



**Bar Council response to the Bar Standards Board
Consultation on Future Bar Training:
Shaping the education and training requirements for prospective barristers**

January 2018

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bar Standards Board (BSB)'s Consultation on Future Bar Training: Shaping the education and training requirements for prospective barristers dated October 2017¹.

2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates and advisers, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of the criminal and civil justice system. It provides a pool of talented people from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

4. References in this Response to "the Paper" should be taken as a reference to the BSB Consultation Paper.

¹

https://www.barstandardsboard.org.uk/media/1852877/consultation_on_future_bar_training_shaping_the_education_and_training_requirements_for_prospective_barristers.pdf.

GENERAL

5. This Response has been prepared by the Education and Training Committee, the Employed Bar Committee and the Young Barristers' Committee, all committees of the Bar Council whose membership comprises a cross-section of members of the employed and self-employed Bar, representing all levels of seniority and geography, and with experience in a wide range of fields of practice. It has been approved by the General Management Committee of the Bar Council, and should therefore be taken as the official response of the Bar Council to this consultation.

6. Our answers to specific questions are set out below. It will save repetition if we make three general points that underpin our individual responses to many of the questions below.

7. First, while we accept that the BSB is entitled to raise the questions it does in the Paper, we trust that, in making its final assessment as to the appropriate degree of regulatory oversight, it will have regard to its statutory obligation to ensure that regard is had to the principle under which regulatory activities should (among other things) be proportionate, and targeted only at cases in which action is needed.

8. Secondly, although we have views to offer on all the questions raised as practising barristers with considerable experience between us, we defer to COIC and the Inns concerning the areas in which those institutions have built up an unparalleled expertise.

9. Thirdly, as was made clear in the Bar Council's response to the previous consultation, we disagree that "encouraging greater flexibility" should be a "key principle" of the Future Bar Training exercise. We acknowledge that greater flexibility in some areas could make it easier for commercial organisations to offer employed pupillages either alone or jointly with chambers. We support the position of the Bar Association for Commerce Finance and Industry on this point and agree that greater flexibility should be encouraged where it achieves this objective.

10. However, flexibility should not be seen as an end in itself, but rather as a means to an end. Where flexibility cannot be said to advance an otherwise positive aim, then it should not be adopted for its own sake. Indeed, greater flexibility can sometimes be positively disadvantageous in terms of other aims which the Future Bar Training exercise seeks to promote. The adoption of flexibility as a "key principle" in its own right underlies a number of the issues in relation to specific questions raised below.

11. We summarise the key elements of our response:

(1) The role of the Inns in education and training should continue. Student membership of the Inns should remain mandatory, and there should be no reduction in the number of qualifying sessions. The Inns are best placed to oversee student members of the profession. Any attempt to transfer roles from the Inns to the BSB or to reduce the role of the Inns in Education and Training would be likely to disadvantage those with least social capital, since Inn membership provides a level playing field at the early stages of entry to the profession.

(2) Pupillage should continue to be 12 months long. The present arrangements for Provisional Practising Certificates should remain.

(3) We support a phased introduction of minimum pupillage awards at LWF Benchmark levels provided that (as we think will be the case) this has a positive (or at least neutral) effect on equality and diversity.

(4) Pupillage supervisors should supervise only one pupil at once. The personal, one-to-one, element of pupillage is important.

12. The Bar Council is determined that the Bar should be a profession open to all, with success or failure determined on the basis of merit alone. We recognise that it is not clear whether this has been fully achieved, and that recent research commissioned by the BSB suggests that, after allowing for any differences in prior academic attainment, there may be differences in attainment related to ethnicity and socio-economic background. The profession faces two parallel challenges: first, to understand what the differences are, at an appropriate level of granularity, and then to identify what causes them; and second and in any event to continue its work to ensure that, at all stages, gender, ethnicity and social background play no part in decision making.

13. This response to the BSB's questionnaire on many issues supports the present arrangements. We want to emphasise that that support for the present arrangements, including our support for the present role of the Inns, stems from a strong conviction that the Inns are the institutions best placed to help achieve the objectives we share with our regulator, including encouraging an independent, strong, diverse and effective legal profession, and promoting and maintaining adherence to the professional principles.

THE QUESTIONS

Question 1: Should the BSB have regulatory oversight of students? Please explain why or why not.

