a significant focus on knowing and applying the provisions of the relevant Code of Conduct/[BSB Handbook](#).

### The BPTC learner experience

136. The first set of issues we would like views on concerns admissions and the quality of learner experience on the BPTC. In paragraph 107 above we described the BCAT, a cognitive skills test which we introduced with the aim of screening out candidates who had very little chance of succeeding on the BPTC course. We have conducted, and will be publishing in due course, a full independent and specialist evaluation of the operation of the BCAT.
137. Our focus groups have given us feedback on it. Expressed generally, the following issues in relation to BCAT and admissions to the BPTC, and the quality of learner experience present themselves:

The BCAT is expensive	This may be putting off good students.
There is a great range of levels of commitment and enthusiasm amongst those admitted	Those with lower levels of engagement then have a negative impact on the experience of those with higher levels, because of the practical and often small-group nature of teaching.
Standards of written and spoken English amongst candidates on entry range widely	This makes it hard for those with lower levels of skill to meet the required standard on exit. It has a negative impact on the learning experience of those with the required or very high level of skills.
The standard of previous academic achievement on entry is too wide ranging	Even now, too many candidates with lower chances of passing the course are admitted. People with a lower standard find it hard to achieve the necessary level on exit.

QV4: Are the above issues in connection with BCAT and admissions to the BPTC correctly identified?

QV5: Are there any other issues connected to the BCAT and admission to vocational training that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

### Detailed prescription of the BPTC and issues identified

138. As has been already stated, the content, structure and methods of delivery of the BPTC are prescribed by us in some detail:

- we prescribe the curriculum in a detailed way;
- we specify the amount of classroom time and the size of classes for different elements and the relative weightings in the assessment of those elements;
- we prescribe the professional qualifications and experience those delivering training must have,
- we prescribe the learning resources (both physical and online) which must be available to students.
- we specify that two elective or optional modules must be studied, though we do not specify what those must be.

In fact, we are currently considering no longer prescribing that options must be studied, in advance of and irrespective of the outcome of this consultation.

139. Whilst much of the content and curriculum matches the purposes of vocational training identified in both our focus groups and our draft Professional Statement well, a range of issues have nevertheless been identified. These are in no particular order and represent the views of a range of constituencies:

- a) **the substantial breadth of content in the knowledge based subjects** (civil and criminal procedure and evidence, for example) limits time on the course available for skills training and practice (advocacy and drafting, for example). Whilst knowledge gaps can be filled if someone has the right skills, this is much less true in reverse;
- b) **procedural knowledge acquired on the BPTC can be out of date** by the time someone gets to the next stage of training – usually pupillage. The qualification has a “shelf-life” of five years currently and it often takes someone two years or more to get to the next stage;
- c) **the level of prescription on how the course must be delivered does not allow for teaching that supports a range of learning styles** or students with varying prior educational and professional experience. This can have a negative impact on learning outcomes for some. “Quicker learners” can be held back in the progress of their training, “slower learners” can be offered insufficient support. This may also have implications for equality and diversity;
- d) **the content mix excludes topics which may be important for practice such as family procedure**; or requires study of areas which someone will never use in practice based on their existing choice of practice area (for example, studying criminal procedure if one does not intend to practise in that area);

- e) **the skills training elements are very rigidly framed and do not always reflect or keep up with the application of those skills in real practice:** for example, the style of opinion writing assimilated through study at one training provider may have to be “unlearnt” when adopting the style required by the chambers in which you become a pupil;
- f) **the course requires students to follow two options**, presumably in line with their likely preferred area of practice, but in reality the options do not deliver enough specialist training to be of real use;
- g) **the course focuses very narrowly on the currently perceived requirement for professional practice as a barrister, yet many who pass it are never able to achieve authorised practitioner status** - not necessarily through lack of ability but rather through insufficient number of opportunities to get through to the next stage of training;

The qualification is not transferrable or portable and is perceived as having little currency or status in other professional spheres, even though many providers aim to align the qualification with the award of a postgraduate diploma and the currently prescribed structure and content of the BPTC make this generally possible.

- h) **The level of prescription in how training must be delivered may slow down helpful exploitation of information technology** and risks being out of step with the adoption of digital technology in practice.

**QV6: Are the above issues in connection with content, structure and delivery of the BPTC correctly identified?**

**QV7: Are there any other issues connected to content, structure and delivery of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?**

## **Demonstrating the requirements of the (draft) Professional Statement have been met: issues with quality assurance of the current BPTC and assessment of outcomes.**

140. We currently contract with eight university providers to deliver the Bar Professional Training Course, according to our specification for admission to the training, the training itself and assessment (set out in the [BPTC Handbook](#)).
141. We award a contract where the provider can demonstrate that they have the physical capacity and academic and professional capability to deliver the prescribed programme. Thereafter, we monitor the quality of training delivery and make sure that the overall training proposition that was agreed is sustained. We aim to make sure that standards are met and the interests of the students protected.

### **Our quality assurance process**

142. We assure quality through a reporting system which includes external examiners on a model familiar in UK higher education as well as on-site visits by quality assurance teams consisting of BSB staff, practitioners who are also familiar with legal professional training, course leaders from another provider and a lay member of our Education and Training committee.
143. We also rely on other external regulation and oversight of the providers, such as that provided by the institution itself and the Quality Assurance Agency which currently assures systems and processes for maintaining quality in most UK HEIs. Unless a provider has university status, wider external oversight is limited.
144. Our oversight of the BPTC is based on a cycle of reports required from providers which are reviewed by us, and routine or triggered visits to the provider. Such visits will always observe teaching as well as discuss relevant topics with students on the course, and involve discussions with course teachers and directors and usually a representative of the institution's more senior management such as a Dean of the law school.

### **The way we assess students' performance**

145. Assessment of student's performance on the BPTC is prescribed and is both formative (tests as students progress to allow them to see how well they are doing and practise assessments) and summative (final assessment for the module concerned).
146. It is important that we can assure the public and those in the profession who will take responsibility for the future training of the intending barrister, that irrespective of where the barrister has studied, he or she has reached the same minimum standard of competence, or where that has been exceeded, the same level of purported excellence. So consistency of standards in summative assessment – final exams – is very important.

147. The individual providers assess levels of achievement in the skills areas. We assess centrally the “knowledge areas” of civil and criminal procedure and ethics. This central assessment provides some mitigation for the risk of inconsistent outcomes across all eight providers.
148. Further mitigation for the risks of inconsistencies in the assessment of the skills components of the BPTC is provided by the external examiner system:
- examiners from different institutions and from professional practice “inspecting” the content of and process in relation to specific skills assessment; and
  - reviewing and sampling student performance and its internal assessment.

This type of activity is standard practice in UK higher education.

### Issues with BPTC quality assurance and assessment

149. Although most practitioners in our focus groups reported that they were impressed with the knowledge and understanding achieved by those to whom they award pupillages after the BPTC, a range of issues in relation to quality assurance and assessment on the BPTC have been identified.
150. Once again, we are interested in your views on whether we have identified issues correctly and whether there are other issues we should be taking into account. A subsequent section at paragraph 163 below sets out possible approaches to resolving the issues.

### General quality assurance issues

151. Quality assurance issues not explicitly related to summative assessment of the BPTC appear to be as follows:
- a) the “system” is costly in human and financial terms for us, and may be duplicating work that others are better placed to do and are already doing, such as the institution’s own mechanisms and the QAA. This does not reflect risk-based regulation and the costs fall on students, the profession and ultimately consumers;
  - b) our monitoring system does not pick up all issues in relation to varying standards of teaching quality across institutions;
  - c) the system is not agile enough to ensure remedial action has an impact on any current cohort of students ie by the time we have identified a problem it may be too late to fix it for those students experiencing the problem;
  - d) some students feel there is a lack of opportunity for redress in relation to complaints about quality of provision;
  - e) some students express frustration at lack of or inadequate feedback from tutors on their performance;

- f) teaching is felt by some students to be of low or variable quality; this includes concerns that too few current practitioners are involved in delivering training; and
- g) our requirement that students attend at least 90% of all classes is both administratively burdensome and inappropriate for adult learners.

### Issues more explicitly linked to assessments:

- a) assessment methodologies do not always match well the intended learning outcome for a component of the course. For example, the central assessments rely heavily on multiple choice questions but real-life practice rarely offers a similar set of choices;
- b) lack of tutor involvement in the setting and marking of central assessments promotes unhelpful disconnections between teaching, learning and assessment
- c) current modes of assessment may have a disadvantageous impact on those with learning disabilities such as dyslexia, which would not have the same extent of impact in real practice as a barrister;
- d) skills assessments can be formulaic in their design and artificial, not replicating well, for example, the unpredictability of real life practice scenarios even at this early level;
- e) pass marks and thresholds are thought by some to be too rigid, unfair or disproportionate; for example:
  - the requirement to pass all components in order to pass overall; or
  - the requirement to re-take the entire course after elapse of certain time if a specific component has not been passed successfully.
- f) centralised assessment is very costly financially: there are certain fixed costs whether there are 150, 15,000 or 150,000 candidates and so economic efficiency may be hard to achieve for the centralised assessment of barristers. This inefficiency is exacerbated by the fact that half to two thirds of those for whom the exams are set do not proceed to the next stage of training
- g) locally set assessment is also resource intensive as well as providing rich potential for inconsistency and variability in standards;
- h) The shared responsibility for assessment between BSB and providers, and the challenges around resourcing it for relatively small candidate numbers, can mean a long time between assessments being undertaken and final marks and qualifications being awarded, in both the first-sit and re-sit cycles. This can create practical challenges for other parties and have negative impacts for students' career progression.

- QV8: Are the above issues in connection with quality assurance and assessment of the BPTC correctly identified?
- QV9: Are there any other issues connected to quality assurance and assessment of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

## Affordability: the cost of the current BPTC

152. The course, together with the pre-entry aptitude test we also currently prescribe, is very expensive. Much of that cost is driven by the high degree of prescription in our requirement.
153. For example, we stipulate very high teaching staff to student ratios for significant proportions of the course as well as the minimum number of hours of classroom time, and this makes the cost-base inevitably high.
154. As for any professional training, Bar students face increasing costs, which are becoming prohibitive for some. This reflects a broader trend in higher education of escalating cost for the learner, as the availability of financial support declines. For example:
- typically a graduate will now carry a substantial debt from their first degree studies, albeit under the terms of a student loan;
  - the BCAT for a home student (from the UK or EU) is £150.
  - A student studying the BPTC in London can expect to pay in excess of £18,000 for the one year course.
155. Although the Inns of Court provide significant funds for scholarships (some £4m annually) and a very small number of chambers allow “draw down” of pupillage remuneration in the BPTC year, the majority of BPTC students rely on their own means.
156. **We have identified a number of issues in relation to the cost or affordability of the BPTC:**
- a) the total cost of vocational training is high and particularly so for those studying the BPTC in London (which is the dominant market both for the profession and for training);
  - b) the scope for candidates to manage payment is limited; for example by staging the progression of training in a way that suits their financial circumstances, securing financial awards or “earning whilst learning”
  - c) the candidate takes on a significant degree of risk in embarking upon the training. There is a lack of wider recognition of the qualification, and high demand for the very limited number of available places within the profession leaves many unable to use effectively the qualification in which they have invested;
  - d) although some providers offer the opportunity to “extend” the BPTC into an LLM – a masters qualification in law – this costs yet more money and time and is as yet of unproven value in the employer market. If the BPTC is done as part of an MLAW (combining LLB with BPTC as in the example of Northumbria University), the student is however eligible for a student loan for the whole course, so a “repackaging” of the BPTC can be in the students’ financial interests;

- e) philanthropic financial awards at the BPTC stage are perceived by some to be “wasted” if the candidate does not get through to the pupillage stage; that sense of poor targeting is exacerbated if the person awarded also has no more widely recognised qualification;
- f) the cost of training has a significant influence on the range of people who might consider a career at the Bar. It is possible that good candidates, particularly those least in a position to take financial risks, are being deterred, or will in future be deterred, from pursuing the training;
- g) where candidates who do get through to pupillage find significant disconnect between the course and requirements of practice, the course will be thought to be not only expensive but to represent poor value for money.

**QV10:** Are the above issues in connection with the cost and affordability of the BPTC correctly identified?

**QV11:** Are there any other issues connected to the cost and affordability of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

## Summary analysis of the current system for vocational training

### Strengths

- The course is well established, with a developing community of practice across providers and a good level of understanding of its structure and content in the community that it serves;
- The course is fairly well adapted to the systems and structures of UK higher education, its methods of supply (for example, for deploying staff) and external regulation; and
- The course engages well with the (current) principal prior qualification for a legal career – ie a law degree (or degree and Graduate Diploma).

### Weaknesses

- The course is slow to adapt to change in needs of the market;
- The course has a substantially fixed structure and pace of delivery, which may not best serve the needs of all students;
- The wider value of knowledge and skills acquired in the course is poorly recognised and the qualification lacks transferability (ie recognition for qualification in other professional domains). Consequently a large number of candidates are only narrowly qualified for a profession that can only accommodate perhaps one third of those who complete training;

- Potential for inconsistency of standards in the assessment of skills by the course providers, in comparison with centrally assessed subjects; and
- Prescription of the course constrains price competitiveness of the market, raising concerns about the cost of training for candidates.

### The regulator's role: striking the right balance

157. We are considering what the regulator must specify as vocational training requirements for a changing legal services landscape, how those requirements should be specified and with what level of prescription.
158. We are exploring how we make sure appropriate standards of advocacy (and related skills) are achieved, so that students are adequately prepared for the application of those skills in pupillage and work-based learning after the course. We need to decide what the knowledge-based requirements should be and how they should be demonstrated. We need to think about how we might focus our involvement in the market for training upon ensuring these needs are met, in a way that is consistent with our regulatory role and the better regulation principles.

### Our vision

159. We think that we can make changes in our approach to vocational training that enable us to focus more clearly on the standards and outcomes to be achieved, and that open new and more flexible pathways to qualification, possibly making it more affordable and accessible to a greater diversity of talented people.
160. However we do this, we will always have to have at the forefront of our minds the regulatory objectives and the statutory guidance under which we must operate, set out in the introduction to this consultation document. We must also take account of other statutory requirements such as our public sector equality duties as set out in the [Equality Act 2010](#); our duty to adopt a risk-based approach to regulation and our duty to promote economic growth.

### We need to strike the right balance

161. Finally, we must bear in mind an important but practical point. We regulate a relatively small profession which operates in a “niche” of the legal services market , notwithstanding how important what barristers do is to society as a whole in relation to upholding the rule of law and the proper administration of justice.
162. This means that we have to balance the desirability of achieving an approach which satisfies all our aspirations and obligations with the need to develop a system for vocational training that is economically viable and resilient at a time of market change. This will of course also apply to any new approach to the final professional stage of training for the Bar.

## Exploring future approaches to vocational training

163. We have identified three broad approaches to explore, each of which might achieve some or all of our aims and objectives.
164. **It is important to understand that none of these three broad approaches represents any settled view of the BSB.**
165. We have organised our explanation of them in a way that we hope makes giving views on them more manageable. The different approaches, or elements of them, are not mutually exclusive and it may be that components of a system could be drawn from more than one approach.
166. We seek views on these three approaches and their different components. We are interested to hear the advantages or disadvantages of them, and in particular to learn from respondents whether there are negative equality impacts to be foreseen in any approach or aspects of it, and how these might be mitigated. We are, of course, also keen to hear about other approaches that we might properly consider.
167. The approaches set out below differ largely as a function of the level and extent of regulatory involvement and prescription in the system of vocational training. They thus move from retaining significant levels of control and regulatory prescription and oversight, to a very much lighter-touch, via possible hybrids where tight control is only exerted at very specific points or in specific areas.
168. In principle, it is our intention to review all the approaches in the light of feedback received in this consultation and our other evidence, in order to form a more settled and specific proposition. This, together with the applicable draft regulatory framework (the rules and guidance) would be consulted upon in spring 2016.
169. The final BSB-approved framework would then be submitted to the LSB, the oversight regulator with the statutory responsibility for approving our regulatory arrangements. Depending on the nature of the final approach, we could expect a new system of vocational training to be in place from at the earliest autumn 2017. Transitional arrangements relating to existing provision would almost certainly be needed as well.

### Approach 1: We will continuously improve the current arrangements

170. The existing course has been shown to provide a reasonably effective training for those that progress into the profession. As currently prescribed, it has only been in place for three years and as such has been subject to continuous review and adjustment. It would be possible to continue the current approach to specifying vocational training requirements.

171. This would see us “holding the ring” on what the content and structure and delivery methods of the vocational training looked like, negotiating these with the profession and the (existing and future) providers, seeking to address some of the practical problems with the current BPTC without fundamentally changing its nature. We would continue to specify the requirements in detail and assure they were met.

### The role of the regulator in Approach 1

172. In such a scenario the regulator would aim to achieve consensus about the balance of skills and knowledge needed and how the course should be delivered and then quality assured and assessed. For example:

- a) the review of the syllabi for criminal and civil procedure and evidence currently underway would address the need for greater consistency and clarity about what is core and what is periphery, what is examined as essential and what is expressed as desirable learning;
- b) The current active consideration being given to abandoning a regulatory requirement for optional areas of substantive law and practice to be studied, if adopted, would reduce the coverage, but could have a positive impact on time taken and cost incurred, and allow more flexible responses to specialisation.
- c) Continuous improvement of assessments, whether centralised or otherwise, based on well-established cycles of BSB and institutional review and adaptation, led by the BSB, would address issues identified with assessments. However, we would expect current academic cycles of assessment to be retained;
- d) Changes to content that emanated from the adoption of the Professional Statement, as well as feedback resulting from the work done on the current reform programme, would be implemented in this gradual way too, led by the BSB.

173. In this way, consistency in the experience of the training would be improved, supporting equality of standing of the qualification for all candidates and mitigating the risk of the qualification having a stronger reputation and market value from one provider compared to another. A foundation for a ‘community of practice’ is created, amongst all providers, to support continual improvement in the training.

174. Candidates can readily plan their route to qualification because the stages are clearly mapped and progression is strictly linear, and providers/career advisors can readily support and advise candidates in their planning. Employers and chambers expecting to recruit successful candidates from the course would continue to have a reasonable assurance of consistent outputs as well as a predictable annual cycle of activity.

