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CHAIRMAN’S FOREWORD

This is the Final Report of the Training for the Bar Committee’s Working Party on the Bar Vocational Course (“the TfBC Working Party”).

Previous Drafts of this Report were forwarded to the Entry to the Bar Working Party, chaired by The Rt. Honourable Lord Neuberger of Abbotsbury. Many of the recommendations in our penultimate draft report (the Fifth Draft) were positively endorsed by Lord Neuberger’s Working Party.¹

One particular live issue centred on whether a 2:1 degree classification (or equivalent) ought to be made a minimum requirement for the entry on to the Bar Vocational Course (BVC). During 2007, major and influential work was being undertaken by Universities UK on the current system of University degree classification. In an interim report, Universities UK’s Steering Group² had expressed the view that the current system of UK University degree classification was “no longer fit for purpose” in the 21st century. They proposed its abolition. It was unclear at that stage, however, what precise form any replacement system would take. A replacement system would clearly impact on entry requirements for the BVC, and the TfBC Working Party’s final proposals.

Universities UK’s Steering Group have now submitted their final report. Their interim proposals for the abolition of the current system of degree classification have been watered down. They found that any replacement system “was fraught with critical dangers”, which would need to be fully addressed before such radical change was introduced. Wider stakeholder groups also remained largely unconvinced about the need for radical change.

The Steering Group now accept that the current system of degree classification will continue for the time being, but propose that a wider academic transcript should be made

¹ Entry to the Bar Working Party: Final Report (November 2007), Chapter 5 (paras.123-196). A member of the TfBC Working Party and two members of the Training for the Bar Committee were also members of Lord Neuberger’s working party.

² i.e., the Measuring and Recording Student Achievement Steering Group
available alongside the current system of degree classification. The proposed academic transcript has been termed “the Higher Education Achievement Report” (HEAR). The Steering Group propose that further consideration should be given to reform of the current degree classification system after HEAR has been fully trialled.

The TfBC Working Party has taken account of these developments in its own Final Report, and has developed a new model for consideration as an alternative basis of assessment for entry on to the BVC. Further, while most of the recommendations remain as they were in the Fifth Draft, substantial changes have taken place in the text of the Final Report.

I now turn to TfBC Working Party’s work on the Report itself. Those who took the considerable time to provide Responses to the Bar Vocational Course Consultation Paper have the Profession’s gratitude. The Responses were thought-provoking and enormously helpful to us in carrying out our review of the BVC and professional training for entry to the Bar.

The TfBC Working Party was composed of individuals from various sections of the practising Bar, and in addition: a Professor specialising in Education who was formerly a University Vice-Chancellor and Chief Executive, a retired Major-General who was Under-Treasurer of an Inn of Court, and an employed barrister with considerable industry experience on diversity issues. It is a tribute to them that this Report represents a consensus view.

However, this Report is much more than simply the work of the TfBC Working Party members (considerable as that has been). We have been enormously assisted by the members of the Training for the Bar Committee and the Bar Council’s Equal Opportunities Officers who offered their comments, orally and in writing, on various drafts of this report. The Report in its final form has incorporated and been shaped by their contributions. I am also indebted to those BVC students who gave up some hours

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3 For a list of the Training for the Bar Committee members in 2006/07 see Appendix 6.
one evening to discuss their own perceptions of the course. This and similar discussions with other students, pupils and New Practitioners from a variety of backgrounds were enormously helpful to us in shaping the views which appear in the Final Report.

I am particularly grateful to the Secretary to the TfBC Working Party for her tireless efforts in coordinating busy practitioners, and in always responding so readily to our requests for information and assistance.

A Fifth Draft of this Report was made available to the newly formed BVC Review Working Group, which is chaired by Derek Wood CBE QC, to assist that Working Group in its comprehensive review of the BVC.

It is with pleasure that I now commend the TfBC Working Party’s Final Report to the Bar Standards Board for its consideration.

RICHARD WILSON QC

April 2008
EXECUTIVE SUMMARY

This Report has been produced by the Training for the Bar Committee’s Working Party on the Bar Vocational Course (“the Working Party”). As such, the Report has been produced on behalf of the representative side of the Bar Council. The regulation of the profession is now governed by the Bar Standards Board, an independent body. Our detailed recommendations to the Bar Standards Board and other matters for further consideration are set out in the body of the Report.

In summary, the recommendations and other matters for further consideration are:

BVC COURSE SPECIFICATION

1. **Course content.** It is recommended that:

   a. The increasing specialisation at the Bar should be better reflected in the BVC course content [paras.13-16].

   b. “Knowledge” modules comprising both Criminal and Civil Litigation should be taught at a general introductory level, and students should then be able to choose from a number of Elective (Specialist) Advanced Litigation Options [paras.17-19].

   c. More substantive, procedural and adjectival (evidence) law should be integrated into the teaching of the “skills” components of the BVC [paras.20-21].

   d. A Unified Mediation Advocacy course unit should be introduced on the BVC [para.22].

   e. Practical Legal Reasoning and Analysis of Evidence course(s) should be introduced and assessed as part of the BVC “skills” components [paras.23-30].

   f. Courses in Ethics [para.31], Forensic Accountancy [para.33] and Equality and Diversity should be introduced and assessed [paras.39-41], either separately or as part of the assessment of other skills such as advocacy or conference skills.

   g. Practice Management skills, including “office skills” and the basic principles of how to run an effective modern professional practice at the
Bar, should be taught. Further consideration should be given as to whether such a course should be separately assessed [paras.34-38].

h. Further consideration should be given to reform of the BVC Negotiation skills course in content and delivery. The object being to attain the standard and quality of negotiation courses offered by the leading educational institutions in the field [para.32].

