



Bar Council response to the Future Bar Training Consultation on the proposed rules for the training framework for the Bar.

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) Consultation on the proposed rules for the training framework for the Bar dated July 2018¹ (“the Consultation”).
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, 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 criminal and civil courts. It provides a pool of talented men and women 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.

OVERVIEW

4. The Bar Council recognises the challenge of creating qualification rules for a diverse Bar and welcomes the opportunity to comment.

¹ https://www.barstandardsboard.org.uk/media/1943343/rule_change_condoc.pdf

5. Although we understand the BSB's preference for outlining the framework prior to committing itself to detailed rules, we should say that this has made our task difficult, because in many instances our concerns may (and, we hope, will) be addressed by the detail which we have not yet seen.
6. For that reason, we do not provide a specific answer to the two consultation questions², but rather set out our comments upon the drafting in the notes that follow.

THE BAR COUNCIL RESPONSE

rQ4.1: what does the word "*successfully*" (not found in the similar rQ5.1) add?

rQ6 appears out of place, both because it interrupts the flow of rQ3 to rQ5 and rQ7 to rQ10, and because it deals with requirements that will be imposed upon the Inns (whereas rQ1 and rQ2 make it clear that the rules apply only to students, barristers and AETOs.) If rQ6 is intended merely as a signpost to the BSB's authority over the Inns in the regards mentioned, would that not be better interpolated elsewhere, rather than introduced here as a freestanding rule?

rQ7: "*The BSB may grant exemptions from all or part of the requirements set out in rQ3 to rQ5 above [for obtaining practising certificates]*". The criteria for granting such exemptions are not specified (other than in relation to knowledge and experience, with which the following rules deal), presumably because they are spelt out elsewhere. If they are not spelt out elsewhere, should they not be? If they are, it would be helpful for the source of the criteria to be mentioned, without which this presents as a free-standing unfettered discretion.

rQ8: The drafting *suggests* that if the relevant knowledge and experience of the applicant make it necessary for the applicant to do such training, the BSB will not grant exemption – but this is not as clear as it might be. It would be better we suggest to be more forthright, viz: "The BSB will not grant exemption from part or all of any component of training if the knowledge and experience of the applicant make such training necessary."

² Do you think that the proposed rules provide the necessary regulatory framework to give effect to the new Bar Training scheme? Is the drafting of the proposed rules sufficiently clear and precise?

rQ12 refers to “this Section”, while **rQ13** refers to “this Part 4”. It is not clear to what these are references.

rQ13 deals with the grant of full exemption among others to those individuals who have been granted certain rights of audience by an approved regulator (**rQ14**). Such individuals *will* (not may) be exempted from training which the applicant has not fulfilled, unless (*exceptionally* – see **rQ15**) the BSB considers that a period of pupillage is necessary. If we have understood this correctly (although the reference to “Part 4” is not understood), this would appear to mean in practice that a solicitor granted rights by the SRA (with its markedly less strict training requirements, and its omission of pupillage, which we regard as critical to practice as a barrister) will be entitled to qualify as a barrister. While accepting that this is not a new rule change, we take this opportunity to make the point that it will unacceptably dilute the high standards rightly required of practising barristers; and it will provide an easy parallel route to the Bar for those practitioners who have failed the Bar’s entry and training requirements.

rQ23 is scarcely better, in that it extends the exemption to many more with existing rights of audience, subject to an effective waiver of both the academic and vocational training elements, and also “*if the BSB thinks fit*”, pupillage. It is easy to see that this will be attractive to solicitors who regard admission to the Bar as a badge of achievement, and who will recognise that this route to that badge is fundamentally less arduous than the route barristers currently take. It will swell the ranks of the Bar with those who will not have faced the same testing regime, and without giving the undiscerning public any means of distinguishing between the two at the point of instruction.

rQ24: We oppose **rQ24.3**. The effect of this rule is that any “teacher of the law of England and Wales of experience and academic distinction” is automatically exempted from both academic legal training and vocational training. No doubt there will be many distinguished academics with a good broad grounding in English law who already have the skills taught on the vocational stage; but it seems to us perfectly possible that there may be some teachers of law (for instance perhaps very specialised academic lawyers) who will not. Given the imprecise definition of those who fall within this rule it is particularly important to avoid passporting people through two of the three stages of bar training.

We therefore suggest the rule for legal teachers should be as follows:

rQXX If the BSB is satisfied that an applicant falls within Rule rQYY, the BSB may if it thinks fit exempt the applicant from the *academic legal training* and from part or all of the *vocational training* and part or all of *pupillage*.

rQYY The following categories of individual fall within this Rule:

.1 a teacher of the law of England and Wales of experience and academic distinction.

rQ31: The BSB has been made aware of the Bar Council's concerns relating to the change in the requirement that a pupil must be supervised by a suitably qualified barrister, who should take only one pupil at a time. The BSB has decided, against the strongly held views expressed by the Bar Council, that this requirement should be relaxed in the case of sets of chambers, and greatly relaxed in relation to other organisations. The Bar Council has been assured that applications by such other organisations will be treated with an appropriate degree of rigour, to ensure that they will apply the same levels of supervision by appropriately qualified individuals as sets of chambers. We do not see in this rule any such reference. The draft Authorisation Framework at Annex 1 to the BSB's Paper 029 (18) dated May 2018 set out the test to be applied by reference to the AETO's ability to train pupils to meet the Threshold Statement, and having regard to other documents (such as the "Pupillage/Workbased Component Evidence") which the BSB is yet to produce. We see in these papers no requirement that the AETO supervisor should be a practising barrister – a feature which we regard as critical to proper training, incapable of replication by any other individual. We view this dilution of the vital work-based component of the pupil's training as antithetical to the regulatory objective of encouraging an independent, strong, diverse and effective legal profession and, similarly, in conflict with the regulatory objective of promoting and maintaining adherence to the professional principles. We urge the BSB to introduce appropriate safeguards, to ensure that this dilution does not take place. We see as a minimum safeguard a requirement that any AETO supervisor should be a practising barrister, responsible for one pupil at a time. We add that the reference in rQ31.2 to the AETO having to be a "*suitable provider*" is too opaque and general to provide us with any reassurance.

Bar Council

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