### Things we need to bear in mind for this approach

175. This approach however may only go a short distance in addressing the issues with the BPTC identified above in paragraph 156. In particular candidates would all start the training at the same point and follow the same training pathway, whatever their circumstances – this lacks flexibility, and would be most unlikely to improve the affordability of vocational training or the level of risk that candidates take on financially relative to their chance of succeeding all the way through to authorisation. The training

would proceed at a fixed pace for all candidates, irrespective of their capabilities and previous experience and remains constrained to a fixed academic year cycle.

176. This approach relies for success to a great extent on candidates having achieved the same entry standard to embark on the training and does little to address some of the issues raised in that regard above.
177. This approach might mean that training will be slow to adapt, to respond to market needs and innovate in training delivery, because it is determined primarily by and dependent on the regulator. Providers are constrained in integrating the training with other professional programmes and so may be unable to realise the advantages of economies of scale which might have been passed on to candidates as reductions in fees.
178. The regulator needs, in this approach, to maintain expertise in the specification, contracting and oversight of training provision which may not represent best-targeted use of limited funds.

QV12. Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

QV13: Are there any other advantages or disadvantages of this approach that you can discern?

QV14: Are there any equality impacts of this approach that you are aware of?

### **Approach 2: We will allow any training that demonstrates the barrister has achieved the required outcomes**

179. This approach probably represents the greatest extent of change in the regulation of vocational training. It envisages that we would approve programmes of training by which the prospective provider can demonstrate (with evidence) achievement of the required outcomes as set out by us, and a limited number of other requirements that we specify. But we would not specify many requirements at all.

#### **Requirements we might include:**

- a) Showing the BSB that the provider can deliver training to meet learning outcomes that we specify, relating to the Professional Statement and threshold standards. We would not, for example, dictate class sizes or teaching methods, but the provider would have to demonstrate, in accordance with acknowledged best practice in the relevant field, that required outcomes could and would be met.
- b) Where learning outcomes that we specify are identical or very similar to those specified by other legal services regulators, combined delivery would be permissible, for example:

- effective assurance by the provider of aptitude and previous academic achievement required for the training at admission, to make sure candidates have the essential skills and prior preparation to succeed in the training;
  - provision of facilities for candidates to undertake any assessments specified by us;
  - delivery of the skills training, with appropriate facilities, and in accordance with good practice specified by an acknowledged authority in the relevant field; for example, skills requirements in family law mediation might be based on those set down by the Family Law Bar Association and a recognised and reputable mediation body;
  - compliance with BSB mandated measures to promote equality and diversity in recruitment and retention of students.
180. In such an approach, we would still have a responsibility to make sure the interests of students are protected. One possibility might be to restrict the approval of courses to institutions that have the status of universities constituted in England or Wales so that students have redress and wider quality assurance mechanisms are available for them.
181. All current providers of the BPTC have this status. Such a requirement need not prevent the formation of partnerships by a university in formulating and delivering a training proposition with another acknowledged authority in a relevant field.
182. With this approach, we anticipate maintaining a degree of oversight of defined pathways to qualification, with the benefit of the opportunity this provides to influence or require training providers to address our regulatory objectives. This approach requires our continued involvement in the direct oversight of training, with a lighter touch but a clearer focus on the outcomes to be achieved.

### Flexibility in this approach

183. The degree of flexibility of such a system might depend to a significant extent on the frequency and timing of the availability of the assessments that we specify. Assessments are currently scheduled to meet the needs of the BPTC within the cycle of the academic (and legal) year (a first sit assessment in April, followed by a second sit in August). We anticipate a need to review the assessment cycle periodically, to best serve the needs of any new system, bearing in mind of course that assessment provision must be cost effective.
184. Innovations in training delivery, for instance information and communication technologies, can support the improvement of standards. For example, online delivery of course components has the potential to increase accessibility and affordability of the BPTC.
185. Highly-rated universities have embraced innovation in use of learning technologies across a range of disciplines. In this approach, a provider could make more varied use of ICT without it concerning us as long as learning outcomes were achieved and other potential mandatory requirements, for example on equal access to technology, were satisfied.

### Overall this approach may have the following advantages:

- a) Providers can design courses to meet the needs of specific groups of candidates; for example, those already working in legal services;
- b) Providers can design courses that support progression to careers other than the Bar;
- c) Providers can design courses that prepare candidates with different prior levels of qualification; for example, to meet the needs of candidates who do not have a degree or those with qualifications from other jurisdictions;
- d) Providers can readily adapt the training to meet changing market needs and take advantage of opportunities, such as new technology;
- e) The regulator can influence the development of diverse pathways to qualification, because it still approves (and possibly contracts) the training;
- f) Employers, chambers and other entities have greater opportunity to influence the design of the training to meet their needs, for instance through partnerships with training providers to develop specialisms which suit them; and
- g) The regulator can focus more clearly on its role of ensuring standards at the point of qualification, targetting its resources in a more coherently risk-based way and not duplicating the regulatory effort of other bodies, being more cost effective in its involvement.

### However the approach may have some disadvantages:

- a) Reliance on assessment at the end of the training alone (for a number of the required competences) may not prove sufficiently robust to ensure standards, given that the training itself cannot be directly compared across all providers;
- b) Without standardisation of the training, too many candidates will fail to achieve the required standard, because of inadequate criteria for admission to the training and/or inadequate standards of the training itself;
- c) Some courses will come to be perceived as a “gold standard”, to the detriment of those qualifying by another route, and irrespective of the standards achieved – with implications for diversity in the profession. Some courses may emerge as simply the old BPTC re-packaged and be the ones that students choose for fear of anything different not being acceptable to Chambers as a basis for pupillage;
- d) Assessments specified by the regulator will require it to resource and maintain the necessary expertise and delivering assessments more frequently and possibly in a wider range of areas may not be cost effective for the scale of possible demand; and
- e) Complexity in the market might confuse prospective candidates, careers advisors and employers/chambers, undermining the effective functioning of the training market.

The full effect of such change is hard to predict and some effects might be unwanted, for example a reduction in the number of providers or poor geographical coverage.

- QV15. Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?
- QV16. Are there any other advantages or disadvantages of this approach that you can discern?
- QV17. Are there any equality impacts of this approach that you are aware of?

### **Approach 3: We will specify and control only a final stage of training, following a barrister's achievement of key outcomes determined by assessment**

186. In this approach, which is something of a hybrid, we would not rely upon centralised assessment alone to assure standards at the point of qualification as a barrister. But neither would it be necessary for the entire training process to be specified to the current extent.
187. It might be possible to identify a core of knowledge-based requirements for which assessment (examination) by us might be sufficient means to assure the standards required and training routes to the assessment would be free for the market to provide as it saw fit.
188. We would then specify only a programme of advanced skills training, focussed very specifically on the identified needs of an intending barrister. In practice, that means predominantly oral and written advocacy, specialist legal advice, and professional ethics. Candidates who demonstrate the required knowledge and aptitude by prior assessment would be admitted to the advanced skills training programme.
189. We anticipate that in this approach we might approve providers for this more limited and advanced training, on the basis of criteria such as those described for Approach 2 above.
190. This third approach provides a very clear focus on standards at the point of qualification. Candidates have the freedom to choose any means available to them to prepare for the assessment that qualifies them for entry to the advanced training.
191. Entry to the assessment which was the gateway to advanced skills training would be open, including globally, and without any other prerequisite than satisfactory completion of the academic stage as far as we were concerned.
192. A relatively shorter period of formal skills training provides the opportunity to consider more than one cycle of training each year. The cycle of entry assessment and advanced skills training could be adapted to meet the needs of a diversity of candidates, as long as that could be done cost effectively.

193. With the freedom to prepare for the assessments by any means, candidates have the opportunity to incur very low cost (for example by home study) in preparing for the entry assessment. Experience from other high stakes assessments, however, suggests that a number will be prepared to invest significantly in formal training nonetheless.
194. This approach improves the opportunity for candidates progressing to the advanced formal training to assure themselves that they have the aptitude to succeed, and constrains and de-risks the cost of training. Nonetheless, the initial assessment could constitute a valuable qualification in its own right for employment in fields where more advanced legal procedural knowledge in particular were needed.

### **Overall, this approach may have the following advantages:**

- a) Candidates have the freedom to choose their own approach to acquiring the specialist knowledge required, including home study – this would have positive implications for the cost of training;
- b) The market might develop to provide very cost effective mass training opportunities for those intending to pursue a legal career. The gateway assessment could become a qualification in its own right, and/or admit to or provide exemption in other pathways of legal training such as those pursued by legal executives, solicitors and costs lawyers or in roles otherwise associated with the justice system for non-practitioners;
- c) Because the regulator has oversight, equality of experience of the final advanced training is ensured, supporting equality of standing of the qualification for all candidates
- d) A foundation for a ‘community of practice’ is created, amongst all providers of the final specialist training, and this can support continual improvement in the training;
- e) The regulator can influence the development of good practice in higher levels of advocacy training, because it commissions the training;
- f) The regulator can draw upon wider methods for assuring standards at final qualification than assessment alone, without prescribing all of the training, because knowledge and skills can be observed, tested and developed over a period of time;
- g) “wastage” may be reduced in that it would be likely that the numbers completing the advanced training would probably be more closely matched to the number of available opportunities to progress to the final stage of training in pupillage.

### **There could be disadvantages to this approach:**

- a) a “gold standard” or a route of prior training with much higher status might develop, to the detriment of those qualifying by other routes, and irrespective of the standards achieved – with implications for diversity in the profession;
- b) by controlling the training resources for commercial advantage, providers might prevent lower-cost opportunities for the initial training to emerge;

- c) The regulator might have less opportunity to influence the diversity of candidates coming forward for the training, because it has no role in determining prior training pathways
- d) The regulator may have less opportunity to influence the quality of prior training, if it relinquishes control of its commissioning; this might have particular implications for the early development of standards in advocacy;
- e) this approach might constrain our opportunity to oversee the development of coherent pathways to qualification, with implications for our interest in promoting diversity amongst those entering the profession;
- f) There is a significant challenge in overseeing an open system of entry to assessment, in handling the potential level of demand for such an assessment and in ensuring quality in the conduct of the assessment. All these have to be done in a cost effective way and that is likely only to happen if a certain scale of operations is achieved.

QV18: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

QV19: Are there any other advantages or disadvantages of this approach that you can discern?

QV20: Are there any equality impacts of this approach that you are aware of?

QV21: From the three approaches outlined above, do you have a preference and if so, why?

QV22: Have you identified any other approach we might reasonably adopt in respect of vocational training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

## Part 3: The Professional stage of training, or pupillage

### The purpose of pupillage

195. Pupillage is work-based training. The concept is similar to that which exists in many professions, especially those where there is a practical activity to be executed in the service of a client.
196. Pupillage aims to prepare a barrister for the application of the knowledge and skills they have developed through formal training or other experience so that they are able confidently to represent a client in a court of law. It is the final stage of training before a barrister can be authorised to practise and receives his or her first practising certificate.

### Pupillage in our current handbook

197. We set out a number of aims in our [Pupillage Handbook](#):
  - to develop further proficiency as an advocate;
  - to develop the high level professional and ethical approach to practise as a barrister, in accordance with the Code of Conduct;
  - to establish the skills of professional practice, whether in chambers or as an employed barrister;
  - to give experience in matters in which pupils are likely to be briefed during the early years of practice, and to build skills and experience that will enable them to handle more complex matters in the future; and
  - to prepare pupils to take responsibility for their own professional development and practice.

### And for members of the Bar from overseas jurisdictions:

- to develop the skills required for practice at the Bar of England and Wales, or preparatory for further training or practice in their home jurisdiction.
198. More specifically, the effective completion of pupillage aims to make sure that all newly qualified barristers have sufficient skill, knowledge and experience of the areas of practice covered in the organisation in which they are training and in which they intend to practise, and of the different aspects of an individual barrister's practice, whether self-employed or otherwise.

### On completion of pupillage ...

199. On completion of pupillage, a barrister should be able to deliver an effective service to a client within the boundaries of their knowledge and experience whilst respecting their professional duties. What we expect a barrister to be able to demonstrate at the point of authorisation on completion of pupillage is set out in greater detail in the draft Professional Statement and threshold standards.

## **What the BSB as a regulator aims to achieve through reform of requirements in relation to pupillage**

200. We want to make sure that pupillage adequately prepares individuals for authorisation as a barrister, whilst providing the flexibility for organisations, entities and chambers to deliver the training and work experience that is appropriate to their business circumstances.
201. We need to be able to reassure the public that those we authorise to practise are sufficiently qualified to do so, to protect the public from the risks presented by those who do not meet the required standard.
202. We want to make sure that the regulatory framework for pupillage is consistent with our overall approach to regulation as set out previously in this consultation document, and to make sure the arrangements are adaptable for meeting future needs in an evolving legal services landscape.
203. There are particular features of our overall approach to regulation of barristers that have not yet been consistently applied in the area of pupillage (such as risk-based supervision, for example) and we would want any reform to pupillage to assist us in achieving a consistent approach in all the areas we regulate.

## **Protecting pupils**

204. Pupils are highly dependent on the relationship with those most directly involved in their supervision. We want to make sure that pupils' interests are appropriately protected in this relationship. Pupils are nonetheless, under the current arrangements, already barristers and subject to some of the Core Duties in the Code of Conduct.
205. So our relationship with barristers at this stage of training is different to our relationship with BPTC students. We want to be able to target our resources more effectively in this area, so that we lay the best foundations for the right regulatory relationship with barristers from the outset of their practising careers.
206. Pupillages are currently "scarce goods" in a complex market: demand currently significantly exceeds supply. This may mean that the area is more susceptible to anti-competitive or abusive market behaviour or to discriminatory practices, as the majority of those seeking the pupillages have very little bargaining power.
207. This is of concern to us as the regulator as it may undermine the statutory regulatory objectives and our public sector equality duties, for example. If our reform can "rebalance" the market at all, this may be helpful.

## **The current arrangements for pupillage**

208. The number of pupillages has remained stable over the past few years at around 400, though this is a decline from the larger numbers that were registered annually immediately prior to the introduction of compulsory funding of pupillages (as opposed to the pupil paying his or her "master" on the historic apprenticeship model).

209. The great majority of pupillages are offered by sets of chambers and by the Crown Prosecution Service, though an increasing number are available in other organisations, most notably in-house opportunities at major companies and within government legal services.

### **The length of pupillage**

210. Pupillage constitutes the “Professional Stage” in the current regulatory system. A full time period of twelve months is specified - and the standard pupillage is currently divided into two six-month segments; a non-practising period and the practising-under-supervision period.
211. Pupils undertake this work-based training with a “Pupillage Training Organisation” (PTO) which can be a chambers or other organisation and which must be registered with us. PTOs might devise their own programmes of “in-house” training as part of their provision, and the content of those is not specified by the BSB, nor the outcome specifically quality assured by the BSB.

### **External pupillage training**

212. Training that is proposed by a candidate as an alternative to pupillage or part of pupillage is referred to as “external training”, and if accepted by the BSB, results in a waiver from the standard pupillage requirements. The guidance available to prospective applicants on what constitutes acceptable external training gives the following key parameters:
- with a solicitor, judge or other suitably qualified lawyer who is not a registered pupil supervisor; and/or
  - in an organisation which is not an Approved Training Organisation but which, in the opinion of the Board, provides suitable training and experience.
213. Applications are decided on a case by case basis by the Qualifications Committee or relevant BSB executive team members under delegation from the Committee. In 2014, 22 applications for approval to undertake external training were received, of which 21 were approved.
214. Certain PTOs have negotiated standing arrangements for external training, such as secondments to solicitors’ firms or a client’s in house legal team but these are not common. BSB guidance gives some further detail as to the “external training” possibilities.

### **Attending the relevant courses**

215. We require that all pupils attend an Advocacy Training Course and Practice Management course during pupillage, as well as a Forensic Accounting course. The details below about these courses show the significant extent to which pupillage is a professional collaboration between key institutions in the profession – Inns, and Circuits critically contribute to the fostering of communities of practice at the Bar, creating important capacity in the profession.
216. The benefits of this are also likely to be intangible or hard to quantify but that in itself should not devalue them. We do not quality assure either advocacy training or practice management courses, though the providers have been accredited by us for the general purpose of providing CPD.

### **The advocacy training course**

217. All the Inns and circuits provide advocacy training courses for their pupils and they will contact pupils directly with the details. Pupils in London or on the South Eastern Circuit are required to attend the course run by their Inn and pupils on circuit are required to attend the course run by that circuit. Advocacy training should, except in exceptional circumstances, be completed in the first six months of pupillage. If the course is not completed in the first six months, the non-practising months of pupillage will be extended until the course has been satisfactorily completed.

### **The practice management course**

218. The purpose of the course is to provide information about a number of matters regarded as essential to those starting out in practice and to help make a bridge between pupillage and practice. There are lectures, some structured seminars and an opportunity for informal discussion on a variety of topics, including:
- Personal and Business Finance;
  - Professional relationships with solicitors;
  - Practical advice from judges about first appearances in Court.

This course is run by the Inns for pupils in London and on the South Eastern Circuit. Pupils outside of London are able to attend a course run by their circuit.

### **The forensic accountancy course**

219. The aim of this course is to introduce practitioners to the use of financial and accounting information in practice at the Bar. The course is delivered under contract to the BSB, currently by BPP (a leading professional training company) and BDO Stoy Hayward LLP (a leading firm of accountants and insolvency practitioners).

The aims of the course are:

- to know what business, financial and accounting documents are relevant for the purpose of litigation

- to have a basic understanding of standard accounting systems, both documentary and computerised
- to be able to communicate more effectively with accountants and experts on matters relating to monetary claims
- to be more confident in dealing with business, financial and accounting information in practice.

Barristers are required to carry out a Forensic Accountancy course during pupillage or during the first three years of practice.

220. A barrister can obtain a full Authorisation to Practise upon completion of the practising period of pupillage (the 'second six'), or sooner if granted an appropriate waiver. A full qualification certificate will not be issued at the end of pupillage unless these training requirements have been met.
221. The status of pupils employed in organisations is reasonably clear, and governed by general employment law. The position differs for those in independent self-employed practice, where there is a contractual relationship between a pupil and their chambers, but it is not a contract of employment, a contract for services, or an apprenticeship<sup>6</sup>.
222. The pupil in independent practice is not protected by the provisions of either apprenticeship or employment law that are relied upon elsewhere. This relative lack of protection places a particular obligation upon the regulator to make sure that appropriate alternative protection is in place, and that the protection is consistent with those for trainees in other professions.