2. **BVC Assessment Framework.** A specific review of the weighting and percentages allocated to each subject area in the BVC should be carried out by the Bar Standards Board once its general review of the BVC course content is complete [para.42].

3. **Quality Assurance.** It is recommended that the Bar Standards Board urgently review, at each Provider, the quality assurance mechanisms for the BVC [para.43].

4. **Duration.** It is recommended that the BVC retains its current length of at least 32 weeks’ duration [paras.44-52].

5. **Level.** It is recommended that:

   a. On completion of the BVC each successful student should be awarded a Postgraduate Diploma in *Professional Legal Skills for the Bar* [para.53].

   b. The BVC should be designed and delivered in a way that will enable it to be recognised as QAA Level HE4 (Masters Level), either by way of elective option upon completion of the course content for the BVC postgraduate certificate or by way of upgrading the entire BVC course content to Masters Level [paras.54-64, 72-77, 182-185].

   c. Providers offering the BVC at Masters Level should be required to satisfy the Bar Standards Board or (a Bar Examinations Board), in addition to others, that they were able and competent to teach the BVC at Masters Level [para.184].

   d. The Bar Standards Board should act now to regulate the content, structure and duration of existing Masters programmes for the BVC [paras.57(5), 64].

   e. On successful completion of the Masters programme, students should be awarded a Masters in Professional Legal Skills for the Bar. The designation should be “LLM (Professional Legal Skills for the Bar)”’. The fact that this is a Masters in the Bar Standards Board’s own vocational course needs to be made clear on the face of the designation of the degree, so as to avoid confusion with other vocational courses in law [para.63].
6. *Bar Council prescriptions for the BVC.* It is recommended that the Bar Standards Board carry out an in-depth review of the current Bar Council prescriptions for the BVC (in particular with regard to matters such as library holdings and provision of computers for student use), with a view to ascertaining whether any suitable reductions can be made to the costs of the course [paras.65-71].

### METHODS TO ENSURE STANDARDS AT POINT OF ENTRY

7. **English language proficiency.** It is recommended that the BVC Providers be reminded immediately of their responsibilities to remove students from the BVC, where students fail to demonstrate the necessary spoken and written English language proficiency (irrespective of whether the student is a ‘home’ or foreign student). The Providers should also be informed that the Bar Standards Board will specifically review their files on this issue when considering re-validation. [paras.78-93].

8. **Measures to improve standards at point of entry.** With a view to improving standards at point of entry for the BVC, it is proposed that the Bar Standards Board give consideration to implementing *one or more* of the following:

   a. *Entrance examination.* Should the Bar Standards Board introduce (as soon as practicable) an entrance examination for all applicants for the BVC, in order to determine whether an applicant’s aptitude and/or legal knowledge and/or English language proficiency is suitable for entry on to a re-vamped BVC and potential practice at the Bar of England and Wales? [paras.78, 104-110, 115-124, 175, 181].

   b. *Minimum attainment of a 2:1 degree classification (or equivalent).* Should attainment of a 2:1 honours degree in law (or equivalent qualifications such as appropriate passes on the CPE/GDL) be made minimum conditions of entry for the BVC (but subject to existing rules as to waivers contained in Schedule 2, Category II of the Consolidated Regulations of the Inns of Court and Bar Council)? [paras.78, 94-103, 111-114, 128-129, 174-175, 177-179].

   c. *CATVAT.* As an alternative to the attainment of a 2:1 (or equivalent) as minimum conditions of entry, should the Bar Standards Board introduce a Classification, Academic Transcript and Voluntary Aptitude Test (CATVAT) model of assessment for entry to the BVC? (The CATVAT model incorporates a variety of judgments about an applicant’s capabilities as opposed to a single summative judgment based on degree classification alone) [paras.130-136, 180].

   d. *English language proficiency test.* Should enrolment on the BVC be made conditional in the case of each student (home or foreign) on passing
an English language proficiency test for the Bar ("English Language Test for the Bar of England and Wales" or "ELTBEW")? [paras.78-93, 174-176].

e. **Voluntary Aptitude Test.** Should a voluntary aptitude test be introduced as an additional ground for admission by waiver, under the Consolidated Regulations of the Inns of Court and Bar Council? [paras.130(3), 131-136].

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**The Training for the Bar Committee recommends:**

i. *The introduction (as soon as practicable) of an Entrance Examination for all BVC applicants* which would test aptitude for practice at the Bar of England and Wales, basic knowledge of the 7 foundation subjects in law and English Language Proficiency [paras.78, 104-110, 115-124, 175, 181].

ii. *Pending the introduction of an Entrance Examination*, the Bar Standards Board should:

- Introduce an English Language Proficiency Test for all BVC applicants [paras.78-93, 174-176];

- Introduce a Voluntary Aptitude Test to assess aptitude (or potential) for practice at the Bar of England and Wales [paras.130(3), 131-136]; and

- Make attainment of a 2:1 (or equivalent) minimum conditions of entry for the BVC, but subject to existing grounds for waiver contained in Schedule 2, Category II of the Consolidated Regulations of the Inns of Court and Bar Council⁴ [paras.78, 94-103, 111-114, 128-129, 174-175, 177-179]. **Alternatively,** introduce the CATVAT model of assessment to set new minimum conditions of entry [paras.130-136, 180].