14. No, not any more than is currently the case. There is already oversight of students, by the Inns, together with an existing degree of involvement by the BSB. We agree that some degree of oversight is desirable, for the reasons identified by the BSB. But the reasons supporting further BSB regulatory oversight, which are put forward in paragraphs 51 to 54 of the Paper, do not explain why it might be considered that the BSB should carry out this task, either in place of or in addition to the Inns. Indeed, the BSB recognises (in paragraph 57 of the Paper) that it might not be the most efficient use of the BSB's resources for it to undertake the regulatory oversight itself.

15. We concur, and see no need to change the current arrangements. The regulation of students has been the responsibility of the Inns for hundreds of years. The Inns have an unrivalled body of experience and expertise in that role, which they take extremely seriously. In the absence of any suggestion whatsoever that the Inns may be neglecting that task, it would be disproportionate and unnecessary for the BSB to impose a further layer of regulation.

16. Continuing the present arrangements, in which it is principally the Inns that have oversight of students, seems to us to fit naturally with the decision of Parliament that it is the Inns, and not the BSB, that should be responsible for calling individuals to the Bar. We do not consider that it is likely to accord with Parliament's intention in defining a barrister, in section 207(1) of the Legal Services Act, by reference to a person who has been called to the Bar by one of the Inns of Court, that call would be regarded merely as an administrative exercise. Rather, consistently with the history of the Inns and their established practices in determining who should be called to the Bar, we consider that provision likely envisages a substantive process of assessment, scrutiny of which (without the Inns' approval) may in fact fall outside of the BSB's regulatory competence.

Question 2: Do you think the BSB should continue to require membership of an Inn as a mandatory part of Bar training? Please explain why or why not.

17. Yes, for two main reasons.

18. The first reason is diversity. Promoting an independent, strong, diverse and effective legal profession is one of the regulatory objectives. Joining an Inn should be a leveller. It does not matter whether you are the child of a judge, or have never met a barrister before in your life: you can join an Inn and you will have the same opportunity to meet barristers and judges, as well as to meet your own peer group.

We agree with the BSB's suggestion that if membership of an Inn were made optional, it is likely to be those most in need of what the Inns can offer who would be the most likely to choose not to join, because they feel socially different, or are nervous because they will not be part of a group of friends who will be joining together.

19. The second reason is that the Inns play a fundamental role in nurturing and developing the shared culture of the Bar. We believe that most barristers share a culture of adherence to high standards of behaviour and professional ethics, not because they are fearful of punishment if they do not behave properly, but because they share a belief that there is a moral imperative to uphold high professional standards. It is for precisely this reason that, although the USA traditionally had no Inns of Court structure, the legal profession there has established the American Inns of Court to promote high professional standards (<https://home.innsofcourt.org>).

20. This culture is strongly reinforced by two types of institution: the Inns, and chambers. The Inns are especially important during the pre-authorisation stage and the very early stages of practice.

21. We do not believe that the benefits provided by Inn membership could be effectively replicated by any other institution, because there are no other institutions that can currently offer repeated contact both with practising members of the profession of a range of seniority, and with judges. For example, there is a world of difference between discussing one's ethical obligations in a classroom environment with someone who may not be a practising barrister, and talking to someone who has just had to return a lucrative piece of work because of a potential conflict. There is simply no substitute for having access to a large body of one's peers and other practitioners of varying seniority, who have a wealth of experience and with whom a student may come into contact, either formally or informally.

22. Before leaving this topic, we should notice the references in paragraphs 65 and 75 of the paper to perceived conflicts of interests issues that might be said to arise if the Inns of Court College of Advocacy were to enter the market for Bar vocational training, while the requirement for student membership of an Inn is maintained. We will deal with this hypothetical risk, which may never materialise, and which the BSB does not pursue to a conclusion, at the stage at which the Inns apply to become an Authorised Education and Training Organisation. We add, however, that we see nothing in the Inns' proposal that could possibly constitute a conflict of interest, properly so called. If the BSB means instead that the proposals might be vulnerable to claims of anti-competitive behaviour (with which we would also disagree), then we would defer to COIC, which has we understand obtained legal advice to the contrary.

Question 3: If you answered ‘yes’ to question 2, do you think the BSB should continue to require “student membership” of an Inn or set the requirement at the point of (or just before) being called to the Bar? Please explain why or why not.