### **The minimum funding requirement for pupillage**

223. Whilst pupillage does not equate to employment or traineeship in law, the law in these and other respects does reflect public expectations and standards in society that are relevant to pupillage. We set a minimum funding requirement that makes sure that pupils receive at least the equivalent of the national minimum wage, circa £12,000, plus their travel expenses.
224. We do not, for example, stipulate an equivalent to the London Living Wage even though the majority of pupillages are in London. In contrast, 20 leading commercial chambers currently offer pupillage funding of £60,000 to £67,500 for the year.
225. We issued guidance ([published Oct 2014](#)) on funding which seeks to make sure that pupils receive a regular minimum income and retain the maximum amount of earnings possible, with a clear and prior understanding of the terms under which any reasonable repayments are to be made.

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<sup>6</sup> Edmonds v Lawson & others [2000] QB 501

## **Fair selection**

226. Recruitment and selection for pupillages are subject to specific rules on openness, transparency and fairness, and, for example, those involved in selection panels must be trained in fair and non-discriminatory recruitment practices. The Bar Council runs an online recruitment portal known as [the Pupillage Gateway](#), which many but not all chambers use, save for advertisement of available pupillages on it which is required by the regulator.
227. In 2015, 92 chambers used the Gateway to offer approximately 200 out of 400 available pupillages; there were 2114 applicants for those 200 opportunities (Bar Council figures). We do not collate figures on numbers of applicants generally.

## **On successful completion of pupillage**

228. Those successful in gaining a pupillage are required to register it with us so we can match that registration to eventual authorisation. We have inherited a system of checklists of skills and experiences that pupils are expected to have acquired during the term of their pupillage. These provide a simple framework for judging standards.
- There is a loose system of validation by the BSB for checklists, though this is not consistently applied. The standard checklist is not a definitive set of requirements, and not all its components need be completed for a pupillage to be signed off as complete.
229. The standard checklist is supplemented by an additional checklist that relates to the field of practice concerned. Specialist checklists may be approved by us as standards for each field, after consultation with the relevant Specialist Bar Association, or submitted by the PTO for approval in rarer fields.
230. Some PTOs have obtained authorisation for their own specialist checklist to be used, in preference to a specialist checklist or both the general and specialist checklists, as models of practice can be so varied. However these are not common. Checklists are often used as a general guide, rather than a systematic 'syllabus' or set of standards. To complete pupillage, the pupil checklists must be signed as complete by the supervisor.
231. Chambers and employers are required to secure approval from us before taking pupils, and the application process involves setting out a detailed statement of the capacity and capability of the organisation to take on this responsibility.
232. There is no ongoing reappraisal of standards of pupillage provision. A significant number of chambers were not subject to any approval process in the first place, acquiring PTO status as a consequence of having pupils at the time the requirement for approval was introduced ie automatically transferring their status as a PTO through "grandfathering" provisions in 2006.

### **Supervising pupils**

233. Pupil supervisors are trained and must be recommended for approval as supervisors by the Inns of Court. Pupil supervisors:
- must provide professional references;
  - must repeat part of their pupil supervisor training if they have not supervised a pupil for three years and all of their training if they have not supervised a pupil for five years.
234. The Inns of Court also oversee the separately-prescribed pupillage advocacy training and New Practitioners Course, both of which appear to receive positive feedback.

### **What if the pupil is not yet competent?**

235. Instances where the pupil is 'not yet competent' (and their qualification has thus been deferred until competence has been achieved) have been identified during the formal assessment in the Inns' advocacy training course, but instances of competence not being signed off as reached in other aspects of pupillage are rare.
236. Overall, when the pupillage stage of training works well – and there are many examples of good and excellent practice - it is generally held to be a valuable, challenging and intensive programme of training leading to authorisation.

**We do not contemplate abandoning this professional stage of work based training.** But it does need to address the issues set out below.

## **Issues to be considered in relation to reform of the professional stage of training/pupillage**

237. A number of issues regarding the current arrangements for this stage of training have been identified through the analysis of policy, evidence from complaints and enquiries to the BSB, and representations made by a range of stakeholders over a period of time. In addition, our more recent focus groups showed a good level of convergence of opinion on what works well in pupillage and what may need to be reformed in the current system.
238. As in other parts of this consultation, we set out below the issues we have identified in relation to pupillage. These are grouped into four main areas:
- recruitment and selection of pupils and access to pupillage;
  - structure of pupillage and the quality of the pupil experience;
  - meeting the required standards;
  - the regulator's role.

We ask respondents to this consultation to comment on whether the issues have been identified accurately and exhaustively. We describe possible approaches to resolving the issues in a subsequent section.

## Recruitment and selection of pupils and access to pupillage

239. It is generally agreed and statistically demonstrable that diversity has improved in many areas of the Bar, following real efforts made by many practitioners to increase access, and following the introduction of our equality and diversity rules. The [data we publish on the profile of pupils](#) confirms this.
240. But some still feel there is a tendency for the profession to “clone itself” or continue to always recruit in its own image. Small numbers only are recruited even in the largest sets (no set currently offers more than four pupillages annually; in contrast a “magic circle” law firm will bring in 100+ trainee solicitors annually). There is a close link between pupillage and tenancy selection: pupillage is sometimes referred to as a “year-long job interview.”
241. There is felt to be significant emphasis on academic credentials and there is debate as to whether this may not be the best or only indicator of those with highest potential and may impose inappropriate obstacles to those from atypical backgrounds or with specific protected characteristics as set out in the [Equality Act 2010](#).
242. The timing of recruitment rounds for some sets, for example those operating outside the Gateway, can mean that BPTC performance plays a less significant role in selection than previous academic attainment.
243. Scarcity of pupillages risks the reduction of opportunity at the Bar for applicants from a diversity of backgrounds. Specific regulatory interventions have previously been introduced, partly to address this concern, with some success, such as the introduction of funding and advertising requirements, and the institution of a recruitment portal controlled by the Bar Council.
244. This is a closely-managed and controlled system operated for a set period annually, akin to a university admissions system and administered by the Bar Council. It aimed to create a level playing field for compliance and to assist small chambers with what is otherwise a potentially administratively resource-heavy task. (*The Gateway*) is a flexible and cost-effective way for chambers and Authorised Training Organisations (ATOs) to advertise pupillages and manage applications - making it easy for you to run a modern, online, recruitment process without a huge investment in your own system (Bar Council website).
245. More recently, however, such a system has been challenged and, whilst many PTOs continue to take advantage of the shared recruitment system ([the Pupillage Gateway](#)), others now recruit independently. The Bar Council has reported to us that in 2015, barely half the available pupillages were recruited to via the Gateway. 72 adverts were placed by chambers obliged to advertise there but not using the Gateway service, suggesting there may be chambers failing to adhere to the regulatory requirement to advertise on the Gateway.

246. There are also reports of unfair practices in relation to what is known as “exploding offers”, where candidates are told they must accept an offer of pupillage within a given very short timeframe (for example a day), otherwise the offer will be withdrawn. Similarly there have been small numbers of complaints that one chambers will diligently stick to the timetable rules for making offers, only to find that the person to whom they make the offer of pupillage has already accepted an offer by a chambers not complying with the timetable, including for example by way of an “exploding” offer.
247. Concern continues to increase over the cost of providing the training opportunity which pupillage represents, and whether that creates barriers to access to the profession. Cost has long been a concern for the self-employed Bar in relation to publicly-funded areas of practice in particular, where capacity to make the financial investment needed to offer pupillages is thought to have reduced greatly and especially since 2012 and the advent of [LASPO](#), which reduced access to legal aid and the funds available for it. This concern is now acutely felt as the market and income for those services has rapidly deteriorated. Chambers working in publicly-funded areas are more likely to offer pupillages funded at the lower (eg £15,000- £20,000) or minimum compulsory levels.
248. The cost of training is borne by the PTO, which is required to pay each pupil a minimum sum encompassing a minimum monthly award or guaranteed earnings plus an amount to cover reasonable travel and other expenses. Most PTOs also pay for the pupil’s attendance on compulsory courses.
249. However, the value of the current minimum award is not great, and there can be significant additional costs of training, placing a further residual burden of cost on many self-employed pupils. It is not unusual, for instance, for a first six pupil to have to fund significant daily travel costs to attend a trial as an observer. One challenge is that it is increasingly financially difficult, as legal aid fees are cut, for a pupil supervisor (or the barrister that a pupil is shadowing) to pay these expenses for them.
250. There is also a risk that previously and currently publicly-funded areas of practice will carry a greater financial burden for pupils, and dissuade those without access to additional financial support from completing their training. This is of especial concern as, historically, practices working in publicly funded areas of law attracted greater proportions of female and black and minority ethnic pupils and practitioners.
251. So the impact of change on the regulatory objective of promoting a strong independent and diverse profession is a negative one. There remains a significant risk that a lack of funding for pupillage will present a substantial barrier to access to the profession for many candidates. It is in those fields of practice that attract a greater diversity of candidates at present, that this risk is most apparent.
252. There are a very small number of philanthropic scholarship and other funding schemes that go a small way to alleviate these funding problems, such as the [Inns of Court “matched funding” scheme](#).

253. In stark contrast, 20 chambers working in leading commercial areas are able to invest collectively £3,679,000 in the direct costs of pupillage funding awards alone. (This is a simple calculation of the value of the number of pupillages awarded at £60,000 or above). The 60 pupillages attracting this level of award are often competed for by a restricted subset of the 2,115 applicants: the same prospective pupil may get more than one offer from this category of chambers.

254. The apparent polarisation in pupillage opportunities might be argued simply as a feature of a normal market functioning. We are aware that some members of the profession we regulate see this as a real concern, but we must of course focus on the extent to which the existence of these extremes tends to undermine the regulatory objectives and the public interest.

**QP1: Have we correctly identified the issues relating to recruitment and selection and access to pupillages?**

**QP2: Are there other issues which the regulator should take into account when thinking about recruitment and selection and access to pupillage?**

## Structure of pupillage and the quality of the pupil experience

255. The current rules establish a fixed duration and structure for the 'standard' pupillage, variations on which must be considered by the BSB by formal application for waiver for individual pupillages.
256. The structure of pupillage (a non-practising six months followed by a practising six months) derives from the traditional apprenticeship model of training, with an emphasis placed on time served emulating the working practices and behaviours of the supervisors and other members of chambers, so as to develop the behaviours expected of the practising barrister.
257. The structure extends to the possibility of a part time pupillage over two years, but there is only very limited take-up of this possibility: on average fewer than one application for permission to do this per year has been made recently. This rigidity of structure may inhibit diverse access to pupillage and constrain the possibilities for more varied experience being gained during pupillage. Pupillage can sometimes be for less than a year for those with relevant previous experience. In 2014, we approved 53 out of 55 applications for a reduction of time on the basis of proven relevant experience.
258. In some professions, a less clear cut distinction is made between the (near) equivalents of the vocational and professional stages of training, and more "sandwich" opportunities are available for combining learning in a formal educational setting with learning in a work-place environment. The current structure of pupillage is inflexible in comparison, as illustrated by the list of situations at paragraphs 261-2 below, for which a formal application for a waiver from regulatory rules must be sought.
259. It is difficult to assess the extent to which this prescription of the structure might prevent more pupillages being made available, beyond anecdotal evidence that non-chambers organisations in particular have reported difficulty in delivering pupillage according to the standard (prescribed) model, and concern about the bureaucracy in navigating the requirements to obtain a waiver, in order to put in place a viable alternative.
260. Likewise it is difficult to assess the extent that regulatory change may place an unrealistic burden on chambers, both in terms of responsibility and cost, at a time of financial difficulty. We are conscious of a possible risk that alterations to the pupillage requirements may have an unexpected result of reducing the ability of chambers to offer pupillages, and thereby the number of pupillages in the market.
261. In the relative absence of a clear and objective point of reference for the outcomes to be achieved in pupillage (until for example the Professional Statement is adopted), those proposing alternative models for pupillage through [waiver applications](#) must try to anticipate the expectations of the BSB Panel assessing an application on the basis of relatively limited guidance as to what is likely to be approved:

262. Explicit permission to vary the structure of pupillage is needed from us if the pupil seeks:
- for all or part of the practising six months of pupillage to be satisfied by a form of external training;
  - for reductions in pupillage based on experience gained outside the usual pupillage structure;
  - for permission to have a relevant period of pupillage treated as having commenced other than on the date of receipt of the application for registration;
  - to commence pupillage more than 5 years after completing the vocational stage;
  - to take a break of more than 2 weeks in the professional stage;
  - to commence the practising six months of pupillage more than 12 months after completion of the non-practising six months;
  - to split the practising period of pupillage so that it would end more than 9 months after it started;
  - to undertake the practising period of pupillage other than in a Member State.
263. Whilst several participants in our focus groups<sup>7</sup> reported examples of good and excellent practice in relation to, for example, pupil mentoring, support and protection, a number conveyed direct knowledge and/ or experience of very poor practice. This included very poor training and supervision or even inappropriate treatment from supervisors. Frequent mention was made of dependence on individual personalities of supervisors for the quality of the learning experience.
264. In some chambers, pupils are significantly dependent upon their pupil supervisor for validation of the successful completion of pupillage. There is a low rate of reporting of problems in pupillage and a risk that the dependent relationship may mean that the pupil feels he or she has no alternative but to put up with unacceptable behaviour or actions on the part of the pupil supervisor. Additionally there is limited guidance for pupils on how complaints should be handled within chambers and when it might be appropriate to make an external report.
265. This creates a dysfunctional learning environment at best and at worst could be indicative of breaches of our Code of Conduct and in particular the duty to report serious professional misconduct which now lies with every barrister.
266. The fact that pupils in chambers are not under employment contracts results in them not being protected by certain legislation that is designed to protect employees. Some measures have previously been put in place to address issues that arise from the dependency relationship identified above:

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<sup>7</sup> See our Focus Group Research Report in Appendix D for the make-up of the focus groups. Current pupils were very few in number as participants, but practitioners of both recent and more longstanding call also gave their views about their own experiences as pupils.

- a) a requirement for PTOs to establish policies which address the interests of the pupil (though effective implementation of those policies is not yet systematically assured through BSB supervision);
- b) approval of PTOs (though this is a one-off validation without periodic re-validation which would exist in the workplace training environments in many professions);
- c) a requirement for pupil supervisors to be trained before approval, and refresher training recommended – but not required – every five years;
- d) provision of telephone support for pupils (by the Bar Council);

267. However, we remain concerned that these measures do not collectively provide adequate assurance that pupils' interests will be protected. For example, in the last five years, 73 pupil supervisors have had disciplinary findings made against them out of a total 352 barristers with findings against them in the same period. Whilst the finding may not always have been directly connected to their activities as a pupil supervisor, an apparent proportion of 20% of those engaged in professional misconduct also having pupil supervisor status seems to be a matter for concern.

**QP3: Have we correctly identified the issues relating to the structure of pupillage and the quality of experience for the pupil?**

**QP4: Are there other issues which the regulator should take into account when thinking about the structure of pupillage and the quality of experience for the pupil?**

## Meeting the required standards in pupillage

268. The draft Professional Statement, together with the threshold standards will set out what we expect to be able to see in a barrister with the skills, attributes and knowledge to be authorised. Paragraphs 206 to 232 above outline how we currently assure ourselves that the required standard has been met.
269. Clearly, the quality of training and “assessment” by supervisors of whether the standard has been met are critically dependent upon the effectiveness of the practices of the PTO involved. There is currently no requirement for, or expectation of, independent validation of standards.
270. We have changed our overall approach to regulation, adopting clear regulatory principles which are outcomes-focussed, risk-based and evidence-driven, as explained further in the introduction to this consultation and in Appendices A and B. Our [Supervision Strategy and Guidance](#), in place since 2014 only, requires chambers to tell us how they manage pupils, and this includes providing key information which we can evaluate as can be seen below from this extract from the guidance document.

### **Pupillage**

#### **All areas**

Handbook Core Duties

CD10 You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations

Qualification rules B5

#### **4.1 Registration**

Key processes: rules rQ37 – 53 & rQ62-67

- Chambers registered as an Approved Training Organisation.
- Barristers registered as Pupil Supervisors.
- Registration of pupillage.

#### **4.2 Quality of training**

Key processes: rules rQ36 & rQ54

Procedures in place for:

- Ensuring pupils receive opportunity to develop skills and experience.
- Access to Supervisor.
- Peer review.
- Appraisals
- Training records.

271. This process is new, and has few baselines of documented and publicly available best practice on which to draw to set the standard, beyond the [Pupillage Handbook](#) issued by us. This contains some material which describes what should happen during a pupillage, but it does not constitute a means for independent validation of outcomes of pupillage. This might be thought surprising given how important it is that the public is assured of newly authorised barristers meeting the right standard and the public interest in consistency in that standard.
272. Problems can arise when a pupil supervisor is unable or unavailable to provide the required validation, or does so incorrectly (for example failing to complete the submitted papers correctly), but these problems very rarely relate to any failure by the pupil. That might be thought unfair and reinforces negative aspects of dependency on the supervisor.
273. The checklists which are required to be completed prior to BSB authorisation are currently the main tool of “assessment” of pupillage outcomes. We understand that - from an analysis of queries made to the BSB about the checklists - PTOs and chambers find the checklists confusing and difficult to use. This is both in terms of what are and are not compulsory requirements; and in terms of how they apply to the practice of a particular chambers and pupil.
274. The current system in effect asks supervisors to “mark their own homework”. Many chambers can demonstrate rigour in their assessment and involve more than one supervisor in the process. Some chambers will have their own safeguards such as assigning multiple supervisors to their pupils, or commissioning a committee to oversee pupils/supervisors.
275. However, in the absence of any external quality assurance system for the assessment process in pupillage, a chambers which, for example, fails to offer appropriately high quality training may equally fail to assess rigorously its pupils, and may even be biased towards passing them. This could result in pupils being authorised to practise despite having received inadequate training, putting the public at risk. Further, public perceptions about such a system are likely to be negative and to diminish public confidence in barristers.
276. There is evidence that some chambers do not help pupils to gain a suitably diverse range of experience during training, where the requirements do not align with their field of practice or structure of business.
277. There are of course intrinsic variations in what different fields of practice will “naturally” offer: for example, a second six pupil in a criminal practice will probably get many more opportunities to practise oral advocacy in a court than a second six chancery Bar specialist. And yet the advocacy standard which both should in theory achieve at the end of pupillage is the same.