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⁴ See October 2007 edition of the Consolidated Regulations.
9. **Bar Examinations Board and one Finals examination.** It is recommended that:

   a. The Bar Standards Board set up a Bar Examinations Board [paras.137-139]; and that

   b. One set of Final examinations should be introduced for all BVC students in all appropriate subjects, irrespective of the institution attended by the student [paras.139].

10. **Central setting of Final examinations.** The Bar Standards Board should give consideration to the extent to which central setting of Final examinations would be appropriate and practicable for the “skills” as well as the “knowledge” components of the course [paras.140-141].

11. **Local assessment of BVC Final examinations.** It is recommended that:

   a. BVC Final examinations should be marked and assessed locally at the Provider where a student is registered, subject to marking schemes being laid down centrally by the proposed Bar Examinations Board [paras.140-142].

   b. Moderation of the marking/assessment for the Final examinations should be conducted by a Bar Examinations Board, with the assistance of external examiners [para.142].

12. **Student attendance at Provider necessary?** In the context of the “outcomes” versus “process” debate, the Bar Standards Board should give further consideration to the question of whether attendance at an accredited Provider is a necessary pre-requisite for sitting the BVC Final examinations [paras.144-154].

13. **The BVC, pupillage and the New Practitioners’ Programme.** It is recommended that there should be greater and more formalised communications between the Providers, the Inns of Court, the Advocacy Training Council, the Specialist Bar Associations, and the Circuits; with a view to producing an holistic approach integrating the training of basic core skills on the BVC with formal training in pupillage and on the New Practitioner Programmes [paras.155-160].

14. It is recommended that the Bar Standards Board mandate that the **Providers guarantee a minimum amount of time students are to spend “on their feet”** during training on the advocacy course unit [para.161].
15. **Reduction of numbers on the BVC.** It is recommended that the Bar Standards Board takes substantive measures to improve the quality of the student intake on the BVC, particularly if such measures are also likely to have the incidental effect of reducing the disparity between numbers enrolling on the BVC and pupillages available. In particular, the Bar Standards Board should:

   a. *Introduce (as soon as practicable)* an Entrance Examination for all applicants for entry on the BVC; and

   b. *Pending the introduction of an entrance examination,* (i) make the award of a 2:1 honours degree classification in law (or equivalent) a minimum condition of entry; or (ii) *alternatively,* adopt the Classification, Academic Transcript and Voluntary Aptitude Test (CATVAT) model which seeks to incorporate a variety of judgments about an applicant’s capabilities.

   :See the full proposals at Points 8 and 9, above.

16. **Publication of information relating to pupillage.** It is recommended that:

   a. The Bar Standards Board and/or Bar Council should make readily available on their websites information relating to each Providers’ track record in terms of the number of students passing the BVC, the grades obtained and the numbers who went on to obtain pupillage [paras.186-188]; and that

   b. The Providers should send out an information pack to each applicant for enrolment on the BVC, containing statistical information from the Bar Council relating to pupillages. The Bar Standards Board should make provision of this information by the Providers a condition of validation [paras.187-188].

**EQUALITY AND DIVERSITY**

17. **Full Regulatory Impact Assessment.** Each proposed measure that the Bar Standards Board is minded to adopt should be subjected to a full regulatory impact assessment prior to implementation [paras.190-194].
SECTION 1:

INTRODUCTION
1. **INTRODUCTION**

1. In the publication *Bar Vocational Course: Course Specification Requirements and Guidance (revised: July 2007)*, which is also known as ‘the Golden Book’, this statement of principle by the Bar Standards Board is to be found:

   “The Bar is a demanding profession. Barristers must evidence qualities justifying the responsibility and trust placed in them by members of the public and by other qualified professionals from who work is referred. **The public is entitled to expect standards of excellence from barristers in the execution of their duties. The BVC must reflect these standards in the training it provides to students**.”

2. In December 2005, the Education and Training Committee of the Bar Council prepared a Consultation Paper on the Vocational Stage of Training for the Bar. That Committee reviewed the present arrangements for the vocational stage of training, including the Bar Vocational Course specification, with a view to proposing changes to the Bar Standards Board.

3. In 2006, the Training for the Bar Committee - the Bar Council’s successor committee to the Education and Training Committee - set up a working party under the chairmanship of Richard Wilson QC (“the Working Party”) to consider the responses to the Consultation Paper and any wider concerns, and to make recommendations for consideration by the Bar Standards Board.

4. Responses to the Consultation Paper were received from a wide variety of sources, comprising: each of the four Inns of Court, some of the BVC Providers, a number of the Specialist Bar Associations, some Bar Council Committees, the South Eastern Circuit, sets of Chambers, individual practitioners and pupils, and...

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5 At p.4. *This publication is also known as ‘The Golden Book’.*

6 See **Appendix I** for a list of members of the Working Party.

7 Six BVC Providers provided responses to the BVC Consultation Paper.
other interested individuals. The great weight of responses came from the profession. All responses have been read and carefully considered.