23. Yes – for exactly the same reason. Students from non-traditional backgrounds need assistance from their Inns as much before as after they are called to the Bar. The Inns provide the opportunity (and insist upon that opportunity being taken) for students to meet barristers; to learn about life at the Bar; to familiarise themselves with much that must initially seem strange; and to appreciate just how much assistance is available (not least from the mentoring relationships with practising barristers offered by the Inns, generally recognised as being of particular assistance in breaking down barriers to entry to professions, which we doubt an educational provider could rival). It is worth pointing out that students who go on to become practitioners continue to require support from their peers, particularly in the early years of practice and at other critical junctures of their life, both professional and personal, such as during maternity and paternity leave and when applying for silk. The requirement for student membership of an Inn flows naturally into these future milestones, at which time the assistance of the Inn can be equally valuable.

24. The level of assistance provided by the Inns should not be underestimated. A study conducted in February 2012² calculated the total pro bono training activity offered through the Inns at 29,823 hours each year. We think it inconceivable that any other training provider could hope to match this level of voluntary activity. Moreover, it is of course significant that the activity is provided by members of the profession that the students wish to join, who are often leaders in their field or particular areas of practice, and whom other training providers would be unlikely to be able to engage either at all, or at the same level of minimal cost to students.

Question 4: Do you think the BSB should continue to delegate responsibility for educational and fit and proper person checks to the Inns of Court? Please explain why or why not.

25. Yes. As with the answer to Question 1, these checks have long been the responsibility of the Inns, who have a body of experience and expertise in that role, which they take extremely seriously. Further, we do not accept the premise of Question 5: the BSB has not delegated responsibility for educational and fit and proper person checks to the Inns, because that responsibility forms part of the function of the Inns, as recognised in statute. In the absence of any suggestion whatsoever that the Inns may be neglecting that task, it would be disproportionate and unnecessary for the BSB to intervene.

² The Role of the Inns of Court in the Provision of Education and Training for the Bar.

26. It is also worth making the point, in this connection, that the checks are in part carried out by the Inns as an administrative exercise, conducted by their staff with competence and economy, and partly by Benchers, who are required to meet and assess the students, providing yet another opportunity for less advantaged students to gain insight about and contact with the Bar.

27. Paragraph 90 of the Paper mentions two cases in the last two years in which education certificates were forged. That is unfortunate, but we find it difficult to see how greater regulatory oversight (or indeed the DBS checks considered next) might have prevented this occurring. While we do not seek to belittle these instances, it is worth noting quite how infrequent they are. We do not consider that BSB intervention would be proportionate, or indeed solve the problem.

Question 5: Do you think the BSB should require DBS checks as part of the fit and proper person checks? If you do, who do you think should perform this function and why?

28. No. The principal reason we oppose them is that they will be wholly unnecessary in the case of the considerable majority of students who do not ultimately make their way into the profession. As a connected point, it is not therefore obvious that the processing of this data can be justified in accordance with data protection principles. Further, DBS checks would add a considerable layer of red tape, unless they can be made fool proof, easy, swift, inexpensive and completely portable (all of which is open to doubt). In the absence of any evidence of a significant failure on the part of the Inns to detect transgressions, a requirement for DBS checks would not be proportionate or targeted regulation. It also does not easily fit with outcome or risk based models of regulation.

29. If DBS checks are required as part of the student's pupillage, or eventual practice at the Bar (for example, because the barrister's practice involves working with vulnerable people), then a proportionate way of administering those checks would be for the pupil's Approved Training Organisation (ATO) to take on the responsibility. This would avoid the time and expense of conducting DBS checks for those students who do not commence pupillage. We therefore consider that DBS checks should be carried out prior to the commencement of the second sixth months of pupillage, if, (but only if), during that period of time an individual will come into contact with vulnerable clients and witnesses.

Question 6: Do you agree with our proposals to improve the current checks as described? Please explain why or why not.

30. Yes, in part. Given the negligible incidence of forged records referred to in paragraph 90 of the Paper, we do not agree that it would be proportionate for the BSB

to adopt the more proactive approach suggested in paragraph 106. The cost implications of this extension of regulatory activity would be significant.

31. We do, however, agree with the proposal for notification to the BSB referred to in paragraphs 107 to 109 of the Paper. We also agree with the proposal in paragraph 110 for a reduction in the level of prescription within the call declaration.

Question 7: Do you think that the Inns or the BSB should oversee student conduct? Please explain why.

32. The Inns. We make three points. The first is that the Inns have a depth and breadth of experience of dealing with student conduct issues that no other body, including the BSB, could easily match or better. We consider it important to make the point, in this connection, that conduct decisions are made by practitioners who are immersed in advocating and administering the rule of law, and who have every interest in ensuring that prospective entrants to their profession meet the appropriate standards.