278. It is not clear that all pupils get a sufficiently similar level of exposure and opportunity to acquire the skills that the Professional Statement sets out at the threshold standard. Our focus group participants commented in particular that opportunities were often slimmer at the chancery or commercial Bar and that this could then present challenges for individuals when they begin to practise.
279. Pupillage opportunities are scarce and pupils may be prepared to accept poor training provision without complaint. The prospects for full qualification of a pupil who withdraws from their pupillage are believed to be very poor. Sometimes, a pupillage opportunity “collapses” through the (planned or unplanned) wind-up of a chambers or other unanticipated events.
280. There is no formal safety net for such pupils in place, albeit on the several occasions that this has happened in the last few years, the profession and the BSB have usually been able to work together to make an adequate alternative arrangement. But this might not be thought to be a satisfactory position.
281. Overall, we are concerned that, in such a competitive market for pupillage places and in a highly dependent relationship of the pupil upon the pupil supervisor, there may be insufficiently consistent levels of targeted external assurance and inadequate oversight of PTOs by us. This would mean there is a risk that the requirements for competent practice are not being met but barristers are nevertheless authorised. This puts the regulatory objectives at risk.
- QP5: Have we correctly identified the issues relating to meeting the required standards in pupillage?
- QP6: Are there other issues which the regulator should take into account when thinking about meeting the required standards in pupillage?

## The regulator's role: striking the right balance?

282. We have regulatory objectives which mean we must concern ourselves with aspects of the market for pupillage. Recent experience of structural change in the market for barristers services risks a decline in the availability of pupillages in certain fields of practice that are critical to the effective functioning of the justice system overall.
283. The market may adjust to a lack of new pupillages in those fields of practice (by barristers from other areas extending or changing their practice), but there is a direct regulatory interest in maintaining a credible market for pupillage in those fields, such as crime, family and immigration practice.
284. It is difficult to determine whether our current prescription of the term and structure of pupillage places any unnecessary constraint on the opportunity of PTOs to offer pupillages in those fields, but a different approach to regulation might offer the opportunity to accommodate a pupillage system that adapts to the market, to the needs of the public and profession, as well as supports the regulatory objectives.
285. Our previously described transition to risk-based and outcomes-focussed regulation (See Appendices A and B) generally means we would aim to prescribe less exhaustively but be much more targeted about where we pitch the regulatory involvement.
286. We would obviously seek to avoid a position whereby any future “de-regulation” of pupillage might inadvertently lead to either a reduction in the number of pupillages available, or an increase in the number of pupillages in which the risk of problems might arise for either the PTO or the pupil. But if we have identified issues with pupillage correctly above, there would appear to be a case for a more rigorous and consistent framework for supervision of pupillage by us.
287. We currently have a predominantly administrative and arguably unduly bureaucratic role in relation to pupillage and it is not clear what value that adds to our regulatory role. For example, mere receipt of detailed checklists without any oversight of the quality of what the checklists represent cannot give the public confidence that standards are being consistently met or that risks in the training will be identified or addressed.
288. Some of our focus group participants expressed a desire to see us increase our efforts to maintain consistent standards and to support pupils, and suggested there should be independent assessment of preparedness to practise at the end of pupillage, carried out by an external body.
289. They also suggested that we need to take a greater role in quality assurance of PTOs and training providers within pupillage, and to make sure that “whistleblowing” and complaints handling were handled seriously and sensitively in the pupillage context.

- QP7: Have we correctly identified the issues relating to the regulator's role in pupillage?
- QP8: Are there other issues which the regulator should take into account when thinking about the regulator's role in pupillage?
- QP9: Are there any other issues not raised in the categories above which we have failed to identify in relation to current arrangements for pupillage?

## **Future approaches and what the BSB wants to address**

Here is a summary reminder of issues we think need to be addressed.

### **Weaknesses**

- Poor alignment of the existing regulatory framework with the wider BSB regulatory approach;
- Risks of regulatory failure and untargeted use of resources;
- Narrow prescription of the term and structure of pupillage may not meet the needs of all potential pupils and PTOs, reducing potential capacity in the system;
- Assurance of standards at point of qualification is weak. Whilst chambers can train pupils to a very high standard, under the current regulations there is no guarantee that this is the case;
- Pupils are highly dependent upon their PTO and therefore vulnerable, without assurance of quality standards or redress mechanisms;
- One-time approval of PTOs provides no assurance of ongoing competence to deliver pupillage.

### **Threats**

- Changes in regulation risk, and increased regulatory cost, precipitating decline in the availability of pupillages, over and above that driven by the market.
- Lack of scope for innovation in the design and delivery of pupillage potentially risks faster decline in pupillages in a changing market.
- Changes in the market for vocational training risk narrowing the diversity of backgrounds from which successful applicants derive.
- Market and regulatory pressures upon chambers and other entities may escalate the problem of pupil vulnerability.
- Poor definition of the essential knowledge, skills and attributes for professional practice, and assurance of standards, risks pupillage failing to deliver barristers that are fit for practice on qualification.
- Changes/volatility in the regulatory framework risk unintentionally making pupils more vulnerable in comparison to their chambers and/or supervisor or indeed themselves reducing capacity in the market.

Paragraphs 290 to 312 below set out some of the principles we propose to deal with in a planned and gradual way, largely irrespective of what more significant changes, if any, are made to our overall approach and regulatory requirements as a result of this consultation and within the [Future Bar Training](#) programme more generally.

We therefore seek your views on them, before asking you to consider in the subsequent section some broad approaches to the regulation of pupillage and work-based learning that we wish to explore.

### Significance of practice-based training

290. We think there is a continuing regulatory justification for requiring a period of in-practice training prior to authorisation, with requirements for a pupil barrister to demonstrate the core skills and attributes we expect in that period of training.
291. The evidence that a candidate can apply knowledge, concepts, skills and professional judgement with confidence in unpredictable situations and can do so consistently, can only be obtained in the working environment; and the opportunity to learn these skills is also only acquired reliably in this way.
292. We also think that the public would be unlikely to have confidence in a barrister who had not had compulsory work-based learning in some form before authorisation. **So we do not intend to remove the requirement for work-based learning or pupillage prior to authorisation to practise.**

QP10: Do you agree with this fundamental position regarding work-based training as a pre-requisite for authorisation?

### Flexibility in pupillage/work based learning

293. A PTO may have additional specialist training requirements beyond any identified minimum requirement for authorisation of a barrister, related to their specialist area of practice, and upon which an offer of tenancy may depend. We do not necessarily think the regulator needs to be involved in these.
294. The concept of 'external training' has arisen to describe training that is designed to fulfil some or all of the requirements of pupillage, but delivered outside the context of the PTO and/or the normal regulatory requirements for pupillage. If the regulatory focus upon pupillage moves from time served to outcomes achieved, we anticipate that approaches currently categorised as 'external training' might be accommodated within a PTO's own pupillage proposition.
295. A chambers might, *without the individual pupil needing a specific waiver from the BSB*, make its own arrangements for a pupil to spend training time with professional clients such as an instructing solicitor or in-house legal team in a company; or in another institution, such as following a *stage* in a legal directorate in an EU institution.

296. Such activities might simply be accepted amongst the variety of alternatives available to achieve the defined learning outcomes for a pupil, or form part of a pupillage programme submitted by the PTO for BSB approval under the supervision system.

This might mean more pupillages become available on the market, helping to reduce the discrepancy between the large number of those passing the BPTC and the small number of those being authorised. This in turn might help provide more qualified practitioners to meet unmet need for legal services at affordable prices for consumers.

**QP11: Do you agree that pupillage should be more flexible in its content, with the BSB taking a more generally permissive approach to the sorts of activities that might constitute appropriate content, as long as the requirements of the Professional Statement could be demonstrated as being met?**

**QP12: What are the risks, if any, associated with this?**

### **Role of the Professional Statement**

297. The development of a Professional Statement provides the basis upon which we might focus our regulatory requirement, whilst adopting a more permissive approach for the PTO to develop more widely the programme of pupillage to serve the market needs of practice.

298. The Statement will define the knowledge, skills and abilities required upon authorisation to practise. For the purposes of our regulation, the point of authorisation is treated as the point at which a barrister is entitled to apply for a Full Practising Certificate, upon receipt of a Full Qualification Certificate (when the practising period of pupillage is signed off).

299. The Professional Statement only defines the competence required upon authorisation at the end of pupillage, and further work is required to define (within the framework of the Statement) the minimum requirements for a candidate to enter pupillage, and therefore the further competence that must be demonstrated as part of pupillage and before the point of authorisation.

**QP13: We have consulted separately on the Professional Statement and you may or may not have responded to that consultation. If you have not, do you agree that the Professional Statement should be used to define the knowledge, skills and attributes to be demonstrated at the end of pupillage?**

**(If you have responded to the Professional Statement consultation, please feel free to re-state or vary your position on this question here.)**

### **Regulatory focus on the PTO and pupil supervisor**

300. The regulation of pupillage has developed over time to reflect our wider (pre-2014) approach to regulation of the Bar, focused on the responsibilities of the individual. This reflects both the way in which the profession works, and the predominant chambers-based business structures that have evolved and which retain the practice independence of (and therefore regulatory focus on) the individual. The system of PTO approval has developed to reflect the wider responsibilities of chambers or the employer in ensuring a successful outcome from pupillage. But it may not have developed sufficiently far.
301. Hosting pupillage is not unlike a number of other responsibilities upon the Bar that cannot be adequately accommodated by exclusive regulatory focus on the responsibilities of the individual (in this case, the pupil supervisor). Another example of this shift is the approach that has now been successfully adopted towards equality and diversity, where there are individual responsibilities which can only be met if a chambers-wide approach to doing so is taken.
302. The shift is of course underpinned by the “new” Core Duty 10 in the [BSB Handbook](#), which requires barristers to take reasonable steps to manage their practice and to carry out their role within practice competently and in a such a way as to the achieve compliance with legal and regulatory requirements.
303. Current regulatory arrangements require a pupil supervisor to have no more than one pupil at any one time. This rule reflects the individual responsibility of the pupil supervisor to oversee closely a pupil’s development through the duration of pupillage.
304. In many chambers, however, pupils are hosted by a number of supervisors through the course of their pupillage. Such arrangements are often very beneficial and promote good achievement of the outcomes required from pupillage: a pupil will, for example, have the opportunity to learn ethical attributes from more than one person, or to experience more than one area of law and practice. The current regulatory rules framework can make it more complicated, both administratively and in relation to assuring standards, for us to accommodate, and riskier for pupils.
305. We recognise, however, that pupil supervisors undertake the role “voluntarily”, without financial reward (though adoption of the role may support career progression). The current system accommodates both systems of pupillage with one supervisor, and others where two or more barristers undertake a supervision role, with the responsibilities of supervision dispersed. A greater focus of regulation upon the individual pupil supervisors might have disadvantages.
306. We are nevertheless considering the development of a more structured approach to the oversight of PTOs, which might provide a better means of directing regulatory attention where it is needed and can be most effective, but will mean an adjustment to the balance of responsibilities between the chambers or employer on the one hand, and the individuals concerned on the other. This of course would be consistent with our wider approach to supervision of chambers and entities, which, so far, has been well received.

307. A rebalancing of regulatory “grip” as between PTOs and supervisors might have the following implications:
- a requirement for a pupillage programme document, produced by the PTO, as the basis of contract for delivering pupillage, demonstrating how the requirements of the Professional Statement and Threshold Standards would be met, including what types of ‘external training’ may be used;
  - the incorporation of requirements of pupil supervisors within the terms of a PTO’s approval;
  - reassessment of the nature of the “contract” with PTOs, which may not be adequately encompassed by the current system of “approval”;
  - a more structured approach to supervision of PTOs, consistent with our overall risk-based Supervision strategy;
  - depending on the cost-recovery model adopted, a different basis of funding our supervision of pupillage (currently borne by the entire profession through the practising certificate fee) might need to be considered;
  - the effective use of technology (for instance, for self-administration of regulatory reporting) which might assist in keeping the cost of regulation low.

**QP14: Do you agree with the principle of the rebalancing of responsibility for pupillage as between the “entity” (chambers or otherwise) and the individual pupil supervisor? Why/Why not?**

308. The regulatory oversight of PTOs is currently relatively superficial. At present, PTOs are “approved” once to host pupils, and that approval does not expire unless we withdraw it in cases of demonstrable, very serious failure. This usually involves us taking disciplinary action against the supervisor/s and as stated earlier, we did so in respect of 73 barrister pupil supervisors over the last five years.
309. PTOs that were hosting pupils at the time of introducing the approval requirement were automatically deemed to be approved and competent to do so. We think there may be a need for a more systematic validation and periodic re-validation of PTOs.
310. Periodic re-validation of PTO approval (perhaps self-accredited after initial approval) on the basis of their record of pupillage delivery and evidence of their current practice, might help to make sure standards are met on a continuing basis whilst maintaining a proper sense of ownership and responsibility for pupillage on the part of the PTO.
311. Largely as a consequence of the manner in which the scheme of PTO approval was introduced, a definitive list of approved chambers and organisations has never been compiled and published (although we do of course have records of those individuals who have been approved as pupil supervisors).

312. More transparently available information might be useful to prospective pupils, other training providers and consumers. (We say more about making information available publicly in Part 4 of the consultation as well.) However, any new system for initial and periodic validation might cost more and be a disincentive to providing more training opportunities.

QP15: Do you think there should be more systematic initial validation of PTOs and supervisors?

QP16: Do you think there should be periodic re-validation of PTOs and supervisors?

QP17: Do you think there are benefits in a published list of approved PTOs and supervisors?

## Exploring future approaches to pupillage

313. In a similar way to what has been done in relation to the earlier parts of this consultation on the Academic and Vocational Stages respectively, we set out below three approaches to regulation we are exploring and on which we would like views.
314. Each of these might achieve some or all of our aims and objectives. **It is important to understand that none of these three broad approaches represents any settled view of the BSB.** We have organised them in this way as it may make giving views on them more manageable. **The different approaches, or elements of them, are not mutually exclusive** and it may be that components of a system could be drawn from more than one approach.
315. We seek views on these three approaches and their component parts. We are interested to hear the advantages of disadvantages of them, and in particular to learn from respondents whether there are negative equality impacts to be foreseen in any approach or aspects of it, and how these might be mitigated. We are, of course, also keen to hear about other approaches that we might properly consider.
316. The approaches set out below differ largely as a function of the level and extent of regulatory involvement and prescription in the system of professional training. They thus move from retaining significant levels of control and regulatory prescription and oversight, to a lighter-touch, via possible hybrids where tight control is only exerted at very specific points or in specific areas.
317. In principle, it is our intention to review all the approaches in the light of feedback received in this consultation and our other evidence, in order to form a more settled and specific proposition. This, together with the applicable draft regulatory framework (the rules and guidance) would be consulted upon in spring 2016.

The final BSB-approved framework would then be submitted to the LSB, the oversight regulator with the statutory responsibility for approving our regulatory arrangements. Depending on the nature of the final approach, we could expect any new system of professional training to be in place from at the earliest autumn 2017, though we would consider making changes to pupillage which were easy to implement and had agreed benefits for all on a shorter timescale.

## Approach 1: Continuous improvement of the current arrangements

318. The current system has proven effective for a significant number of chambers, and a number of small variations of the prescribed structure and content of pupillage have been agreed over time. Given that there is evidence that the current system has proven effective, we must consider retaining broadly the current approach.
319. Some of the concerns about the current system relate to the pressures on pupillage from a fast-changing market. Whilst the number of pupillages has been sustained in recent years (an average of a little under 450 per annum since the change in funding rules in 2008), there is a risk that key areas of practice will be unable to accommodate pupillages in future.
320. Whilst the structure of pupillage might not be the critical consideration, we have an interest in making sure that the structure of pupillage does not present any unnecessary barriers to supply of pupillage opportunities especially in areas where there may be unmet client need or which are at the forefront of the public as opposed to private interest.
321. This “continuous improvement” approach would see us adopting some of the principles and ideas set out in paragraphs 290 to 312 above (more flexibility in structure and duration and content; adoption of the Professional Statement; rebalancing of the regulatory touch between the PTO and individual supervisors).
322. It might involve us setting out “minimum terms” and a standard Pupillage Programme document, upon which a PTO might draw, with variations from the standard requiring our agreement. The “minimum terms” might cover areas such as:
- policies for pupillage recruitment, administration and dispute resolution;
  - delivery of the training, including what external training may be used;
  - how pupillage must meet the Professional Statement requirements;
  - the training, oversight and other responsibilities of pupil supervisors.

### Advantages of the continuous improvement approach include:

- a) The current nature of pupillage is well understood by chambers and prospective pupils: change would be organic and gradual, minimising business and cultural disruption for practitioners and allowing any increased cost to be planned for;
- b) The broadly fixed duration and cycle of pupillage largely matched to the “academic calendar” creates a stable and uncomplicated market for recruitment;
- c) The approach would be relatively simple for us to administer as it would build on existing materials such as the [Pupillage Handbook](#);

- d) The improvements would align with our overall approach and would be prioritised in accordance with the risks that needed to be addressed and the resources available to do so.

**Disadvantages of the continuous improvement approach include:**

- a) The approach might focus too much on administrative process and do little to address regulatory risks in a systematic way;
- b) The approach might not give chambers or other entities/employers the flexibility they seek;
- c) Responsibilities for delivery of effective pupillage might remain unbalanced as between chambers, pupil supervisor and the pupils themselves, which might reduce the effectiveness of regulation;
- d) The approach may fail to meet our objective of focusing on outcomes, as opposed to prescribing content of training, as a way of assuring standards.
- e) the issues outlined above in relation to the vulnerability of pupils might not be resolved soon enough;
- f) regulation of pupillage might be out of step with “mainstream” BSB regulation.