5. Two distinct themes emerged. On the one hand, the profession expressed fundamental concerns about the BVC. In no particular order, the general perceptions and concerns were these:

- The BVC was a very expensive course which did not represent value for money.
- The increasingly specialist nature of the profession was insufficiently represented in the BVC course content specification.
- Mediation was of increasing importance for practitioners and this fact ought to be reflected in the course content.
- The performance and quality of the teaching was highly variable across the different BVC Providers.
- The entry standards were set too low.
- Too many students lacking proficiency in the English Language were being permitted entry on to the BVC.
- There was an increasing disparity between the numbers taking the BVC and the limited places available in pupillage.
- There was a lack of genuine appreciation amongst some students enrolling on the BVC as to their real prospects of obtaining pupillage.
- There was a perception that the BVC was of little intrinsic worth over and above it being a condition for automatic call to the Bar and for the securing of Pupillage.
- The BVC was not taught or assessed to a sufficiently high standard particularly with regards to the skills modules.

\[\text{See Appendix 7 for a list Respondents to the BVC Consultation Paper.}\]

\[\text{The expression “the profession” is used in this instance to cover the Inns of Court, Specialist Bar Associations, Bar Council Committees, sets of chambers, individual practitioners and pupils.}\]

\[\text{The Providers and professionals concerned with teaching the BVC might well challenge the empirical basis for this perception. For instance, see pamphlet ‘Bar Vocational Course’ (published by 6 by 6 - the Careers Advisory Service) which carries the legend “We train transferable skills. You choose where to apply them”.}\]
• The course was not sufficiently challenging intellectually, and was in need of radical overhaul.

• The BVC needed to be raised up in standard to the level of a Masters degree.

• A centralised examination setting and assessment regime might be appropriate, particularly in the case of the “knowledge” components of the BVC. Further investigation was required together with detailed consideration as to the costs which would be involved in centralised assessments.

• The Bar Council was over-prescriptive in laying down course requirements which did not bear on the quality of teaching or course content.

6. On the other hand, those BVC Providers who responded were generally more content with the status quo. The following is a selection of their views:

• Criticisms of the BVC were for the most part unfair and ill-informed. Failures attributed to the BVC Providers were often more the product of failures at an earlier stage of many students’ education.

• Some BVC Providers were significantly better than others and met the specified standards. It was unfair to level general criticisms against all the Providers in circumstances where, judged objectively, the dissatisfaction expressed by past BVC students and the profession might well relate to the past performances of one or two institutions only.

• The generalist approach to the course content specification should continue.

• There ought to be greater emphasis on mediation in the course content specification.

• Advocacy ought to carry greater weight in the overall assessment weighting for the BVC.

• The Bar Council’s course requirements with regards to matters such as book provisions in main libraries and course libraries, and computer-student ratios etc. were too prescriptive, failed to take account of online facilities now available and also failed to recognise the fact that most students now had their own computers. Such prescription unnecessarily drove the costs of the BVC up. It should be left to BVC Providers to satisfy the Bar Council’s validation/monitoring panel that
library and computer provision etc. was sufficient to deliver an institution’s course satisfactorily.

- Bar Council prescription should be limited to matters such as the staff-student ratios, the overall hours devoted to the course and course specification.

- Steps should be taken to reduce the costs of the BVC, if possible, but not at the expense of quality.

- Opinion was divided on the efficacy of up-grading the BVC to the level of a Masters degree.

- There were problems with a minority of students who entered the BVC without an adequate grasp of the English Language.

- Centrally set and administered assessments, especially in the “knowledge” areas, could help strengthen the credibility of the BVC amongst the profession. If the knowledge components were tested only via multiple-choice tests (as is already the case at a number of Providers), it would in theory be relatively straightforward to establish and operate the BVC as a centralised system. However, there were potential disadvantages even with this limited approach (such as breaking the link between learning and assessment processes, and a possible consequential over-emphasis by Providers on the “knowledge” rather than “skills” modules).

- There should be no move to centralised assessment by the Bar Council. The practical and logistical difficulties would be formidable. There would be additional costs. It would also limit the curriculum and tend to result in more didactic teaching i.e. cramming for exams.

- Whilst increased practitioner involvement in the BVC had some merit in principle, it would prove difficult to achieve in practice owing to the difficulties in ensuring a practitioner’s availability. Practitioners would also need to undergo significant training and familiarisation with the BVC.

7. The Working Party addressed four principal areas concerning the BVC:

(1) Course Specification: structure, content, duration and level
(2) Methods to ensure standards at point of entry on to the BVC
(3) Final assessment of competence before entry into practice
(4) The disparity between student numbers on the BVC and available pupillages.
8. The Working Party’s review led it to conclude that fundamental changes are required to the BVC in terms of course content, the proportion of the course taken at QAA level HE4 (Masters Level), and the methods by which the BVC examinations are to be set and assessed.

9. A further particular concern is the growing and substantial disparity which exists between those seeking pupillages and the number of pupillages available. The profession has a moral obligation to address this problem, and to take steps to remedy it. There is this further practical consideration: if the disparity is too great, good candidates troubled by the risks attendant on being able to find a pupillage might be put off a career at the Bar.

10. The potential loss of such candidates is evidently not in the interests of the profession; nor however, would such losses be in the public interest. In particular, students from less advantaged socio-economic backgrounds may be deterred from opting for a career at the Bar when faced with the prospect of taking on the heavy debt associated with taking the BVC, in addition to the significant uncertainties of being able to obtain a pupillage.