33. Secondly, the Inns all have well-resourced and competently administered apparatus for performing this task. As the Paper acknowledges, the resource implications were the BSB to take over the task would be considerable.

34. Thirdly, we again make the point concerning targeted and proportionate regulation. In the absence of any suggestion at all that the current system does not work, we question why it could possibly be thought necessary for the BSB to intervene.

Question 8: Do you think that the BSB should continue to prescribe qualifying sessions as part of the mandatory training requirements? Please explain why or why not, including (if appropriate) which elements of the qualifying sessions are particularly useful to be undertaken prior to practice.

35. Yes. There are two critical components to a qualifying session. The first is the educational component, which is selected to complement the stage of training which the student has reached. The second is the opportunity for the student to mingle with practising barristers, judges and their contemporaries. While the first is obviously helpful to the student's professional development, it is the second that has the greater potential benefit, for the reasons set out in paragraphs 136 and 137 of the Paper. If the element of compulsion is removed, the opportunity to take advantage of the Inns' facility will remain, but particularly in the case of students who are less inclined to participate in activities at the Inn for socio-economic reasons, or for other reasons that cause them to believe they would not fit in, it is unlikely to be taken up to the same extent.

Question 9: If you answered 'yes' in question 8, should there be any changes to the existing arrangements, or do you prefer Option B or Option C to reform our oversight of qualifying sessions? Please explain why.

36. The Bar Council does not agree with the changes suggested by the BSB to the existing arrangements for qualifying sessions. The Inns acknowledge that the current system can always be improved, and do so continuously in any event. However, the requirement for 12 qualifying sessions should be retained. Over the last 35 years, the requirement has been reduced from 36 to 12, in a bid to accommodate some of the difficulties regarding cost and accessibility that are referred to in the Paper.

37. In addition to this, the Inns already operate flexibly and seek to ensure that the qualifying sessions are not London-centric. As one example, the Young Barristers' Committee recently participated in a Joint Inns qualifying session in Manchester. Additionally, four of the sessions may be taken at events held by the Circuits; four sessions may take the form of a residential weekend; and Call counts as one session. The qualifying sessions requirement can therefore translate into only three trips to London, which may themselves be subsidised by the Inns. We therefore resist any further reduction, and indeed would support an increase in the number of qualifying sessions if there were better provision for those students based outside London.

Question 10: If you answered 'yes' in question 8, do think that other training providers could provide qualifying sessions? Please explain why or why not, including what elements would need to be delivered by or in association with the Inns themselves to ensure their benefits are to be retained.

38. For the reason explained in the answer to question 8 above, although other training providers could obviously provide the educational component of the qualifying sessions, we cannot see the merit or sense in that being conducted as a separate exercise. The value of the current qualifying sessions is that the Inns deliver both components to the student in one session, with the educational component providing the framework for the social component. The educational component is delivered by a mix of Inn members and outside speakers, and to that extent there is already external involvement. We do not see the need for any change to this.

39. As we have stated in our response to question 2 above, the Inns play a vital role in maintaining the shared culture of the Bar. Membership of an 'Honourable Society' and regular interaction with senior members of the Bar and judiciary reinforces in students and junior barristers the culture of adherence to the professional standards set out in paras. 1.16 to 1.18; and the personal values, characteristics and behaviour set out in Part 2 of the Professional Statement. The Inns welcome students into the community of barristers and develop in them a sense of responsibility and shared values in a way that cannot be achieved outside this unique institution. Qualifying sessions are central to this.

40. We think it worth adding that the Inns' sessions are delivered at very low cost, taking full advantage of the fact that high quality, interesting speakers usually provide their services to the Inns gratuitously – something that we doubt could be matched by external providers. Further, students would be at a particular disadvantage in judging the value and quality of qualifying sessions being offered by external providers, particularly if they were offered as a bulk 'add on' at the commencement of a BPTC course.

Question 11: Do you have any alternative suggestions for how qualifying sessions might help students meet the requirements of the Professional Statement?

41. No.

Question 12: Do you think we should allow pupillages to vary in length? Please explain why or why not.