**QP18:** Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

**QP19:** Are there any other advantages or disadvantages to this approach?

**QP20:** Are there any equality impacts of this approach that you are aware of?

## Approach 2: Approval of any pupillage schemes proposed by PTOs that demonstrate the achievement of the standards set out in the Professional Statement

323. An alternative approach retains some formality of structure and content in pupillage, while supporting the development of alternative approaches and adapting to the needs of the market. In this approach, the current more rigidly prescribed pupillage, its term and structure, would be replaced with a requirement for our prior approval of pupillage programmes proposed by PTOs.
324. They would need to provide evidence that they meet specified criteria for quality and learning outcomes which matched the Professional Statement. It might be possible in this approach to be more flexible about the duration and content of work-based training and it may not need to be as rigidly prescribed as it is today.
325. We think that pupillage needs to be underpinned by qualification in core knowledge and skills required for the profession, making sure that the pupil is well equipped to learn from the experience that the work-based training provides. For that reason, we think there is a continuing need for some form of vocational qualification to be required prior to the start of pupillage.
326. Further formal training is currently specified during pupillage, and we see value in retaining the principle that formal training is a useful component in the development of the pupil through this phase of training towards authorisation. However, it might not be necessary to specify exactly which components of any formal training requirement happened in the vocational stage and which in the pupillage stage.
327. So under this approach, it might, for example, be possible to build advocacy skills through formal classroom training and observation of real-life practice in different phases or combinations than under the current model. The PTO – or indeed groups of PTOs collaborating – could design or commission, and deliver or oversee delivery of, programmes of skills training that were more focussed on their individual or collective business needs.
328. In this approach, we might still need to issue guidance on best practice for meeting the standards associated with the Professional Statement, which we would do in consultation with appropriate competent bodies. PTOs might adopt this guidance or use it as a basis for adaptation for their own proposed programme.
329. Additionally, we recognise that there is a risk that:
- 1) some PTOs may for good reason (for example financial or in respect of available resources) not wish to, or may be unable design their own programme; and/or that
  - 2) some PTOs who do try to design a programme may not be capable of running it effectively.

This may create a risk that either PTOs in (1) may choose to stop offering pupillages, or that PTOs in (2) begin to operate programmes that increase the risks involved for both pupils and the PTOs themselves.

Therefore we would also consider including the current, standard pupil model within the type of programme that we would approve, allowing chambers to continue with that system if it is what is most appropriate in the circumstances.

330. Under this “approval system” it could also be the case that the PTO would “sponsor” the application to the BSB for provisional practising rights for the individual pupil and then subsequent full authorisation, at the points in time at which the PTO considered it could demonstrate that the required standard had been met, that the new barrister was not an unacceptable risk to the public, and that pupillage had been completed.
331. The process of how a PTO might operate such a sponsorship scheme would be included in the substance of their pupillage programme. This would remove the bureaucracy around the current ‘waiver’ application system.
332. The ways in which Chambers could assess that a pupil is ready to accept provisional practising rights may include the pupil’s undertaking many forms of advocacy and provision of legal advice that both do and do not have to be regulated by us, or regulated at all (such as representation of clients before tribunals or paralegal and caseworker advice in law centres or Citizens’ Advice Bureaux) as well as the work they carry out with the PTO itself.
333. The best practice guidance might still however stipulate some recommended minimum and maximum periods for which skills needed to be practised under supervision in a range of specified real-life situations in order to reach those points. We realise that there is a risk that a vulnerable pupil could be prevailed upon by unscrupulous chambers, seeking to take maximum advantage of “cheap labour” to either (1) begin practice before they are in fact competent to do so, or (2) to continue pupillage longer than necessary.

Equally, such guidance would need probably need to set out *maximum* periods of work based training. If the training period were left open-ended, that could create the risk of pupils being taken advantage of as “cheap labour” by a chambers deliberately failing to sign off a pupil as having completed pupillage, or failing to commit to offering a tenancy, simply to keep them on in a low-remunerated role irrespective of their competence.

### **The advantages of this approach include:**

- a) Clearer accountability for an approved pupillage would be vested in the PTO which is best placed to take responsibility for training its pupils (and likely future tenants);
- b) Greater opportunity for the PTO to design pupillage that matches the nature and structure of its business and practice areas, whilst meeting the expectations of the Professional Statement;

- c) Opportunity for PTOs to adopt a standard model of pupillage if they do not wish to, or cannot afford to invest in developing their own proposition;
- d) Opportunities for chambers, entities and employers to collaborate cost effectively on the design and delivery of more flexible pupillage programmes;
- e) Greater opportunity for competent bodies to contribute to and draw on the community of best practice at this stage of training, for example the Advocacy Training Council or the Crown Prosecution Service;
- f) Greater flexibility within some fixed parameters might encourage a larger number of pupillages to be available in the market, helping to meet unmet needs of both consumers of legal services and those aspiring to practise.

**The disadvantages of this approach include:**

- a) Prospective pupils might need to consider more carefully the specific arrangements attached to individual pupillages on offer;
- b) Limited scope for improvement of systems for quality assurance in smaller PTOs;
- c) Risk of inconsistency of standards at the point of authorisation through too great a variation of content and delivery;
- d) There may not be enough capacity in the market to sustain this approach without specific incentives;
- e) The approach does not necessarily address the issues in relation to vulnerability of pupils;
- f) BSB would need to transfer or increase resources to develop expertise in relation to approval and oversight of programmes and evaluation of pupil's readiness for authorisation, so it could be more costly;
- g) The shift of responsibility to PTOs for the design and operation of the scheme would result in increased costs for PTOs;
- h) Changes in regulation risk, and increased regulatory cost, precipitating decline in the availability of pupillages, over and above that driven by the market;
- i) Changes/volatility in the regulatory framework risk unintentionally making pupils more vulnerable in comparison to their chambers and/or supervisor or indeed themselves, reducing capacity in the market.

**QP21: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?**

**QP22: Are there any other advantages or disadvantages to this approach?**

**QP23: Are there any equality impacts of this approach that you are aware of?**

### **Approach 3: Authorisation of candidates on the basis of their own evidence of having met the requirements of the Professional Statement; with possible final independent external assessment.**

334. In this approach, we would remove any system of prescription or prior approval of the term, structure and content of pupillage. Regulatory action would be focused entirely upon verification of evidence that the pupil has achieved specified learning outcomes that match the Professional Statement.
335. Evidence would need to respond to guidelines related to each of the skills, attributes and areas of knowledge defined in the Professional Statement at the Threshold Standard. This provides a very high degree of flexibility to the pupil and to the PTO and arguably represents the most radical departure from current practice in pupillage.
336. It would be possible and/or desirable for us, in conjunction with other competent bodies, to require a final, summative assessment, based on the Professional Statement, to be passed before a barrister could be authorised to practise.
337. As above, such an approach might allow the many forms of advocacy and provision of legal advice that do not have to be regulated by us, or regulated at all (such as representation of clients before tribunals or paralegal and caseworker advice in law centres or Citizens' Advice Bureaux) to "count towards" full authorisation, but there would be no requirement for this to be supervised by a PTO within a pupillage programme.
338. This could respond to unmet consumer need. It might provide many more opportunities for aspiring barristers to progress beyond the vocational qualification and into full authorisation.
339. There are many practical implications of implementing such a scheme. But, using the analogy of one of the approaches set out above in relation to vocational training, providing the summative assessment had been passed and/or the evidence of competence to practise had been validated positively, there might be no reason to impose a regulatory framework of requirements on the *route* to final authorisation.
340. This approach would have the probable effect also of removing a distinction between a non-practising and practising period of pupillage as currently framed, though it might be still be necessary to put in place arrangements for some form of provisional authorisation for individuals which could only be converted to full authorisation through success at the final assessment.

**341. The advantages of this approach include:**

- a) great flexibility allows for pupillages to be adapted to the greatest variety of circumstances;
- b) it may allow for a pupil to gain relevant experience and qualify while carrying out work that is remunerated at a higher rate than the average pupillage award;
- c) the number of people “converting” a vocational stage qualification to full authorisation might increase significantly, helping to address unmet consumer need and potentially bringing more legal service provision within affordable price ranges and enhancing access to justice.

**342. The disadvantages of this approach include:**

- a) provisional authorisation in such circumstances would introduce new risk to the interests of consumers, whereby inexperienced practitioners would be able to provide a wider range of legal services;
- b) it might become much more practically difficult and more costly for us to operate a system to assure consistent outcomes and maintenance of necessary standards. That increased cost would almost certainly be passed on to the profession, or be charged to individual pupils;
- c) the approach is outside the experience of a profession that has a deeply-embedded and valuable professional cultural approach to training, risking a loss of confidence and capacity amongst those most capable of providing the training;
- d) lack of accountability on the part of the PTO where one was involved might increase the vulnerability of the pupil;
- e) the approach might not provide the sufficient opportunity for us to address the range of risks associated with pupillage set out earlier in this consultation;
- f) the cost of an external assessment would need to be borne by either the PTO supervising the pupil, or quite possibly the pupil themselves.

**QP24:** Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

**QP25:** Are there any other advantages or disadvantages to this approach?

**QP26:** Are there any equality impacts of this approach that you are aware of?

**QP27:** From the three approaches outlined above, do you have a preference and if so, why?

**QP28:** Have you identified any other approach we might reasonably adopt in respect of professional, work-based training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

## Part 4: Publication of key statistics for vocational training and professional training, for the public and the profession

343. A well-functioning legal services market, including the market for legal education and training, relies on the availability of extensive, up to date information which people involved – be they consumers or suppliers – can use to make good, informed choices.
344. Barristers work with a close connection to areas of public life that have to function well for the benefit of everyone in society – the civil and criminal justice systems, for example. Public interest regulators, especially when they are operating in accordance with a risk and evidence-based approach as we must do, also “run on information”: we cannot do our job properly without it.
345. We think we have a responsibility to the public and consumers, and in the particular area with which this consultation is concerned, to existing and prospective students and aspiring barristers, to collect, validate, analyse and publish statistical information and, to make available quality assurance reports that we produce.

We must of course do so in accordance with relevant legislation such as the [Data Protection Act 1998](#) and the [Freedom of Information Act 2000](#) to the extent that they apply to us.

### Q1: Do you agree that the BSB has this responsibility? If not, why not?

346. We have committed to publishing a far greater range than ever before of key statistical information on our education and training system, during the course in 2015. This will include:
- prior achievement by candidates for the BPTC course;
  - the diversity of candidates;
  - achievement in the course;
  - success rates in securing pupillage; and
  - important correlations between these characteristics of the market for training and qualification.
347. Our view is that the publication of reliable information on overall candidate performance will foster continual improvement of standards by training providers, and support any move to reduced reliance on prescriptive training requirements. Students are better-informed and more confident consumers than in the past, with a general expectation that their opportunity to choose will be supported by information that is trustworthy and accessible.
348. Later in 2015 we intend to publish information relating to 2010/11 onwards in the categories below.

## Part 4: Publication of key statistics

Overall results, student profile and student progression	Overall student profile	Overall student progression
<ul style="list-style-type: none"> <li>• Applications and enrolments</li> <li>• Overall grades obtained by students</li> <li>• Breakdown of grades of full and part time students</li> <li>• Overall grades indicating whether achieved at first or second attempt</li> <li>• Student results by first degree classification</li> <li>• Student results by domicile</li> <li>• Student results by ethnicity</li> <li>• Student results by gender</li> <li>• Student results by disability</li> </ul>	<ul style="list-style-type: none"> <li>• Age as at 1 October of year of enrolling</li> <li>• Domicile</li> <li>• First degree classification</li> <li>• First degree classification by domicile</li> <li>• University at which first degree studied</li> <li>• Students who completed CPE/GDL</li> <li>• Ethnicity</li> <li>• Gender</li> <li>• Declared disability</li> </ul>	<ul style="list-style-type: none"> <li>• Number of BPTC graduates commencing a first six pupillage</li> <li>• Time elapsed between BPTC completion and commencement of first six</li> <li>• BPTC grades of graduates commencing first six pupillage</li> <li>• Domicile of graduates commencing first six pupillage</li> </ul>

**Q12:** Are there other categories of information you think we should collect and analyse? Please explain briefly why.

349. We will of course always fulfil our obligations under statutes applying to information collection and publication. We will also seek to use our resources wisely, and the resources of those from whom we collect information, as far as possible on a “collect once, use many times” principle. We are committed to transparency and will always have a predisposition to publication wherever possible. But we do not have to publish everything we collect.

**Q13:** Are there any categories of information we ought to collect, but that we should not publish, even if under relevant legislation we have the choice whether to do so?

## **Part 5: How to respond to this consultation**

### **The deadline for responses to this consultation is 30 October 2015**

You do not have to wait until then to respond. You can respond to any or all of the areas of the consultation: it has been structured so that if your primary interest is on only one area of the education and training system for barristers, you can if you wish respond only to that section.

A response does not have to be a comprehensive written document: it can be if you wish, but it can also be short form answers to the very specific questions we have posed. It is however far more useful to us (and we are better able to take your views into account) if you are able to address the questions we have posed specifically, rather than, for example, simply reciting your particular view on something to do with training for the Bar. We will of course never exclude consideration of a response, whatever its form or content.

You do not have to respond in writing. If you would like someone from the BSB to meet with you or the organisation group of people you represent, to listen to your views, record them accurately in writing for you, we will do this as far as possible. Just let us know that is what you wish to do.

We will be contacting lots of people and organisations who may have an interest in this consultation and asking if we can come and talk to them about it. If you would like us to talk to you about the consultation, please get in touch.

If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know.

Please let us know if there is anything else we can do to facilitate feedback other than via written responses.

Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation, and publish a list of all respondents - unless you specifically ask that we do not do any of these things. Please make your wishes clear to us in this regard.

Please send your response, or otherwise get in touch, as follows:

Email: [futurebartraining@barstandardsboard.org.uk](mailto:futurebartraining@barstandardsboard.org.uk)

Tel: 020 7092 6808

Tim Keeling  
The Bar Standards Board  
289 High Holborn  
Holborn  
London WC1V 6JQ

## **Summary of consultation questions**

### **Part 1: The Academic stage**

- QA1: Does possession of a lower second class degree provide good evidence that an individual possesses the intellectual abilities that are consistent with those described in the draft Professional Statement (paragraph 63 above)?
- QA2a: If an individual does not hold a degree, or the degree that they hold was not passed at the required level, are there alternative means by which these abilities can be demonstrated?
- QA2b: If so, how?
- QA3: Are there any other issues in relation to intellectual abilities and degree classification, as set out above in paragraphs 65 to 77, which we have failed to identify?
- QA4: Do you agree that “knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context” provides an essential foundation for the legal knowledge and understanding that our [draft] Professional Statement requires? Please tell us why or why not.
- QA5: Assuming you agree with the formulation in paragraph 83, which of the above ways (a to e) do you think we should use to make sure that those seeking to be barristers and completing the academic stage have sufficient legal knowledge and understanding to progress towards full qualification as a barrister? Please explain the reason why you have chosen these.
- QA6: Would your answer be different if a student had taken a non-law degree plus a GDL?
- QA7: Are there any other ways of doing this that we have not identified?
- QA8: Are there any other issues associated with the academic stage of training that we have not identified and to which, given our role as a regulator of barristers, we should be turning our minds?

## **Part 2: The Vocational stage**

- QV1: Do you agree that some form of vocational training is needed to bridge the gap between an academic stage and a professional stage?
- QV2: Do you think the features of the changing legal services market which we have identified are the ones which have the main impact on vocational training for barristers?
- QV3: Are there any other features of the legal services market now and in the future which you think will have an impact on vocational training for barristers?
- QV4: Are the above issues in connection with BCAT and admissions to the BPTC correctly identified?
- QV5: Are there any other issues connected to the BCAT and admission to vocational training that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?
- QV6: Are the above issues in connection with content, structure and delivery of the BPTC correctly identified?
- QV7: Are there any other issues connected to content, structure and delivery of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?
- QV8: Are the above issues in connection with quality assurance and assessment of the BPTC correctly identified?
- QV9: Are there any other issues connected to quality assurance and assessment of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?
- QV10: Are the above issues in connection with the cost and affordability of the BPTC correctly identified?
- QV11: Are there any other issues connected to the cost and affordability of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?
- QV12: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?
- QV13: Are there any other advantages or disadvantages of this approach that you can discern?
- QV14: Are there any equality impacts of this approach that you are aware of?
- QV15: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

## Part 5: How to respond and summary of consultation questions

- QV16: Are there any other advantages or disadvantages of this approach that you can discern?
- QV17: Are there any equality impacts of this approach that you are aware of?
- QV18: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?
- QV19: Are there any other advantages or disadvantages of this approach that you can discern?
- QV20: Are there any equality impacts of this approach that you are aware of?
- QV21: From the three approaches outlined above, do you have a preference and if so, why?
- QV22: Have you identified any other approach we might reasonably adopt in respect of vocational training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

## Part 3: The Professional stage of training, or pupillage

- QP1: Have we correctly identified the issues relating to recruitment and selection and access to pupillages?
- QP2: Are there other issues which the regulator should take into account when thinking about recruitment and selection and access to pupillage?
- QP3: Have we correctly identified the issues relating to the structure of pupillage and the quality of experience for the pupil?
- QP4: Are there other issues which the regulator should take into account when thinking about the structure of pupillage and the quality of experience for the pupil?
- QP5: Have we correctly identified the issues relating to meeting the required standards in pupillage?
- QP6: Are there other issues which the regulator should take into account when thinking about meeting the required standards in pupillage?
- QP7: Have we correctly identified the issues relating to the regulator's role in pupillage?
- QP8: Are there other issues which the regulator should take into account when thinking about the regulator's role in pupillage?
- QP9: Are there any other issues not raised in the categories above which we have failed to identify in relation to current arrangements for pupillage?

## Part 5: How to respond and summary of consultation questions

QP10: Do you agree with this fundamental position regarding work-based training as a pre-requisite for authorisation?

QP11: Do you agree that pupillage should be more flexible in its content, with the BSB taking a more generally permissive approach to the sorts of activities that might constitute appropriate content, as long as the requirements of the Professional Statement could be demonstrated as being met?

QP12: What are the risks, if any, associated with this?

QP13: We have consulted separately on the Professional Statement and you may or may not have responded to that consultation. If you have not, do you agree that the Professional Statement should be used to define the knowledge, skills and attributes to be demonstrated at the end of pupillage?

(If you have responded to the Professional Statement consultation, please feel free to re-state or vary your position on this question here.)

QP14: Do you agree with the principle of the rebalancing of responsibility for pupillage as between the “entity” (chambers or otherwise) and the individual pupil supervisor? Why/Why not?

QP15: Do you think there should be more systematic initial validation of PTOs and supervisors?

QP16: Do you think there should be periodic re-validation of PTOs and supervisors?

QP17: Do you think there are benefits in a published list of approved PTOs and supervisors?

QP18: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

QP19: Are there any other advantages or disadvantages to this approach?

QP20: Are there any equality impacts of this approach that you are aware of?

QP21: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

QP22: Are there any other advantages or disadvantages to this approach?