11. The Bar’s aim for the BVC should be to raise the course’s current standards and standing, and to make it internationally recognisable as one of the very best professional legal training programmes in the world. This is achievable. The benefits will be felt first at home, in producing BVC graduates well-fitted for practice as pupil barristers. A BVC of perceived high value would also play its

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12 Currently, a Provider may deliver its BVC so that only a third of the course (40 out of 120 credits) is performed at QAA Level HE4 (i.e. Masters Level); see BVC Course Specification Requirements and Guidance (revised: July 07), p.5. To qualify as a Masters, 180 credits would need to be delivered at HE4 Level (Masters Level). Note, however, that the QAA Descriptors may be undergoing revision.

13 Not only is this a proposition of common sense, there is some anecdotal evidence to support it. For instance, a course leader at one of the BVC Providers reports having been told by “very able” undergraduates at law fairs that they had opted to become solicitors because of their understanding of the risks attendant on not being able to obtain a pupillage following the BVC. This is not an unusual report.

14 30.6% of students enrolling on the BVC in the year 2005/06 had debts in excess of £20,000; see BVC Student Survey of Aspirations for Practice at the Bar. However, “... there is evidence that this ready acceptance of [student debt] applies only to the majority of students and that there is a minority, particularly among those from lower socio-economic groups, for whom debt is a source of particular worry”, Task Force on Funding Entry to the Bar (2003), para.5.16.
part in continuing to attract students from overseas jurisdictions which have a historic and continuing professional association with the Bar of England and Wales.
SECTION 2:

BVC COURSE SPECIFICATION
2. **BVC COURSE SPECIFICATION**

**Structure and content**

12. The structure and content of the BVC is currently governed by *The Bar Vocational Course: Course Specification Requirements and Guidance* (The Golden Book) which was first produced in January 2001 by the Working Party chaired by Mr Justice Elias, and subsequently adopted by the Education and Training Committee of the Bar Council. The Elias Report prescribes the general framework within which each Provider is permitted, subject to validation, to design its own particular course. A copy of the current *BVC Assessment Framework: Summary Table* is to be found at Appendix 2 to this paper.

13. In order to determine the appropriate content for a professional training course for the Bar, it is necessary first to identify the skills required to be an effective barrister. In essence, the skills required by a barrister comprise competence in: (i) legal reasoning (ii) analysis of evidence (iii) presentational (written and oral advocacy, negotiating etc.) and (iv) research skills, all underpinned by a strong ethical code. These skills ought to be the central focus of any professional training course for the Bar.

14. **Current course content.** The BVC comprises the following elements:

- (1) Professional ethics and conduct
- (2) The **Knowledge** areas which comprise:
  - (a) Civil litigation and remedies
  - (b) Criminal litigation, evidence and sentencing, and
  - (c) Evidence.
- (3) The **Skills** areas, which comprise:
  - (a) **Casework skills**
    - (i) Fact management
    - (ii) Legal research
  - (b) **Written word skills**
(i) Opinion writing
(ii) Drafting
(c) Interpersonal skills
   (i) Advocacy
   (ii) Conference skills
   (iii) Negotiation

(4) The Options.\textsuperscript{15}

15. The BVC course content is in need of urgent review and revision. A number of suggestions are set out in the succeeding paragraphs.

16. Specialisation. The number of specialist chambers continues to grow. Further, as a result of the way in which legal services are being provided and are likely to be provided in future, the proportion of barristers with a specialist as opposed to a generalist practice will continue to rise. This increasing specialisation in the profession needs to be reflected in the BVC course content.

17. Knowledge modules. It needs to be recognised that an increasing number of students have made a decision as to whether to practice in criminal or civil law before entry on the BVC. By that time, some students will already have secured or be about to secure, a pupillage at a specialist set (criminal, chancery commercial, family or employment etc). These factors, taken together with increasing specialisation within the profession, make it unnecessary and time-consuming to require all students to undertake extensive training in both (i) civil litigation and remedies and (ii) criminal litigation and sentencing.

18. The knowledge modules which include both criminal and civil litigation and evidence should be taught at an introductory level - sufficient to give the student a good working knowledge of the two principal models of procedure in our jurisdiction, and of the pervasive impact of the Human Rights Act. Students

\textsuperscript{15} Students must choose two single options or one double option within a single subject. No less than 50% of the duration of the option must be directed to the practice of skill(s) learnt in the core of the course. Options must be taught in a vocational style and the assessment of the options must include a skills exercise: see \textit{BVC Course Specification, Requirements and Guidance (revised: July 07)}, pp.6-14.
should then be able to elect specialist knowledge modules from, say, one or more of the following:

- Advanced Civil Litigation/Practice, ADR, evidence and remedies (this would include the specialist Chancery, Commercial Court, Technology and Construction Court and Queen’s Bench procedural Guides which supplement the Civil Procedure Rules)
- Advanced Criminal Litigation/Practice, sentencing and evidence
- Advanced Family Litigation/Practice, evidence and mediation
- Advanced Employment Tribunal Litigation/Practice, evidence and mediation
- Advanced Personal Injury Litigation/Practice, evidence and mediation

19. The list of subjects set out above is given by way of example only, and are not intended to be prescriptive or exhaustive. Clearly, this is a matter on which the Bar Standards Board will need to give further detailed consideration to, with such assistance from appropriate educational specialists as is necessary.