42. No. First, we are very firmly of the view that there should be no change to the minimum prescribed length of pupillage. We regard pupillage as indispensable to a barrister's training; an apprenticeship model which leads not only to a thorough grounding in a particular area of practice, but also an appreciation for and understanding of the ethical and other traditions of the Bar. Although we have all had very different experiences, both as pupils, and as supervisors, none of us considers that 12 months is too short or too long, and we are unaware of any view, from any practitioner or ATO, whether in the employed (public or private) or self-employed sector of the Bar, that would support a general reduction in the period. If it is the BSB's impression that the employed bar would welcome a deregulation of this requirement, having consulted widely, neither the Employed Barristers' Committee nor BACFI (who we understand are preparing their own response to this consultation) have found any support for this amongst ATO's offering employed Bar pupillages currently, or indeed, those organisations who are considering applying to become ATOs. It is therefore the view across the self-employed and employed ATO providers that the ad hoc consideration of waivers, for instance for those with a substantial prior experience in a similar foreign jurisdiction, strike the appropriate balance in making adjustments where a lesser period may be justified. It is also the most proportionate way to mitigate the risk identified in the Paper that ATOs may reduce the length of pupillage too far, which would potentially expose the public to undesirable outcomes.

43. Second, we have seen no evidence that would suggest that ATOs are unable to "design the best possible training plan for their pupils" within the present 12 month period. Rather, that mandatory minimum period provides structure to the planning of such training, and allows Chambers and employers to exchange ideas about best practice with relative ease. As to the comments which relate to practice areas where advocacy experience is limited, in our experience the Chambers involved are already

able to, and do, plan significant ‘in-House’ training programmes to supplement any perceived deficiency in this regard. It is of course also relevant that as junior counsel, these barristers will still have fewer advocacy opportunities, so it is not necessarily the case that such individuals are left facing a skills gap that additional time in pupillage could ameliorate.

44. In addition, granting the ability to an individual ATO to vary the length of pupillage as they see fit is likely to lead to a lack of predictability and certainty from the perspective of a potential pupil who is making applications for pupillage. Although all potential pupils could be detrimentally impacted, this change would be likely to have a disproportionate detrimental impact upon those potential pupils who are from non-traditional backgrounds, and could well reinforce the view that alternative legal training, such as qualifying as a solicitor, represents a ‘safer’ option.

45. Finally, we are concerned that paragraph 167 of the Paper misunderstands the nature of a ‘Third Six’. The pupillage, divided at present between a first and second six, is the mandatory minimum training period after which a pupil barrister becomes fully qualified to practise. It can be regarded as a regulatory floor. The decision of an individual ATO to offer a pupil barrister a tenancy in Chambers is conducted by reference to their objective tenancy criteria, which go beyond this. As most commonly understood, a ‘Third Six’ is a period during which an unsuccessful applicant for tenancy in one set of Chambers is accepted by a further set of Chambers, on a provisional basis, for a further period of time, during which that applicant is assessed by the latter set of Chambers against their own objective tenancy criteria. The additional time is not generally required because the pupil is considered inadequately trained for the purposes of BSB requirements, but because the relevant ATO does not feel it has had a sufficient opportunity to judge the quality of the pupil’s work to make a tenancy decision, in line with its own, often higher, standards and expectations. We think that it is simply incorrect to state that “Many chambers require longer training periods but are currently unable to change the 12 month pupillage period.” We are unaware of any evidence to support this contention.

Question 13: If you answered ‘yes’ to Question 12, please tell us if you think there should be minimum and or maximum length associated with this change and what should that minimum or maximum length be. Please explain why.

46. Please see our answer to question 12 above.

Question 14: Which option, if any, for reforming the award of Provisional Practising Certificate do you support? Please explain why.

47. Option D. All the other options seem to us to suffer from the same defect, namely that they create the circumstances in which pupils may be set to work before they are ready. The safeguards necessary to prevent this happening would be complex and

expensive to administer. As matters stand, we are jointly of the firm view that the first six months is the minimum period needed, and is necessary for the protection of the pupils (who are frequently vulnerable, not best able to determine suitability to practice for themselves, and relish the security of a substantial period during which they cannot be required to work); of Chambers and employers (who need to ensure a proper period of training, without there being other calls on the pupils' time); and of the public (who are best served by properly trained pupils). Insofar as the Paper appears to set great store by flexibility, we would point out that considerable flexibility is already achievable (and is achieved by Chambers and employers) within the current framework, and that certain of the other examples provided in the Paper risk undermining the objective of maintaining high standards. We comment further on the specific alternatives suggested below.