QP23: Are there any equality impacts of this approach that you are aware of?

QP24: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

QP25: Are there any other advantages or disadvantages to this approach?

QP26: Are there any equality impacts of this approach that you are aware of?

## **Part 5: How to respond and summary of consultation questions**

- QP27: From the three approaches outlined above, do you have a preference and if so, why?
- QP28: Have you identified any other approach we might reasonably adopt in respect of professional, work-based training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

## **Part 4: Publication of key statistics**

- Q11: Do you agree that the BSB has this responsibility? If not, why not?
- Q12: Are there other categories of information you think we should collect and analyse? Please explain briefly why.
- Q13: Are there any categories of information we ought to collect, but that we should not publish, even if under relevant legislation we have the choice whether to do so?

## Appendix A

### The role of education in the BSB's regulatory regime

#### Introduction

350. The purpose of this paper is to place our education function, and the [Future Bar Training](#) (FBT) programme in particular, in the context of the wider change programme at the BSB and to demonstrate how FBT links to wider external factors that we must consider as a regulator.
351. Alongside FBT, we have launched a new change programme (ASPIRE – Accessing Staff Potential to Inspire Regulatory Excellence), the three main work streams of which are risk, consumers and governance – all of which will have an impact on our final approach to education and training, following the completion of FBT.

#### Background

352. We regulate in the public interest and with regard to the other regulatory objectives. Our role is primarily to authorise individuals to undertake reserved legal activities (it also, to a lesser extent, regulates those holding the title barrister who are not authorised to exercise reserved legal activities).
353. In addition to the regulatory objectives, we have adopted two principles of good regulatory practice, which are set out by the Legal Services Board in its regulatory standards framework:
- a) outcomes focused regulation; and
  - b) risk-based regulation.
354. When regulating reserved legal activities, our primary tool to ensure public protection is the barristers register. By setting the standards to enter and remain on the register we make sure that appropriate standards are maintained. For the unregistered, these standards are set at the point of call to the Bar (hence the requirements for call to the Bar are an important component of, but not sufficient for, authorisation to practise).
355. We are **not** a regulator of education – in our capacity as a regulator of legal services we are only concerned with the **outcome** of the education process as a means of demonstrating suitability to access the barristers register (or suitability for call to the Bar for the unregistered).

## Our requirements

356. In exercising our regulatory functions (whether in connection with reserved legal activities or not) we must act in a way that is compatible with the regulatory objectives and which we consider most appropriate for the purposes of meeting those objectives. The regulatory objectives are listed in section 1 of the [Legal Services Act 2007](#). We must also have regard to the principles under which activities should be transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed, in addition to any other principle appearing to us to represent best regulatory practice<sup>8</sup>.
357. In addition to these requirements of the [Legal Services Act 2007](#), we are also subject to the Regulators Code. The Legal Services Board has also established its regulatory standards framework, which we have adopted as good regulatory practice, with a change programme (ASPIRE) to make sure that it achieves a “satisfactory” rating under the framework by April 2016. The LSB framework’s indicators of success are summarised in Appendix B.

## Our approach to regulation

358. In the light of these external drivers of good practice, we have made a decision to be **risk-based** and **outcomes-focused** in our approach to regulation. The FBT programme has a key role to play in meeting both of these objectives.

## Risk-based regulation

359. Working in a risk-based way means that before we act, we work to identify the things that could go wrong, or have gone wrong, in the sector of the market that we regulate. We must also consider, from the wide range of tools at our disposal, which intervention is right for each situation or identified risk.
360. Our draft risk index, approved by the Board, will be published later in 2015. It will highlight the key risks that we are seeking to address in the market. These will fit into a number of broad categories:
- Market and external risks;
  - Ethical conduct;
  - Competence to practice;
  - Management and administration; and
  - Client service and delivery.

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<sup>8</sup> s28, Legal Services Act 2007

361. The training and assessment required to qualify as a barrister (in addition to validation of knowledge and skills previously demonstrated) are some of the key controls that we can apply to mitigate these risks. We do this currently in two ways:
- by setting the standards required for call to the Bar; and
  - by setting the standard required for authorisation to practise reserved legal activities (there are then ongoing CPD requirements once authorised).
362. It is important to note that these ‘gateways’ into the profession cannot (and should not) seek to control all risks. To do so would be disproportionate and lead to over-regulation (which would be contrary to the better regulation principles and the Regulators Code). The FBT programme therefore needs to be seen in the context of the wider BSB structure, which also includes:
- Policy and Standards (including [the BSB Handbook](#) and associated guidance);
  - Supervision;
  - Post-authorisation requirements (such as CPD);
  - Enforcement.
363. If we are being targeted and proportionate, we should spread the controls across all areas of activity – being too risk averse at the outset will create barriers to entry that may not be in consumers’ interests (by reducing the supply of qualified professionals).

### **Outcomes-focused regulation (OFR)**

364. The key principle of OFR is that the regulator should be concerned about the outcomes experienced by clients and others impacted by barristers’ activity – that our regulatory arrangements should be focused on these rather than detailed process-driven or prescriptive rules. Put simply, the **end** is more important than the **means**.
365. In the regulatory context this means that the gateways to the profession need to specify the outcomes that are required for call to the Bar and for authorisation to undertake reserved legal activities. In theory, the regulator need not be concerned at all about the **process** of education and training, as long as the outcome is someone suitable to be called or suitable to practise.
- This is why some regulatory regimes simply adopt an entry exam – passing the exam demonstrates that the outcomes needed for registration have been met. However, in addition to setting the standard for entry to the profession, we must also be satisfied that we have met the regulatory objective of “encouraging an independent, strong, diverse and effective legal profession” which is likely to require a wider range of regulatory interventions to promote equality and diversity in particular.
366. In practice, an exam may not be a suitable vehicle for demonstrating all of the outcomes where (for example) an element of work-based practice may be necessary. An alternative approach may be to invite potential providers to demonstrate how they intend to make sure the outcomes have been met (with appropriate quality assurance processes to ensure that those completing training have satisfied the necessary outcomes).

367. In any case, in an outcomes-focused approach, the regulator must not prescribe the method of education unless there are evidence-based reasons to demonstrate that such a requirement is necessary. An outcomes-focused approach also enables innovation in the provision of training and greater flexibility, which in turn can drive efforts to improve diversity in the regulated population.
368. FBT will therefore have implications for our wider review of our governance arrangements. An outcomes focused approach will mean that detailed specification of curricula (and the expertise to do so) will no longer need to be undertaken by the BSB. There will continue to be a need for some form of quality assurance function so that we can satisfy ourselves that those who are called or who access the barristers register have in fact met the required standards.
369. The LSB's regulatory standards framework also makes clear that any outcomes focused approach must rely on high quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the BSB regulates with evidence about whether outcomes are being achieved.
370. The ASPIRE programme therefore includes a work stream to build our knowledge and understanding of consumer needs. We will then have to regularly review and update our regulatory arrangements (including training requirements) based on that evidence.

### **The standard required**

371. The regulator must decide the appropriate level for its entry gateways. In doing so it must balance a number of factors, in particular:
- the regulator must set a baseline standard for competence to make sure that the public interest and other regulatory requirements are met;
  - however, the regulator must not 'gold plate' or seek unnecessarily high standards, as this will restrict entry to the profession, reducing supply in the market, which in turn could reduce consumer choice, increase prices and restrict diversity.
372. We have therefore published the Professional Statement for consultation, which includes the skills and attributes that are expected of barristers who have been authorised to practise. The next phase, the "threshold standards" will be key to establishing the minimum level required for authorisation

## Appendix B

### LSB regulatory standards framework

#### Outcomes focused regulation

Factors that indicate that the approved regulator (AR) is towards top of the scale:

- Regulatory arrangements deliver the outcomes that consumers need; there is clear evidence and analysis to justify any detailed rules; those regulated understand and accept approach to regulation;
- All members of staff and Board understand the organisations approach to focusing regulation on the consumer and public interest;
- High quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the AR regulates; evidence about whether outcomes are being achieved; consumers have confidence in regulation. Regularly reviews and updates its regulatory arrangements based on that evidence.

#### Risk assessment

Factors that indicate that the AR is towards top of the scale:

- Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR regulates. Risk analysis focuses predominantly on consumer detriment, including those in vulnerable circumstances. Evidence that approach to risk works in practice;
- Approach to evidence gathering for risk assessment enables the identification of future trends as well as current issues;
- Relevant staff and Board understand the reasons for risk assessment, how it informs other aspects of the AR activities. Staff share best practice and lessons learned in a structured and effective way.

#### Supervision

Factors that indicate that the AR is towards top of the scale:

- Supervisory activity:
- is underpinned by an evidence-based understanding of different market segments and providers that the AR regulates;
- is determined by reference to identified risks;
- is informed by data from the Legal Ombudsman;
- facilitates innovation, change and commercial freedom; and

- is adequately resourced (including the use of fit for purpose technology) to provide good quality, consistent decisions without backlogs.
- Clear and structured feedback loops between supervisory activity, risk assessment, staff learning and best practice;
- Regular senior management and Board monitoring of effectiveness and value for money of supervisory activity leads to improved processes.

#### Enforcement

Factors that indicate that the AR is towards top of the scale:

- Published policies and guidelines are written in plain language that enables others to understand the criteria for deciding to take action; appeal processes follow best practice;
- A wide range of effective, proportionate enforcement tools that can be deployed quickly by staff who have appropriate levels of experience and are well trained; enforcement powers provide appropriate incentives for compliance;
- enforcement penalties punish as well as deter; regular senior management and Board monitoring of effectiveness and value for money of enforcement activity feeds back to improved processes and reduced costs;
- Decisions to take (and not to take) enforcement action are evidence based and use reliable sources.

#### Capacity and capability

Factors that indicate that the AR is towards top of the scale:

- Clear and consistent leadership at Board and senior management level that ensures that the whole organisation has strong consumer engagement and consumer focus. Consumers are confident that regulation is independent;
- Appropriate levels of budget and staffing linked to the nature of the market(s), entities and individuals regulated;
- required skill sets are defined and linked to the key challenges facing the organisation, to the regulatory objectives and to the AR's regulatory outcomes – which are achieved in practice.
- Organisations structure enables effective decision making by appropriate delegation of powers to staff;
- Evidence-based understanding of the market(s) it regulates and the commercial realities of operating in it. High levels of knowledge management and analytical skill at all levels in the organisation drives culture of transparency, continuous improvement and embeds best regulatory practice from legal regulation and other industries.

## Appendix C

### Levels of graduate achievement

(From *Assessment in Higher Education and the Role of Graduatness*, the Higher Education Quality Council, 1997).

This presents an example of contemporary guidance on, and of the characteristics seen as defining, levels of graduate achievement. It comes from one of the HEIs whose law faculties formed part of the sample and has been adopted by many law schools as the basis for their assessment of programmes. It could have come from any of them; indeed with a few changes of reference, it corresponds closely to the guidance of 'class' characteristics distributed by central administrations in all the universities visited.

#### Example 1

##### First class

**A first class answer has a thoughtful structure, a clear message displaying personal reflection informed by wider reading of articles and/or other commentaries and a good grasp of detail (as evidenced by the choice of relevant examples which are well integrated into the answer's structure). Complete with no errors or omissions.**

First class answers are ones that are exceptionally good for an undergraduate and which excel in at least one and probably several of the following criteria:

- comprehensiveness and accuracy
- clarity of argument and expression
- integration of a range of materials
- evidence of wider reading
- insight into the theoretical issues.

Excellence in one or more of these areas should be in addition to the qualities expected of an upper second class answer. Although there is no expectation of originality of exposition or treatment, a first class answer is generally expected to spot points rarely seen. A high first is expected to display originality and excel in most if not all the aforementioned criteria.

### **Upper second class**

**An upper second class answer generally shows a sound understanding of both the basic principles and relevant details of the law, supported by examples which are demonstrably well understood and which are presented in a coherent and logical fashion. The answer should be well presented, display some analytical ability and contain no major errors or omissions. Not necessarily excellent in any area.**

Upper second class answers cover a wider band of students. Such answers are clearly highly competent and typically possess the following qualities:

- generally accurate and well-informed
- reasonably comprehensive
- well-organised and structured
- provide evidence of general reading
- demonstrating a sound grasp of basic principles
- demonstrating a good understanding of the relevant details
- succinctly and cogently presented
- displaying some evidence of insight.

One essential aspect of an upper second class answer is that it must have competently dealt with the question asked by the examiner. In problem questions all the major issues and most of the minor issues must have been spotted; the application of the legal rules must be accurate and comprehensive; the application of the legal rules must be insightful (ie, the candidate must demonstrate that s/he can both distinguish cases on their facts and argue by analogy); there should be a conclusion that summarises the legal position of the relevant parties.

### **Lower second class**

**A substantially correct answer which shows an understanding of the basic principles.**

Lower second class answers display an acceptable level of competence, as indicated by the following qualities:

- generally accurate
- providing an adequate answer to the question based largely on textbooks and lecture notes
- clearly presented
- no real development of arguments
- may contain some major error or omission.

A lower second class answer may also be a good answer (ie an upper second class answer) to a related question but not one set by the examiner.

**Third class**

**A basic understanding of the main issues but not coherently or correctly presented.**

Third class answers demonstrate some knowledge or understanding of the general area but a third class answer tends to be weak in the following ways:

- descriptive only
- does not answer the question directly
- misses key points
- contains important inaccuracies
- covers material sparsely, possibly in note form
- assertions not supported by authority or evidence.

**Pass**

**A pass represents the minimum acceptable standards at the bottom of the third class category.**

There is just sufficient information to indicate that the student has a general familiarity with the subject area. Such answers typically:

- contain very little appropriate or accurate material
- only cursorily cover of the basic material
- are poorly presented without development of arguments.

**Borderline fail**

Not a category as such but answers in the range usually contain some appropriate material (poorly organised) and some evidence that the student has been to one or two lectures and done a bare minimum of reading.

See Appendix C of the [QAA Law Benchmark Statement](#).

## Appendix D

# Future Bar Training: BPTC and pupillage focus group research report

## About this report

### Background

373. In October 2014 the Bar Standards Board launched [Future Bar Training](#), a programme of review and reform designed to bring the regulation of training for the Bar up to date and to assure high standards in barristers' services in the future.
374. We need to focus our proposals for reform on areas where we can justify intervening. To help us, we have identified three key principles:
- **High standards** - we must be able to show that as a result of our changes barristers are maintaining high standards for effective practice. But we must set those standards in such a way that they keep pace with change in the legal services market;
  - **Essential skills** - our job as the regulator of Bar training is to focus on those things that a barrister must be able to do – we do not need to intrude further;
  - **Access to training** - regulation should not prevent candidates from the widest range of backgrounds from training for the Bar.
375. The vocational and professional stages of training for the Bar, currently fulfilled by the Bar Professional Training Course (BPTC) and pupillage are key areas of the [Future Bar Training](#) programme of reform.

### Why have we produced this report?

376. We wanted to understand more about the current experience of vocational and professional training and how far in its current form it is helping us to achieve these key principles. We carried out a series of structured focus group discussions with current and aspiring barristers and BPTC tutors. This report is a record of our research.
377. We have used this research to update our proposals for reform, which are set out in a consultation paper to be published in July 2015.

### **How did we carry out our research?**

378. We used focus groups to find out the depth and complexities of people's views.
379. Often, in a focus group setting, people taking part can stimulate new thoughts for each other, which might not have otherwise occurred. Each session provided a high quality discussion and brought to our attention some important issues in advance of our wider consultation.
380. We held eight focus groups in six locations in England and Wales, led by an independent facilitator/researcher.
381. We recruited people by open invitation. Throughout the focus groups we carried out equality and diversity monitoring. You can find the results at the end of this report.

### **Who did we invite views from?**

382. We invited views from:
- current BPTC students;
  - BPTC graduates that had not yet secured pupillage;
  - pupils;
  - new practitioners (less than five years in practice)
  - experienced practitioners (more than five years in practice); and
  - BPTC tutors.
383. We hosted two focus groups solely for BPTC students, BPTC graduates and pupils to make sure these people were comfortable in sharing their views.
384. We invited all other people taking part to the remaining six focus groups.
385. To maximise the opportunity for practitioners to contribute, we supplemented the focus group discussions with one-to-one telephone interviews with barristers.
386. In total 51 individuals were involved:

Practitioners	21
BPTC tutors	18
BPTC students	2
BPTC graduates	7
Pupils	3

387. It should be remembered that although the number of current pupils participating was small, all practitioners and most BPTC tutors have also been pupils at some previous point. To protect anonymity and promote candour, we held sessions under the Chatham House rule and recorded them for accuracy and transparency.
388. We encouraged people taking part to focus on education and training up to the point at which an individual is authorised to practise under a full practising certificate (that is, after completing the second six of pupillage).

### **Questions we asked people taking part**

389. We asked:
- what do you expect this stage of training for the Bar (currently the BPTC and pupillage) should deliver?
  - in what ways is the current system working well to meet your expectations?
  - in what ways is the current system not working so well to meet your expectations?
  - what do you think are the greatest opportunities for improvement?
390. Within each area, we asked people taking part to focus on the issues they felt most strongly about.
391. We also asked them to think about areas where they believed the BSB as a regulator should focus.

### **The focus of our research**

392. We focused on the vocational and professional training requirements for barristers - currently fulfilled by the BPTC and pupillage.
393. Sometimes people looked at the academic stage requirements as background for our discussion – here are some key points that were made:
- both the qualifying law degree and the conversion course are currently providing students with sufficient knowledge of the law to progress to the BPTC;
  - it might be more effective for student learning to introduce ethics and the rules of evidence at the academic stage;
  - in some cases it appears that students are not held to high standards of spelling and grammar at the academic stage;
  - students need to receive honest careers advice at the academic stage.
394. We focused our research on education and training up to the point when a barrister is authorised to practise – but some people taking part felt it was important to view the discussion within the wider context of ongoing learning and development throughout a barrister's career.

## External factors

395. Although the following issues are outside our control, people highlighted them as important external factors:
- market pressures that impact the availability of pupillage;
  - both the positive and negative aspects of the culture of the Bar;
  - the cost of higher education in general;
  - the assessments-focus of the UK education system; and
  - the standard of education generally.