20. The BVC is a vocational course, and should remain so. However, more substantive, procedural and adjectival law should be integrated into the teaching of procedural and practical skills. This would enable students to further develop their underlying legal skills in a practical context. It could be achieved in the Advanced Litigation electives suggested above or in the Specialist (subject) Options by greater use of the law (substantive, procedural or adjectival) in opinion writing, document drafting, and interpersonal skills. The emphasis would be on applying the relevant law in a practical setting and not on teaching BVC students large tracts of substantive black letter law.

21. There is anecdotal evidence that some of the difficulties experienced by many students on the BVC relates to their inadequate grasp of substantive law; knowledge which they should have acquired at the academic stage of their legal

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16 The skills areas comprise casework, written word, and interpersonal (advocacy, conference, negotiation) skills.

TfBC Working Party on the BVC: specification, standards and pupillage
education.\textsuperscript{17} This is a problem which might well be addressed and remedied by raising entry standards for the BVC. This topic is dealt with in Section 3 of this Report, below. Nonetheless, in line with the recommendation in the Collyear Report,\textsuperscript{18} it is currently still incumbent on BVC Providers “to take appropriate action to require students to demonstrate knowledge of key areas of substantive law during the course”.\textsuperscript{19} Considerable doubt has been expressed as to whether the BVC, as currently delivered, meets the Collyear recommendation.\textsuperscript{20}

22. \textit{Mediation.} Methods of dispute resolution have diversified over the last 10 years. Mediation, for instance, is likely to play an increasingly significant part in civil and family disputes.\textsuperscript{21} The Working Party supports the submission that there should be a Unified Mediation Advocacy course unit on the BVC.\textsuperscript{22}

23. \textit{Practical legal reasoning and analysis of evidence.} Although legal research skills and fact management skills are “outcome specifications” for the BVC, what currently appears lacking in the BVC course content is a sufficient emphasis on practical legal reasoning skills and the analysis of evidence. These are essential tools in the armoury of any practising barrister. Particularly, with regard to evidence:

“... skills in analysing and marshalling evidence and in constructing, criticising and evaluating arguments about disputed questions of fact are intellectual skills that can and should be taught effectively and efficiently in law schools. They are as essential a part of “legal method” as legal analysis and reasoning about questions of law. Common sense, intuition, and practical experience all have a

\textsuperscript{17} See Gray’s Inn Response to the BVC Consultation Paper, paras.17-21.

\textsuperscript{18} In May 1999, the Committee chaired by Sir John Collyear produced the report “\textit{Blueprint for the Future}” which is referred to in this Report as “the Collyear Report”.

\textsuperscript{19} Collyear Report, para.2.1.5.

\textsuperscript{20} See Gray’s Inn Response to the BVC Consultation Paper, para.20.

\textsuperscript{21} “\textit{All members of the legal profession who conduct litigation should now routinely consider with their clients whether their disputes are suitable for ADR}”, as stated by Lord Justice Dyson in \textit{Halsey v Milton Keynes NHS Trust} [2004] EWCA Civ 576.

\textsuperscript{22} See Response to BVC Consultation Paper by Paul Randolph on behalf of the Bar Council ADR Committee; and see also ADR Committee’s paper ‘Proposal for a Unified Mediation Advocacy Course’, dated 17 March 2004.
part to play in exercising these skills, but they are not adequate substitutes for what Wigmore\(^{23}\) called ‘the principles of proof’.\(^{24}\)

24. The ability to remember large tracts of decided cases and even the principles from the relevant case law is often not what distinguishes the good from the average practitioner: what distinguishes them is the ability to reason inferentially, and to analyse and weigh evidence in a legal setting. Lord Atkin’s daughter when writing of him, once stated:

“I understand that his strength as an advocate lay not in his powers of oratory, but in the reasoning and persuasiveness of the arguments by he which he tried to bring the court round to his point of view. He continued to use his powers of persuasion when he was sitting as a Lord of Appeal and would come home and say that he thought that he had won his ‘brothers’ over his side or ‘so-and-so is still not convinced but I think he may be tomorrow’. He certainly persuaded his family that he was right. When he gave us the facts of a case and asked us what we thought about it, his way of presenting the problem was such that there was never any suggestion in my mind that the other side could have a leg to stand on’’.\(^{25}\)

25. In the USA, there is often a close correlation between what is taught in the best law schools and the requirements of the practising Bar. For such American law students:

“… much of their legal education focuses on providing them with some of the specific skills they will need to be effective lawyers. These skills include legal reasoning, legal research, written and oral communication, problem solving and practical legal skills”.\(^{26}\) [Emphasis added].

\(^{23}\) Henry Wigmore (1863-1943) was an American legal scholar who is especially noted for his substantial work usually known as Treatyise on Evidence.

\(^{24}\) Analysis of Evidence (2nd edition), Anderson, Schum and Twinning, p.xvii.

\(^{25}\) E. Cockburn Millar ‘Some Memoirs of Lord Atkin’, (1957), 23 Glim 13, at pp.14-15. Lord Atkin was a Lord of Appeal in Ordinary and one of the outstanding English jurists of the last century. He delivered the leading judgment in the landmark case of Donoghue v. Stevenson [1932] A.C. 562 which established the modern law of negligence. He is also remembered for one of the finest dissenting speeches in English legal history in Liversidge v. Anderson [1942] A.C. 206. In a recent speech, Lord Justice Judge, President of the Queen’s Bench Division said of Lord Atkin that “we simply acknowledge his greatness as a judge, a judge whose name will be certain to be revered down the centuries” (“The Sentencing Decision”, The Reform Club, London 2.11.05).