48. Option A: We do not support the reallocation of decision making from the supervisor to the ATO. This does not sit well with the way in which Chambers and employers are structured or pupillage is organised in practice, and would likely simply result in this function being delegated by the ATO back to a supervisor. If this were not the case, then another problem potentially arises, which is of the ATO 'overriding' the supervisor (who remains best placed to make a PPC decision). At present, as part certifying satisfactory completion of the First Six, a supervisor has to sign a declaration that the pupil has "*completed the relevant parts of the pupillage check list conscientiously throughout this period of pupillage.*"

49. The risk of override is particularly problematic given that the insurance arrangements for the Second Six are those of the supervisor and the second six pupil operates under the cover of the supervisor's insurance. It is far from clear whether BMIF or other relevant insurers would be willing to extend cover under the circumstances envisaged by Option A. Even if the supervisor effectively remained in control of decision making, the impact on pupils is potentially uncertain and unpredictable, because there is more room than at present for supervisors to make a decision based on personal risk appetite having regard to their insurance.

50. Option B: We note from the outset the comment at paragraph 180 that "*We would anticipate that many organisations will continue to encourage pupils to apply for a PPC after six months*". In such circumstances, the case for regulatory intervention is not strong. Furthermore, the objections applicable to Option A also likely apply, and the examples of "*greater flexibility*" that it is suggested are not available under the present regulatory framework are either misconceived or undesirable changes.

51. As far as foreign qualified lawyers or solicitors are concerned, it is not at all clear why the BSB believes the current system of waivers is inappropriate. In any case, allowing the approach for this category to dictate the approach for the training of barristers more generally would be to allow the tail to wag the dog. As to varying the

practising or non-practising periods to meet the needs of that particular practice area, we have seen no empirical evidence that this is required in order to allow pupils in those areas to achieve regulatory competence. Further, insofar as this is a reference to areas in which advocacy experience for pupils is more limited, Chambers and employers already take flexible approaches within the current framework, as set out above in response to Q12. Turning to the award of a PPC when the pupil is ready, we repeat our view that it is unlikely in the extreme that this would be at a time before six months as a pupil, and there are good reasons to maintain that as a minimum requirement. Insofar as a pupil is not ready even after six months, we would expect that a supervisor would feel able, consistently with the declarations that are currently required to be made as to progress against the checklist, to refuse to sign off the forms for satisfactory completion of the First Six until the relevant deficiencies were remedied. We have already set out our view as to pupillages of a different length, and need not repeat it except to say that we do not consider it a positive change.

52. Finally, we note that the likely result of organisations reviewing pupils' progress at set (and possibly multiple) times imposes an increased burden upon ATOs, Heads of Chambers and supervisors. When set in the context that the flexibility envisaged is already catered for within the current framework, and that the potential other examples of flexibility are undesirable, this option is entirely unattractive. It is not clear how this is thought to offer an additional "*regulatory "checkpoint"*" as compared to the current framework, nor why, if this is the "*main advantage*", why this is a compelling factor in favour of change.

53. Option C: We are extremely concerned that the Paper views as a particular advantage of this option that an ATO could "*avoid the additional administrative burden of having to make decisions in respect of each individual pupil*". By its very nature, the pupillage process impacts individuals in different ways, and there is a risk to the public if oversight were to be reduced in favour of a 'block' authorisation for several individuals without regard to their circumstances. We do not understand how this can be consistent with the "*key objective*" of "*maintaining high standards*".

54. Again, as it is difficult to see how even those with prior experience are likely to be ready to practise before having spent six months as a pupil, the envisaged flexibility risks undermining high standards of training. Even for those with previous practical experience in another common law jurisdiction or experience as an English solicitor, the nuances of actual practice at the English Bar, particularly as far as procedure is concerned, means that a significant amount of additional training will be required.

55. Whilst we note that paragraph 187 of the Paper regards a "*fixed point of awarding the PPC ... for all pupils, determined in advance*" as a particular disadvantage, we could not disagree more. We have seen no evidence to suggest that the current arrangements as regards the PPC places pupils under "*undue strain*", and to make a change on this

basis would be flawed. Even if this were the case, or it were the case that organisations feel under pressure to sign off pupils who are not ready to practise, these concerns would need to be weighed against a process which is largely working well for the other pupils and ATOs, and also against the potential detriment involved in making the changes suggested. We would not expect that such an exercise would lead to Option C being adopted.

**Question 15: Do you think the minimum pupillage award should be raised?
Please explain why or why not.**

56. In principle, The Bar Council supports the proposition that pupils should be paid at the LWF, subject to the caveats below.