## Our findings

396. Points of view on the current training and opportunities for improvement varied widely. In many areas of our discussions, opinions differed within as well as between communities.
397. We want to reflect these diverse views accurately, letting you know wherever possible:
- where people taking part agreed or disagreed;
  - which communities had particular points of view; and
  - the strength of opinion.
398. Since we designed our process to capture the full range of views, we did not try to get everyone to agree within group discussions.
399. We have not tried to resolve the differences of opinion in this report. The evidence reflects the complex issues raised and this report provides the background for our consultation on the future of Bar training.

## Areas of agreement

400. On a few issues nearly everyone agreed, often with considerable strength of feeling:
- generally, students who reach the end of their second six of pupillage are ready to be authorised to practise;
  - the current training programme meets at least some of the regulatory requirements, in that those who complete it are equipped with the knowledge and skills needed to fulfil their duties in the public interest.
401. However, the group highlighted some significant flaws. They have important implications for the regulator and the Bar community as a whole - particularly for access to training and diversity – and nearly everyone called for change.

**People taking part agreed on the following issues:**

- a) there are general weaknesses associated with the current BPTC model;
- b) almost everyone taking part raised serious concerns about:
  - the cost benefits of taking the BPTC in respect of the huge debt students take on (especially now that university fees have increased);
  - the poor regard in which the qualification is held by some in the profession;
  - the scarcity of pupillage places.
- c) people are particularly concerned about the negative impact of cost on the diversity of the profession;
- d) the lack of portability of the BPTC, both within and beyond the legal profession, adds further to concerns about the cost benefit of the qualification;
- e) both knowledge and skills are essential for practice. The breadth of the BPTC *knowledge* requirement combined with the nature of assessment (especially multiple choice questions) leaves limited scope for developing *skills*;

There was widespread concern, including among many experienced practitioners and tutors, that this focus has a negative impact on the development of skills learning and is not fostering the ability to assimilate new knowledge and apply it to solve problems in professional day-to-day practice;

- f) There should be increased focus on the “real world” of practice in the prescribed content of the BPTC. Specifically, a practical focus is very important for skills training, particularly advocacy;
- g) The BPTC does not appear to be operating as an aid to selecting the most capable trainees for the Bar; BPTC marks are rarely part of the selection procedure for pupillages;
- h) The pupillage system, when it works well, is generally regarded as an effective training vehicle. However it is widely acknowledged that the quality of the pupillage training experience is highly dependent on the individual pupil supervisor, and that positive experiences are by no means universal;
- i) Training provided by the Inns of Court during the BPTC and pupillage is regarded to be high quality.

## What do people expect from vocational and professional training?

402. We asked people taking part to tell us what they expected vocational and professional training for the Bar (BPTC and pupillage) should deliver for individuals and the profession. There was broad agreement about the knowledge, skills and attributes that individuals should possess by the end of the vocational training stage.
403. Most people agreed the following:
- a) the training should make sure graduates are credible and competent advocates and have “*the ability, confidently demonstrated, to represent a client in a court of law*” (experienced practitioner);
  - b) ethics is the most important factor: a barrister’s ethical understanding and approach should develop throughout the training programme;
  - c) by the end of training:
    - individuals should have a deep understanding of the ethical requirements of their profession, including the code of conduct;
    - individuals should be aware of the ethical considerations involved across their work and be able to recognise and deal with ethical concerns within the context of practice.

## The qualities a barrister should possess

404. By the end of the vocational training process:
- individuals should be able to make decisions based on sound appreciation of professional ethics;
  - individuals should have a set of attributes that equip them to use their knowledge and skills effectively;
  - individuals should be confident but self-aware;
  - individuals should be resilient, committed, creative, and persuasive;
  - individuals should have clarity of thought and good judgment;
  - individuals should be able to recognise their own limitations and admit when they have made mistakes.

## A barrister’s knowledge and understanding

405. Individuals should develop a sound knowledge of the areas described below. However, it was felt that knowledge in itself is insufficient and that a developed *understanding* of fundamental principles is of great importance.
406. People taking part in our focus groups thought the BPTC should cover the following (in order of priority):

<p><b>Procedural and substantive law</b> (certainly criminal and civil, and a number of people argued family law).</p>	<p>Individuals should learn the fundamental principles, and how to apply them effectively and efficiently.</p> <p>Alternative dispute resolution should also be covered.</p>
<p><b>Social awareness</b></p>	<p>It is essential for a barrister to understand, communicate effectively with, and represent clients.</p>
<p><b>How commercial practice works, and what their compliance and professional obligations are</b></p>	<p>Individuals should be aware of the practical elements of practice:</p> <ul style="list-style-type: none"> <li>• self-employment (tax, billing, etc);</li> <li>• working with clerks and solicitors; and</li> <li>• business marketing.</li> </ul>

407. This knowledge should be further enhanced through practice during pupillage, where it is expected that individuals will build an understanding of what practice at the Bar entails.

408. People taking part agreed that pupils should understand current best practice and potential developments, and appreciate the key rules of courtroom etiquette.

### **What skills are required?**

409. People taking part agreed the BPTC should create a strong foundation of skills in the following areas, which can be built on during pupillage.

410. In order of priority they chose the following desired skills:

<p><b>Technical skills required for practice:</b></p> <ul style="list-style-type: none"> <li>• advocacy (the most commonly mentioned and strongly emphasised);</li> <li>• legal research;</li> <li>• analysis, drafting;</li> <li>• opinion writing;</li> <li>• interviewing; and</li> <li>• conference and negotiation.</li> </ul>	<p>Some people emphasised the importance of being able to develop an individual style as an advocate.</p>
<p><b>Excellent verbal and written communication</b></p>	<p>Essential across all practice areas.</p>
<p><b>Problem solving</b></p>	<p>Individuals should have the ability to use the breadth of their knowledge and skills to devise practical and workable solutions based on client need.</p>
<p><b>Learning</b></p>	<p>Individuals should be:</p> <ul style="list-style-type: none"> <li>• capable learners;</li> <li>• independent; and</li> <li>• self-reflective.</li> </ul> <p>Individuals should recognise they will be required to continue learning throughout their practice and so have the knowledge and confidence to undertake research and seek help in support of their own learning.</p>
<p><b>“People handling” and client relations</b></p>	<p>Individuals should:</p> <ul style="list-style-type: none"> <li>• be able to understand and work with a broad range of people;</li> <li>• understand issues of diversity and be able to reflect this in their practice.</li> </ul> <p>Most people taking part expected this to be more of a focus during pupillage than on the BPTC.</p>
<p><b>Professionalism</b></p>	<p>Individuals must be able to manage their time effectively, manage stress and be able to work as part of a team.</p>

## The BPTC

411. There was a great diversity of views on the strengths and weaknesses of the BPTC, both within and between the different communities.
412. People taking part often described very different experiences of the course, whether as student, tutor or practitioner. This is reflected in the breadth of issues (positive and negative) identified.
413. Many new practitioners voiced strong concerns about its relevance and how little they feel the BPTC has helped them in their professional practice. Comments such as “*The BPTC as it currently stands is not fit for purpose*” were made frequently.

## The value of the BPTC

414. Grave concerns about the cost benefit of the BPTC were expressed across all communities, but particularly by current BPTC students, pupils and new practitioners:  
*“What I learned on the BPTC I have subsequently had to unlearn, and it is better that I unlearned it”* (new practitioner).
415. Several new practitioners felt the BPTC has not had any relevance or bearing on their time in pupillage and practice. People taking part were concerned about overall value for money, related to the factors below, and, for some, the quality of the teaching experience, which we discuss in more detail later in this section.
416. The high financial risk associated with a qualification where only a minority would be able to progress to a career at the Bar, and which has limited use beyond the profession, was felt to be too great:  
*“It’s an absolute disgrace for a course this expensive that only one in five will get to use a qualification that is useless for anything other than becoming a barrister. I’ve heard it said that it’s like an MBA, but that’s just a sop.”* (experienced practitioner).
417. Some people taking part, especially new practitioners, expressed concern that the qualification is not respected by the profession and lacks credibility:  
*“The first thing I was told was forget everything you’ve learned on the BPTC”* (new practitioner).
418. Almost everyone taking part felt that the high cost of the BPTC poses a major barrier to diversity within the profession:  
*“It’s just a risk that is too high for most people to take... unless you have a particular personal background that can financially support you through that time”* (pupil, second six).

## Admission to the BPTC

419. Wide-ranging views were expressed on how selection and admission to the BPTC works in practice.
420. The Bar Course Aptitude Test (BCAT) is seen as an ineffective tool for screening for entry to the BPTC. Current and recent BPTC students frequently said that some students are admitted with too low a standard of written and spoken English, or too low an academic standard, or simply less enthusiasm and commitment, which they feel strongly impacts on the quality of learning for other students:  
*“When you are taught advocacy, you are reliant on your classmates. If someone is not grappling with the course appropriately, or they don’t have a proper grasp... it can be very frustrating”* (new practitioner).
421. In a few cases, recent BPTC graduates were concerned that some students are being inappropriately admitted by providers:  
*“At my provider people ... didn’t meet the basic English language requirements, but the test was only administered two weeks into the course”* (pupil, second six).
422. However, a BPTC tutor pointed out that this happens because students are, in some instances, allowed to self-certify their standard of English. Therefore, providers are only able to administer the English language test when they are given cause for concern, after students have already started the course.
423. Tutors and some practising barristers raised concerns about the equality and diversity implications of a more restrictive approach to admissions. They commented on the value to the profession of having people with diverse experience and learning styles that might not be identified through more narrow admissions procedures.
424. Many tutors also observed this might exclude some students whose true potential emerges as the course progresses.
425. Tutors and practising barristers frequently noted the value to the learning experience of having a strong group of overseas students, who bring diversity of life experience to the course.

## Quality of experience

426. Most experienced practitioners who commented told us they are impressed by the knowledge and understanding of BPTC graduates who made it to the pupillage stage.
427. However, a few felt the BPTC is not raising individuals with the critical thinking and problem-solving skills they believe necessary for effective practice.

428. Current and recent students of the BPTC report very different levels of satisfaction with the quality of their training, with certain providers being criticised repeatedly.
429. A few felt exploited by their training institution, and expressed a sense of injustice:  
*“The BPTC is actually exploitative. Providers don’t care about you, they care about the money”* (new practitioner).
430. Some complained that tutors are sometimes unable to answer questions from students.

### **Advocacy training**

431. This difference of opinion regarding satisfaction was particularly true of advocacy training on the BPTC. Some graduates, and a pupil, told us that advocacy training on the BPTC is working well - in particular the small class sizes - and that providers place real emphasis on advocacy.
432. On the other hand, others felt strongly that advocacy training on the BPTC is of a very low standard, as they did not learn with an opponent and often received conflicting feedback from different tutors. Indeed, some tutors did tell us that it is difficult to be consistent, as each tutor has their own individual style.
433. This contrasts with widespread satisfaction with the quality of advocacy training provided by the Inns of Court.

### **The quality of training**

434. A few students and new practitioners felt there is a lack of opportunity to complain about the quality of training and that we are not doing enough in terms of quality assurance, admissions and preventing escalating fees.
435. Involving practitioners in teaching the BPTC was felt to be a good approach - and current and recent students praised the quality and care of some of their tutors.
436. However, teaching was not always considered to be high quality:  
*“The standards were absolutely atrocious”* (BPTC graduate who had not yet secured pupillage).
437. Some were frustrated at lack of feedback from tutors on their performance.
438. Inconsistencies and flaws in study materials were reported.
439. Some students and tutors felt there is too heavy a focus on assessment rather than practice (discussed in greater detail later in this report).

## The content and structure of the BPTC

440. There was concern that the BPTC curriculum and structure does not provide students with the breadth of skills they need for practice. Tutors were concerned that the breadth of content required to pass the BPTC knowledge-based examinations is too great, which limits the time that could be spent on developing skills.
441. Some experienced practitioners who have also supervised pupils agreed. Although they expect pupils to have a strong knowledge base (and generally think that they do) they feel that if pupils have the right mix of skills any knowledge deficiencies could be addressed; this is less true in the reverse.
442. Some new practitioners found that the procedural knowledge they obtained on the BPTC was out of date by the time they started pupillage. This is particularly significant given the length of time – two or more years in some cases - that it can take after completing BPTC to secure a pupillage.
443. A minority of new practitioners said the breadth of knowledge required is useful, and that this was not always apparent until later in their career. There was occasional comment that the intellectual challenge required to learn and retain a wide knowledge base is useful.
444. Many tutors were concerned that the current BPTC model and curriculum prescribed by us does not allow for teaching that supports all learning styles, or students with varying prior educational experiences. They felt that this has a negative impact on learning outcomes for some and implications for equality and diversity.
445. We consistently heard there should be greater focus on areas such as legal research and trials:
- “The crucial thing for me is how the skills fit together and the connections between the skills... and that leads into, ultimately, you really need to be able to do... a trial”* (BPTC tutor).
446. Some felt that business practice and negotiation should have a place on the BPTC. The absence of family law was also thought to be a problem by several practitioners who had gone on to practise in that area.
447. Many practitioners felt the current approach to skills areas such as opinion writing and case analysis do not reflect the way they are applied in practice:
- “Everything that I learned about writing drafts at bar school, I’ve had to put out of my mind because it’s in the house-style of your provider, and chambers will have their own house-style...”* (new practitioner).
448. The focus on ethics in the BPTC is considered to be very important and should be kept - although there are concerns about the way it is assessed (see below).

449. In one session we heard a comment that, since the majority of BPTC students will not progress to a career at the Bar, the focus of the BPTC is too narrow: a broader focus would increase the wider use of the qualification.

## **The way the BPTC is assessed**

450. The majority of people taking part who discussed assessment agreed the current assessment regime for the BPTC is not fit for purpose.
451. Some experienced practitioners supported the idea of a centralised examinations board as they felt it gives them confidence in the consistency of standards achieved. On the other hand, some tutors felt it would be better to allow providers flexibility to deliver the same assessments locally.
452. Many people taking part were concerned about the assessment methods used, particularly multiple-choice questions. It was felt that the current means of assessment encourage rote learning and the cramming of knowledge, not the ability to practise.
453. There was widespread concern about how ethics is assessed as a knowledge exam paper, especially given its importance to practice:  
*“In actual fact they can pass the exam and not be ethical at all”* (BPTC tutor).
454. Similarly, some felt the current means of assessing ReDoC “as black letter law” is ineffective.
455. Several new practitioners felt there is a general disconnect between the way subjects are assessed on the BPTC and the reality of practice:  
*“The difficulty with learning ... to pass an exam is that you approach it like a check-box and that’s not at all how you practise in real life, where it’s much more organic. [It is]... a totally artificial experience”* (new practitioner).

## **The marking scheme**

456. Tutors were concerned about the marking scheme for exams - their design means that:
- able students sometimes fail because their interpretation is not reflected in the key words identified by the mark scheme;
  - less able students sometimes pass because they are able to simply recall key words by rote.

## **Administration of assessments**

457. The administration of assessments was also criticised – for example:

- poor timing;
- late exam results;
- recent BPTC graduates reported mistakes in exam scripts;
- exam papers have been sent to providers at the wrong time.

458. In one session, BPTC tutors emphatically criticised the external examiner system. One practitioner who had recently started teaching on the BPTC was concerned about the absence of rigorous training for external examiners.

459. A concern was also raised about the impact of the current assessment methods on people with learning difficulties, such as dyslexia, that would not otherwise affect their ability to practise.

460. In one session tutors and experienced practitioners discussed the challenges of assessing advocacy skills to an exact percentage, and doing so consistently across examiners.

## **Suggestions for improving the BPTC:**

461. We invited people taking part to identify the greatest opportunities for improving the BPTC. A great range of suggestions were made, some contentious, some with wide support.

462. Some felt we need to radically rethink the BPTC. One proposal was suggested by people taking part from all communities and attracted contentious debate:

463. Shall we integrate the BPTC and pupillage?

<b>Suggested benefits</b>	<b>Suggested drawbacks</b>
<p>Combined learning and practice would be good for skills development and could help students to manage their financial risk.</p> <p>This would make it feasible for current practising barristers to be more actively involved in delivering training, which would be of considerable value to students and the profession as a whole.</p>	<p>This could have a negative impact on the international market and opportunities for international students.</p>

## Other suggestions:

- a) Leave training to the Inns of Court or to chambers/employed Bar with requirements for a “common experience”;
- b) Extend pupillage to two years, with all skills and knowledge taught within chambers and by the Inns over the course of the two year programme. There was, however, a difference of opinion on this suggestion. Some tutors felt it would not be feasible for practising barristers to take on this level of teaching responsibility, and that there is a need for a distinct course:

*“The idea that busy practitioners could somehow do it better... I rather doubt. I think they would be shocked, if they took on these students who had never done any advocacy, to realise how much they have to ratchet them up... in such a short period of time”* (BPTC tutor).

- c) Deliver an online knowledge component – students would take this before starting skills development, which could be self-taught or taught through distance learning.

This would help to mitigate the financial risk for those unable to pass the knowledge component, or those who discover they do not enjoy it and therefore do not wish to continue to pursue a career at the bar.

There was, however, a level of debate around this suggestion. Some tutors felt this would be detrimental to the learning experience, as learning knowledge and skills together can help to cement a deeper understanding.

One experienced practitioner felt that providing the opportunity to self-teach some of the knowledge would have a negative impact on diversity:

*“If you do that the inevitable result will be that you further advantage an already advantaged group because ... those people [who are less advantaged] are going to be the very group who want to save money [and therefore forego the opportunity to receive teaching]”* (experienced practitioner).

- d) Several people taking part from across all communities felt that given the scarcity of pupillage places, we need to think about facilitating alternative routes to qualification, for example through work as a paralegal. It was also suggested that we should investigate models used in other professions, such as medicine and engineering.
- e) In one session tutors and practising barristers proposed that, instead of the BPTC, a combined stage one course for all lawyers should be created which would be followed by a tailored stage two course for the Bar.

It was felt that this would be a more effective way of preparing people for practice. It could also help keep training costs down as there would be efficiencies for providers in delivering the stage one course, and the total time spent in training would be reduced. It would also provide students with more options.

- f) Similarly, we heard some suggestion that the BPTC should be easily transferrable to other legal professions – such as arbitration, or even other industries, such as finance.

- g) We heard occasional comments about the possibility of moving some knowledge elements, such as the rules of evidence and ethics, from the BPTC to the academic stage, both to give a better grounding in these areas, and to create space for further practical skills development.

### **Admissions and access**

464. In addition to introducing more flexible routes to qualification, people taking part suggested reforms to the admissions procedures and financial support available.