\(^{26}\) The Impact of the close relationship between American Law Schools and the Practicing Bar’: Lawrence C. Foster (University of Hawaii, United States).
26. Legal reasoning, problem solving and the analysis of evidence are skills which are central to being an effective barrister. These skills are particularly useful, for instance, when a barrister has to determine the theory of the case, often the most critical area of a barrister’s work when dealing with a factual dispute. Whether dealing with written or oral advocacy, an advocate’s theory of the case is his or her argument about the case as a whole. It should be capable of being expressed in the form of a logical and coherent statement of the reasoning supporting the desired conclusion.

27. A theory of the case is the logically persuasive story of “what really happened”. It informs the advocate as to his/her position and approach to all the evidence it is anticipated that will be presented at a hearing or trial. The objective is to force the fact finder to conclude that you have the most plausible explanation of “what really happened”:

   “Might it be suggested that the central act of the legal mind, of judge and lawyer alike, is the conversion of the raw material of life … into a story that will claim to tell the truth in legal terms?”

28. Although case theory, practical legal reasoning, analysis of evidence and fact management might not require separate assessment, they should certainly be taught discretely so that students are able better to understand the essential principles they should be trying to apply in any given situation. In other words, a Practical Legal Reasoning and Analysis of Evidence course or courses (comprising legal reasoning, analysis of evidence, fact management and case theory) should be taught, and further consideration should be given as to whether such a course should be assessed separately. Alternatively, proficiency in these skills could be included in the assessment criteria for all assessed skills.

29. The suggested approach would entail the Bar Standards Board taking the following steps: first, the Bar Standards Board would identify the relevant matrix

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of skills; next, following consultation with the Providers, it would indicate precisely how and in which modules these skills are to be covered; finally, it would determine whether these skills are to be assessed separately and/or integrated with other named assessments.28

30. The experience of other common law jurisdictions may provide a useful comparison. In New Zealand, for instance, it is mandated that its Professional Legal Studies Course contain the following discrete course units (amongst others): (i) Fact investigation and analysis; (ii) problem solving and (iii) practical legal research and analysis. These skills are each assessed and together carry 25% of the total marks available for the course. Consequently, in New Zealand these skills are not only assessed as a course outcome specification, but it appears that they are also taught in the practical context of “specific legal transactions that are commonly required to be completed by newly admitted lawyers” 29.

31. **Ethics.** Professional ethics lie at the core of what it means to practise as a barrister. It underpins the role played by the Bar in the administration of justice. Ethics should not be taught simply as a discrete subject, but should continue to be integrated and assessed in the practical exercises. Genuine ethical dilemmas should be addressed in simulated real life situations. This is one area where the practising Bar could have a real input in assisting the institutional Providers develop case studies which raise complex ethical questions likely to be faced by students in practice. The Specialist Bar Associations and the relevant committees of the Bar Standards Board 30 and Bar Council, 31 in particular, may have a role to play in this context.

32. **Negotiation skills.** The profession has received particularly negative feed-back from students who have recently completed the course, concerning the quality of

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28 It is understood that this is similar to the approach now adopted for specialist medical training. For further information on the medical approach contact Dr Valerie Shrimplin, Head of Education Standards, Bar Standards Board, General Council of the Bar.
29 See the Professional Legal Studies Course and Assessment Standards Regulations 2002 (NZ), para.2.1
30 These are likely to include the Bar Standard Board’s Complaints Committee and Standards Committee.
31 E.g., the Training for the Bar Committee.
the teaching of Negotiation skills on the BVC. The Working Party agrees that consideration should be given to the introduction of Negotiation courses of the type offered by institutions such as Harvard Law School, which are reputedly held in high regard and teach skills that are unlikely to be acquired in pupillage.

33. **Forensic accountancy.** A barrister unable to understand a balance sheet properly is at a disadvantage. Some knowledge of accounts, accounting and business organisation is useful to the practitioner, whether the area of practice is criminal, civil or family law. The subject’s usefulness is not confined to practitioners in private practice. It is likely to prove just as useful to many employed barristers, whether they work for a commercial organisation or are employed by the Crown Prosecution Service. Forensic accountancy should be taught on the BVC.

34. **Practice Management.** The modern barrister needs to be efficient at what is, perhaps infelicitously, referred to as “office skills”. For many practitioners in private practice, their lack of good practice management has been a bane of their professional lives. The basic principles of how to run an effective modern professional practice at the Bar (including the management of workload) should be taught on the BVC. The Bar should not eschew the learning available from other fields, and may be able to utilise the expertise of practice managers and employment psychologists in devising appropriate course content.

35. The teaching of these practical skills should be made an integral part of the BVC. It makes no difference that a student may not ultimately enter self-employed practice. There are two reasons. First, many students may not be sure as to where they will end up; whether in self-employed or employed practice. Second, there

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32 For instance, see Lincoln’s Inn Response to the BVC Consultation paper: “Concerns are felt about the present teaching of negotiation skills. As taught these are very basic and occupy a disproportionate amount of time for the work involved: indeed some members of our working party who have recent experience consider the conference course to be without value” (at p.5). See also the South Eastern Circuit’s Response to the BVC Consultation Paper: “… research conducted by the Committee, including feed-back from recent users suggests that the interpersonal skills of conference skills and negotiation were the areas that received the most negative feedback in terms of their usefulness during pupillage and in the early years of practice” (at p.6).