**Question 16: If you answered 'yes' to question 15, should we use the National Living Wage or the Living Wage Foundation benchmark for the minimum award?
Please explain why.**

57. We support the use of the Living Wage Foundation benchmark for pupillage award. Payment below this level increases the risk of students who are not from wealthy backgrounds not being able to afford pupillage and may ultimately be a factor potentially decreasing access to the Bar. Anecdotally, many pupils receiving the minimum or low pupillage awards struggle to afford accommodation, particularly in London. At present, all Inns offer means tested awards for the pupillage year³, which reflects the reality that continuing to pay £12,000 per annum as a minimum is not financially viable for those receiving such awards, especially for those pupils who are unable to earn money during their second six months of pupillage (although we of course recognise that many do so and supplement the award in that way).

58. However, we are aware that 35% of pupillage awards are less than £20,000⁴ and are concerned that an unintended consequence of increasing the minimum award may mean that fewer pupillages are offered. We feel that this risk may be mitigated through the provision of the Pupillage Matched Funding Scheme run by the Council of the Inns of Court, which may assist in the funding of pupillage awards for those chambers who would otherwise struggle to pay an increased minimum award. However, for the same reason, we feel that the minimum award should be phased in over several years to avoid a decline in the number of pupillages. This would also

³ Lincoln's Inn offers £60,000 per year and usually makes up to 50 awards. Recipients on minimum awards can expect to receive approximately £4,500. Middle Temple offers Pupillage Support Grants (for pupillage awards up to £20,000 in London and £17,500 outside London) and Pupillage Hardship Grants (for pupils facing unexpected financial hardship). Gray's Inn offers Ann Goddard Pupillage Scholarships to pupils at publicly funded sets. On average, eight to nine awards are made, which usually range between £5,000 and £9,000 each. The Inner Temple Marshall Hall Trust offers Benefactor Scholarships for those with a minimally funded pupillage. It will provide a minimum of £10,000 in 2017.

⁴ The Paper, paragraph 207.

allow the BSB to monitor the impact of the increase in the minimum award and potentially to suspend it if the number of pupillages were materially impacted.

59. Given that many chambers offering the minimum award for pupillage are in areas of law that are publicly funded and historically have higher numbers of women and BME barristers, we consider that a robust Equality Impact Assessment is needed to consider what if any effect any changes in the minimum award will have on these groups. However, for the reasons outlined above, we feel that increasing the minimum award may actually be beneficial from a diversity perspective.

Question 17: Do you think the current exemption from the funding rules for transferring lawyers should be removed? Please explain why or why not.

60. Yes, for exactly the reason given in the Paper.

Question 18: Do you agree that we should introduce re-authorisation of Approved Training Organisations (ATOs), as outlined above? Please explain why or why not.

61. Yes. Given the importance that we attach to properly-conducted pupillages, we think it essential that ATO's should be both properly authorised, and periodically reassessed.

Question 19: If re-authorisation were to be introduced, how many years do you think the defined authorisation period should last (e.g. 3 or 5 years, etc)?

62. We think that reauthorisation every three years would definitely be too frequent. It would also be burdensome and costly. We take much the same view about reauthorisation every five years, and would suggest 10 as striking a balance between the applicable regulatory principles. If, in any given case, the BSB considers that an ATO requires more regulatory attention, then that should be (and no doubt already is) an option it could pursue.

Question 20: Do you think the BSB should allow pupil supervisors to supervise more than one pupil? Please explain why.

63. No. The rules were changed in 1992 for good reason (although the incidence of multiple pupils per supervisor was very low even then). We are unaware of any driver for change. If properly conducted, pupillage is a very intensive process, placing heavy demands upon the supervisor. Busy barristers, whose practices are therefore likely to be of most use to the pupils they supervise, are quite unlikely to have the time to devote to the proper supervision of more than one pupil at a time.

64. If the BSB relaxes this requirement, we foresee that a two tier system will emerge, with better qualified (and therefore more marketable) pupils being those under single

supervision. Again, this two tier system is likely to impact primarily the publicly funded bar, which we regard as undesirable for obvious reasons.

65. We do not regard as remotely persuasive the support for deregulation. First, the notion that the responsibility for proper supervision should pass from the supervisor to the ATO seems to us to be a retrograde step. Supervision should carry with it a heavy burden of responsibility, given the importance of the function. The organisation does, of course, have an interest in ensuring the competence of its supervisors, but it is not better placed for taking responsibility for such considerations as whether supervisors are giving adequate time to their pupils. Secondly, we doubt that the point made at the end of paragraph 239 is a practical consideration: organisations that are too small to offer each pupil an individual supervisor are quite unlikely to wish to offer many pupillages, in any event.