	<b>Suggestion</b>	<b>Comments</b>
a)	Some current and recent BPTC students and new practitioners felt that entry requirements for the BPTC should be made more demanding.  In particular, people taking part from several communities felt the academic stage requirement of a 2:2 degree is inadequate.	Tutors and some practising barristers felt: <ul style="list-style-type: none"> <li>• this could negatively affect diversity in the profession;</li> <li>• we need to think carefully about how a revised admissions regime would operate in this respect.</li> </ul>
b)	Most people taking part agreed we should communicate a stronger, clearer warning about the limited number of pupillage places available.	Prospective BPTC students may continue to disregard it, perhaps because they are optimistic about their own ability or under external (for example, family pressure) to pursue a career at the Bar.
c)	A new practitioner suggested we could stream people on the BPTC according to their language ability.	
d)	Some BPTC graduates and pupils felt it would be appropriate to interview all candidates for the BPTC.	
e)	Give people realistic, objective advice on their prospects of reaching the Bar before they commit to the financial cost of the BPTC.	
f)	Increase funding for students or pupils.	
g)	Reinstate Bar Council loans.	

## Content of the BPTC curriculum

### Commonly suggested improvements were:

- a) a greater focus on skills over knowledge, with knowledge focused on core principles;
- b) a greater focus on what the job demands, including:
  - trials and hearings;
  - negotiations;
  - commercial and business skills;
  - case handling, including seeing a case through to completion;
  - in particular, the need to strengthen advocacy skills development.
- c) a review of the breadth of the curriculum - but we need to keep a strong focus on ethics;
- d) include family law.

### Some other suggestions were:

465. The BPTC should allow early specialisation, for example choosing to focus on civil, crime or family for six months.

*"In terms of getting to authorisation to practise, I would much rather hire a ... practitioner who knew their area properly, rather than someone who had a vague understanding of several areas of ...law" (pupil).*

466. A number of people had different views on this point. One experienced practitioner told us that training "*must be broad enough to cover all areas of practice*", as sometimes pupils will go on to tenancy somewhere different to where they did their pupillage, which might require them to practise in a different area.

467. One pupil was concerned about the practical implications of early specialisation for prospective barristers:

*"There is a risk of over-specialisation at the BPTC stage. Some people enter the Bar course knowing ... they have a pupillage in a highly specialised set...others come in... and it's much less clear what they want... Pupillage is so hard to get, it's very fair to apply to a range of sets... the risk of having a specific criminal or civil Bar course is you're having to choose very early in your career what you want" (pupil).*

### Further suggestions

- more practical experience, including mini pupillages, and pro bono work;
- opportunities for students to consolidate skills and knowledge at the end of the course in a non-assessed way - for example advanced advocacy;
- a few students also suggested BPTC providers could be more proactive in offering career guidance to students to help them consider alternatives to seeking pupillage.

## Structure of the BPTC

468. Suggested changes to the structure of the BPTC were among the more contentious areas of discussion, with different stakeholder groups and individuals holding strong opinions about how best the course should be designed:
- there was a strong agreement there should be a greater focus on how different skills are implemented in practice;
  - some argued for separation of the knowledge and skills elements of the course, whilst others felt that their integration is essential;
  - new and experienced practitioners generally felt it should be possible to reduce the length of the course and move the structure away from the academic year;
  - tutors, however, more commonly felt that the length of the course allows individual quality to emerge;
  - where discussed, views about the use of electives and whether they should form part of the BPTC or pupillage varied widely.

## BPTC assessment

469. Almost everyone taking part supported reforming the way the BPTC is assessed:
- Almost everyone taking part agreed that the current model of multiple choice questions should be removed from the assessment regime, *“End multiple choice questions. Barristers don’t have them.”* (BPTC Tutor).
  - Similarly, many felt that drafting should not be assessed as a hand-written exercise as this does not reflect current practice; rather, all students should have the option of using a laptop or other computer.
  - A BPTC graduate suggested a review of modes of assessment should take place which accounts for those with learning difficulties.
  - People taking part from all communities suggested that the current knowledge exams should be replaced with an open-book assessment requiring a degree of analysis, which would be more reflective of what a barrister actually does in practice:  
*“In reality ...you would have the book with you when you go to court, to be able to check the detail. I think [having to memorise the current level of detail] places an unnecessary burden”* (BPTC tutor).
  - Some tutors felt the centralised exam board should be abolished. However, other tutors, practitioners and students felt it should be retained to ensure a consistent standard qualification. A further suggestion from tutors was that providers should assess procedural knowledge and a strong external examiner system should be developed to support this.
  - Some tutors felt that there should be a specialist external examiner for each subject (currently external examiners are allocated according to providers, rather than particular subjects).

- Some tutors suggested a marking system with less specificity or even just a pass/fail award would be more appropriate.
- Some tutors suggested inviting greater involvement of professional educators and examiners in writing exams.
- Tutors and practitioners recommended that we reconsider how ethics is assessed. Many shared the view that ethical problems should be contained within other exercises, such as conference, so that students can be assessed on their ability to recognise ethical problems in context.

470. Other suggestions for improvement (predominantly put forward by BPTC tutors) included:

- Reduce the number of exams;
- Increase the number of attempts allowed at assessment;
- Revise the marking rubric;
- Include practical assessment of knowledge;
- Revise ReDOC assessment – one tutor suggested it should be moved to the New Practitioners Programme as part of Continuing Professional Development.

## **Pupillage**

471. The pupillage stage of vocational training, when it works well, was agreed to be a valuable, if challenging and intensive, training programme for pupils.

472. There was markedly greater difference of opinion in the discussions about pupillage than about BPTC. There was frequent discussion about the problems caused by the increasing scarcity of pupillage places relative to the numbers completing the BPTC.

473. Although considerable frustration was expressed across all communities, they also acknowledged that this market challenge was beyond our powers to address. A number of serious concerns were also raised about how pupillage currently operates.

## Pupillage selection procedures

474. There was general agreement that diversity has improved in many areas of the Bar following real efforts by many Chambers. However, some practitioners, both new and experienced, as well as some tutors, felt that current pupillage selection procedures, together with the association between pupillage and tenancy, contribute to a tendency for the Bar to “clone itself”, reinforcing an exclusive Bar culture with negative implications for the diversity of the profession.

Experienced practitioners, in particular, were more likely to raise serious concerns about diversity:

*“I’m not satisfied with diversity at the Bar and the way it filters people in a very particular way who make it to the Bench in the end”* (experienced practitioner).

475. Pupils, BPTC graduates and new practitioners felt that a contributing factor to this is an over-emphasis on academic credentials, even though they might not be the best indicator of those with the highest potential. This imposes obstacles for those from a non-‘typical’ background.

476. Experienced practitioners noted that the timing of pupil selection in relation to the awarding of BPTC marks, and the poor regard in which the BPTC is held by many in the profession, means that BPTC performance often plays only a minimal role in pupillage selection, and the individual’s previous academic record plays a more significant role:

*“When we go through the selection process for pupillage, we don’t care what grade you got for your BPTC... You’d like to think that in fact your professional qualification and training counted in your selection process. It’s irrelevant to your assessment.”* (experienced practitioner).

This was seen to be problematic by people from all communities, as previous academic record may not reflect the aptitudes required for practice that are developed during the BPTC.

477. Some pupils and new practitioners have observed breaches of the pupillage advertising rules, such as a failure to advertise on [the Pupillage Gateway](#), and felt that we did not do enough to enforce compliance. However, a few felt that restrictions should be lifted and chambers should be allowed to recruit as they see fit.

## Quality of experience

478. Pupils and practicing barristers expressed their support for pupillage as a model that grants the opportunity to learn from some of the most senior and experienced barristers in the profession.
479. The experience of training amongst a community of practitioners was also valued.
480. Pupils and practitioners felt that advocacy training provided through pupillage is generally of a high quality. Comment was heard, however, that in some areas of law such as chancery or commercial, opportunities to practise advocacy skills could be limited, which could then present challenges for the individuals when they begin to practise.
481. Several practitioners – both new and experienced – commented positively on arrangements within their chambers for pupil mentoring, support and protection.
482. A significant minority of pupils and practitioners had themselves had, or known people who had had, very poor experiences of pupillage, for example with poor training and supervision or even inappropriate treatment from their supervisors. Frequent comment was heard that the dependence on the individual personalities of the supervisors for the quality of the experience was a problem.

There was also general recognition that the nature of pupillage as a “year long job interview” for tenancy means that pupils may not feel able to challenge or complain about their experience during their pupillage, either internally or externally:

*“You are in an impossible position... there is no way you can complain”* (new practitioners).

Some felt particularly strongly about this:

*“[If placed with a poor supervisor] you just have to suck it up, because if you report it to your head of chambers, or the BSB, you do serious damage to your chances of being taken on, to the extent that people I know who suffered serious abuse have still, years later, never done anything about it because the bar is a small world and they know their reputations will be trashed”* (new practitioner).

483. Our role was raised here, with one person taking part noting that we had seemed unresponsive when a complaint was lodged.
484. We heard very little comment about the process by which pupils are judged to be ready to be authorised to practise. One experienced practitioner, however, identified a particular flaw in the current system where the supervisor ‘marks’ his/her own pupil.
- While many chambers are rigorous in assessment, the barrister noted that in the absence of a ‘quality assurance’ of the assessment process, chambers who fail to offer appropriate high quality training for their pupils may equally fail to properly assess them and may even be biased towards passing them. This could result in some pupils going on to obtain authorisation to practise, despite having received inadequate training.

## Suggestions for improving pupillage:

485. Suggestions for improvement focused on two key areas:

- improving access to pupillages; and
- ensuring a high quality experience for pupils.

### Improving access

486. People taking part recognised the availability of pupillage places is limited by the professional market more generally. Discussions focused on how to mitigate the impact of a lack of available pupillages, including how other experiences could contribute to qualification. People taking part also considered selection and diversity issues.

487. Some suggestions were heard several times, from different communities and met with general support:

- BPTC graduates and some experienced practitioners called for the BSB to investigate alternative models of providing pupillages, for example pupillages with non-barristers, and alternative routes to qualification, for example through paralegal roles and pupillages with the employed Bar.
- Pupils and some practitioners called for improved pupillage selection procedures to promote diversity. For example, they felt it is necessary to increase the relationship between the learning and performance on the BPTC and pupillage selection.
- Several commented that the timing of releasing assessment results (generally falling after the pupillage recruitment period) needs to be reconsidered.
- There were different views about the level of participation from the BSB in pupillage selection. Some felt that we need to have greater involvement in regulating the recruitment of pupils, whilst others thought that chambers (and other pupillage providers) should have greater freedom in how they recruit pupils.
- A suggestion was made that greater co-ordination and liaison between providers and chambers could improve selection and make sure students with high potential are identified.

488. One suggestion proved particularly controversial: A number of students, practitioners and tutors suggested that unfunded pupillages could be brought back to increase the availability of pupillages, thus increasing accessibility of training.

However many others felt very strongly that this would be highly detrimental for diversity and accessibility, since only those with other sources of income would be able to fund themselves:

*“I’m utterly against unpaid pupillage. The cost of coming to the Bar is so great, it would bar some people immediately”* (experienced practitioner).

## Ensuring high quality pupillage experiences

489. Pupils and practising barristers called for promotion of mentoring and advice schemes that give pupils access to support from barristers outside their own chambers as well as within.
490. Both pupils and practising barristers asked us to increase our efforts to maintain standards in pupillage provision and support pupils.
491. One suggestion that met with support of pupils and practitioners was that there should be a statement that sets out clearly what pupils should realistically expect from their pupillage experience and where to go with concerns.
492. A few pupils felt that pupillage providers should be encouraged to increase in-court and advocacy experience as part of pupillage.
493. Some barristers suggested that pupillages should be subject to a yearly audit process:  
*“It ought to be a regulatory requirement that each year the heads of chambers audit their pupillage scheme - compile a confidential report saying that they’ve audited against the requirements of the BSB and think it’s fit for purpose”* (experienced practitioner).

## Quality of learning and assessment

494. Those who supported the integration of the BPTC and pupillage felt that there would be significant value in being able to regularly switch between practice-based learning and classroom-based learning.
495. An experienced practitioner suggested that rather than assess at the BPTC stage whether someone is ‘fit’ to proceed to pupillage, there should be an independent assessment made of fitness to practice at the end of pupillage, carried out by an external body such as the Inns. It was felt that this would both improve standards of pupillage supervision, because chambers offering poor pupil supervision would be more readily identified, and bring greater consistency.

## The role of the regulator

496. We asked people taking part where they would like the regulator to place its focus. Some tutors and experienced practitioners thought that we have not been bold enough in our reforms to date and should be braver in this review:  
*“I’m concerned that nothing much has changed since the Wood Review. The BSB seemed to say that they’d understood the concerns, but only tinkered with the system. I would be very disappointed if the same happened now... the BSB needs to be unafraid to be radical”* (experienced practitioner).

## Across both vocational and professional training

497. Almost everyone taking part felt that we need to address the cost of training and debt for students.
498. Many were concerned that more should be done to promote diversity. “Diversity in the profession has got to be critical in terms of how the BPTC is looked at. There is a fundamental priority of making sure barristers are suitably qualified to practise in the interests of [the] public, but I think we all want a profession that is more diverse than it is” (new practitioner).
- There was considerable discussion concerning at which stage of the selection and training process this could best be addressed. Many new practitioners argued that the cost of the BPTC is by far the biggest problem for diversity.
499. Some felt that our *sole* focus should be to make sure that the fundamental principles of knowledge and the necessary professional skills are in place at the point of authorisation to practise.
500. Many students, pupils and practitioners wanted to see an increase in the involvement of the Inns of Court.
501. There was also a request for us to help facilitate greater dialogue between providers and the profession to find shared solutions to address deficiencies in the training system, and make sure that Bar training in the future meets the needs of the community.

## BPTC

502. Many BPTC students, pupils and new practitioners called for greater regulatory control over BPTC providers. They want:
- greater quality assurance in a number of areas, including teacher quality and powers to identify and address provider weaknesses;
  - greater transparency about BPTC pass rates and numbers of people securing pupillage at each provider.
503. On the other hand, some tutors called for less regulation in certain areas, which they feel adds to the cost of provision such as staff-student ratios for some less intensive aspects of the course, and the provision of a BPTC-specific quiet study room.
- BPTC graduates and some practitioners wanted us to help develop alternative routes to the BPTC to achieve authorisation to practise.
  - Tutors and practitioners suggested that we should think about exploring a common training programme with other parts of the legal profession to improve the value of this phase of training for those who do not go on to pupillage.

504. Students and practising barristers argued for us to play a stronger role in ensuring a higher quality of BPTC experience:

*“As a result of that training the people who undergo it should be better barristers. The public should benefit from the fact that you’ve done this course”* (new practitioner).

On the other hand, some tutors wanted more freedom, from what they feel is a prescriptive curriculum and assessment system, to focus on developing in students a deeper understanding of law and Bar practice.

- Tutors in one focus group wanted us to facilitate increased involvement of providers in the design, governance and assessment of the BPTC.
- A few tutors and practitioners asked us to make sure that reforms protect the interests of overseas students, including those from the Commonwealth, and maintain the international market of British Bar training.

## **Pupillage**

505. Many pupils and new practitioners, as well as more experienced practitioners, wanted to see us play a greater role in protecting and championing the needs of students and pupils:

*“Until pupils are given some limited rights which can be enforced by the BSB, then the BSB itself isn’t really fit for purpose”* (new practitioner).

Specifically, it was suggested that we should increase and/or modify quality assurance of pupillage providers to identify and address weaknesses and make sure whistleblowing and complaints are handled seriously and sensitively.

506. Whilst there was little appetite expressed for us to be directly involved in how chambers deliver their pupillage schemes, one experienced practitioner felt that as the regulator we should be *“very clear and precise about what is acceptable and reasonable”* when supervising pupils.

## Equality and diversity monitoring data

<b>Age</b>	<b>Percentage</b>
16 to 24	8
25 to 34	19
35 to 44	19
45 to 54	38
55 to 64	16
65+	0
Prefer not to say	0

<b>Gender</b>	<b>Percentage</b>
Male	38
Female	62
Prefer not to say	0

<b>Disability</b>	<b>Percentage</b>
Yes	8
No	92
Prefer not to say	0

<b>Ethnic group</b>	<b>Percentage</b>
White	84
BME	16
Prefer not to say	0

<b>Religion or belief</b>	<b>Percentage</b>
No religion or belief	43
Buddhist	0
Christian (all denominations)	46
Hindu	0
Jewish	5
Muslim	3
Sikh	0
Other religion	0
Prefer not to say	3

<b>Sexual orientation</b>	<b>Percentage</b>
Bisexual	3
Gay man	0
Gay woman/lesbian	0
Heterosexual/straight	89
Other	0
Prefer not to say	8

## Socio-economic background

<b>If you went to University, were you part of the first generation of your family to do so?</b>	<b>Percentage</b>
Yes	51
No	49
Did not attend university	0
Prefer not to say	0

<b>Did you mainly attend a state or fee paying school between the ages 11 to 18?</b>	<b>Percentage</b>
UK state school	46
UK independent/fee paying school	41
Attended school outside of UK	8
Prefer not to say	5

## Caring responsibilities

<b>Are you a primary carer for a child or children under 18?</b>	<b>Percentage</b>
Yes	30
No	68
Prefer not to say	3

*Out of the 51 people who took part in this research, 37 returned to us their equality and diversity monitoring data.*

## Appendix E

### Links to reference material

[Legal Education and Training Review \(LETR\)](#)

[BSB's Draft Professional Statement](#)

[Legal Services Consumer Panel Annual Report](#)

[QAA Law Benchmark Statement](#)

[Pupillage Handbook](#)

[The Pupillage Gateway](#)

[Data we publish on the profile of pupils](#)

[Equality Act 2010](#)

[The Bar Council Website](#)

[The Bar Standards Board Website](#)

[LASPO - Legal Aid Sentencing and Punishment of Offenders Act 2012](#)

[The Inns of Court Pupillage Matched Funding Scheme](#)

[BPTC Handbook](#)

[BSB Handbook](#)

[Bar Standards Board Supervision Strategy and Guidance](#)

[The Data Protection Act 1998](#)

[The Freedom of Information Act 2000](#)

Please note: our Future Bar Training BPTC and Pupillage Focus Group Research Report is in Appendix D of this consultation.