66. Following on from this, employed practitioners balance busy legal practices, often coupled together with additional administrative responsibilities, such as management responsibilities, and a closer involvement in the business decisions of their organisations, as compared to their self-employed counterparts. Therefore, insofar as this question relates to practices at the employed bar, and the one-to-one supervision of pupils, again those employed barristers who currently are pupil supervisors are adamant that having more than one pupil would make it difficult to dedicate the proper time for the development of the pupil and to discharge the supervisory obligations to a high standard⁵. There is also a value to the cohesion of the Bar, in that there is a shared experience amongst barristers, across all practice areas and whether in self-employed or employed practise, that at the commencement of their legal working life, all barristers benefit from the dedicated one-to-one supervision of a pupil supervisor.

67. Notwithstanding all of the above, we support the proposition that the requirement for the BSB to be supplied with names of supervisors should be dropped, provided always that the requirement remains that there should be one pupil per supervisor. Secondly, we support the notion that ATO's should also bear responsibility for the way in which pupillage supervision is provided, although, as we have said, the primary responsibility should be that of the supervisor.

Question 21: Should the BSB prescribe pupil supervisor training outcomes? Please explain why or why not.

68. Yes. This is of course consistent with our firm view that competent supervision is essential, and that all supervisors should have the same training objectives.

⁵ We make this assertion with the complete support of not merely the Employed Bar Committee, but also BACFI.

Question 22: How should the BSB seek assurance that outcomes in pupil supervisor training are being delivered?

69. The Inns have a long history of involvement in best practice with pupillage. They each have considerable, and efficient, support structures, using volunteers from the Bar and Bench. Finally, and most importantly, they have a vested interest in ensuring that the best possible training is provided. This suggests that the Inns are in the best position to ensure that this important task is properly carried out. That should be sufficient assurance to the BSB that the outcomes in pupil supervisor training are being, and will be, delivered. Notwithstanding this, we support the reauthorisation of ATOs and mandatory refresher training for pupil supervisors (see our responses to Questions 18, 19 and 25).

Question 23: Should organisations be required to provide this assurance during the authorisation process? Please explain why or why not.

70. Please see our answer above.

Question 24: Should the provision of pupil supervisor training be opened up to other providers (other than the Inns)? Please explain why or why not.

71. For the reasons set out in answer to question 22 above, our answer is no.

Question 25: Should regular refresher training be mandatory for all pupil supervisors? Please explain why or why not.

72. In our experience, pupil supervisors and ATOs review best practice between themselves, and go beyond the minimum standards required by the BSB - for example, via the Bar Council Pupil Supervisor Network. Having said that, we accept that if ATOs are reassessed, in line with our answer to Question 18, then pupil supervisors should be reassessed as well.

Question 26: If you answered 'yes' in Question 25, how often should it be undertaken (e.g. every 2, 3 or 5 years)?

73. rQ52.5 of the BSB Handbook allows the BSB to remove a barrister's name from the register of approved pupil supervisors if the barrister has not acted as a pupil supervisor for the previous five years. This strikes us as an appropriate stage to require refresher training; more often than every five years would be too burdensome and every ten years would be too long for individual barristers (although not for ATOs, as per our answer to Question 18).

Question 27: Should delivery of mandatory courses for pupils be opened up to other training providers? Please explain why or why not, specifically considering the risks and benefits.

74. Please see our answer to question 22 above, which applies equally to this question.

Question 28: Do you find the language and terminology used in the Authorisation Framework sufficiently clear and accessible? If not, please provide examples of how and where this could be improved.

75. Yes.

Question 29: Referring to the relevant sections of the draft Authorisation Framework, are the definitions of flexibility, accessibility, affordability and high standards sufficiently clear? If not, how could they be improved?

76. Yes.

Question 30: Do you think we have identified the correct mandatory indicators for flexibility, accessibility, affordability and high standards? If not, what do you think should be added or removed and why?

77. Subject to what is said in the general introduction about flexibility, yes.

Question 31: Do you agree with our proposals for recognising transferring qualified lawyers? Please explain why or why not.

78. Yes.

Question 32: Do you think there is anything which we have omitted and that we should take into account when considering transitional arrangements?

79. No.

**Bar Council
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