33 “Office skills” have been defined as the keeping of accounts, reading company accounts, and dealing with income tax and VAT (Shapland, ‘Developing Vocational Training for the Bar’).
should be easy transferability in both directions between self-employed and employed practice as a barrister. An employed barrister transferring to the Bar should be “fit for purpose”. Vocational training should provide for one Bar.

36. However, the content of “office skills” is not set in stone. Further consideration should be given as to whether additional or optional items should be added to the list, and also as to whether such a course should be separately assessed. For instance, is there scope for more efficient instruction in the use of modern technology in the legal context? In a recent study by the Berkman Center for Internet and Society at Harvard Law School, the core conclusion was that a large majority of lawyers perceived critical gaps between what they were taught in law schools and the skills they need in the workplace, that appropriate technologies were not being used to close this gap and that legal educators seriously under-utilised new technologies. There is little to suggest that a similar conclusion might not be drawn about the BVC and the Bar of England and Wales.

37. Perhaps, as a start the subject should be referred to as “practice management” as opposed to “office skills”. The title “office skills” is likely to downgrade the importance of the subject in the eyes of students and practitioners. Further consideration needs to be given as to whether a Practice Management Course should be assessed (and weighted) as well as taught.

38. It should be noted that in early 2007 the Inns of Court were required to take over the former Advice to Counsel Course. It has been revamped and re-named in conjunction with the Bar Standards Board as the Practice Management Course. Any BVC course on a similar topic would call for close cooperation between the Inns and the Providers in order to avoid duplication, and in order to produce an integrated and complementary programme for the different stages of training.

34 For instance, such training might include (perhaps optionally and not assessed) the use of presentational tools such as power point presentations, effective use of spreadsheets in the presentation of a case, use of bar charts etc for the presentation of aspects of evidence in a case, and so on.


36 Interestingly, hospital surgeons have also recognised the need for a “practice management” course to be incorporated into their training: see www.iscp.ac.uk
39. **Equality and Diversity.** Specific training on diversity (including disability) should be introduced into the BVC. This should cover as a minimum the requirements of equality and diversity as they relate to delivering legal services to a diverse society, managing a barrister’s practice, and also with regards to diversity issues which may arise in chambers.

40. It should be noted that preparing students for practice in a culturally diverse society is not only one of the expressed aims of the BVC, but further, the ability to deliver legal services in a diverse society is now part of the assessment criteria for judicial and silk appointments. Students should be made to understand this, so better to appreciate the importance of the subject.

41. Whilst there should be some basic introductory teaching on equality and diversity, it may not require separate assessment. The relevant issues could be integrated into the assessment of other subjects, such as advocacy, conference skills or practice management. The advantage of such an approach would be to bring it home to students that equality and diversity are not subjects to be boxed up and put away in a disparate category and then forgotten about, but rather that these issues are important and permeate professional life and practice at Bar.

42. **BVC Assessment Framework.** If the recommendations made above as to additional subject areas on the BVC were implemented, then further consideration would have to be given as to the relative weighting and percentages of the total marks, available for each subject. Even as matters stand, there is a good case for carrying out a review of the weighting and percentages presently allocated to the existing subject areas. For instance, should a subject like “conference skills” be

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37 According to the Equality and Diversity (Disability) Committee of the Bar Council, the ICSL have agreed in principle that training on disability issues should become a compulsory part of their BVC: see the ED(D) Committee Response to the BVC Consultation Paper, para.5.

38 *BVC Course Specification Requirements and Guidance (revised July 07)*, p. 4, para.2(c).
given the same weighting as “Opinion Writing”, or does “Negotiation” as currently taught merit the same weighting as “Drafting”?

43. **Quality Assurance.** High levels of criticism of the BVC have been expressed right across the profession. The Bar Standards Board should urgently review the quality assurance mechanisms for the course at each Provider.

**Duration**

44. It is currently mandated that the BVC shall be of at least 32 weeks’ duration, excluding vacations. Providers must also demonstrate a minimum notional study time of 1200 hours.

45. Some Respondents to the BVC Consultation Paper argued that the length of the course should be reduced on the basis that the course was “flabby”, not sufficiently intensive and unduly expensive. Whilst these criticisms appear well-founded, shortening the duration of the course is not a view endorsed by Working Party.

46. On balance, the majority of the Working Party considered the arguments against a reduction in the length of the course to be compelling. The profession should look towards improving the BVC in terms of quality and intensity, not reducing it. A reduction in length would also run contrary to the discernible trend towards

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39 Conference skills and Opinion writing are each currently allocated a weighting of 7.5% of the total marks in BVC final examinations.

40 “Notional study time” includes all scheduled lessons and associated course activity, placement days or weeks, revision time and assessments, and private study time calculated as appropriate to the task for which the student is preparing. It is expected that teaching on the full-time and integrated degree modes would take place on at least four out of five days of the working week: see BVC Course Specification Requirements and Guidance (revised: July 07), p.6, para.4.

41 Further, see Task Force for the Bar Funding Working Party report (2003) paras.7.8-7.13 where these arguments were previously addressed and summarised.
increasing the amount of compulsory study required for qualification for modern specialist professions.\textsuperscript{42}

47. It is worthwhile considering how other professions structure their training and qualifications:

- **Architecture** (minimum 7 years): \textit{3 year} undergraduate degree (RIBA Part 1); \textit{1 year} practical training; \textit{2 year} diploma/degree (RIBA Part 2); \textit{1 further} year practical experience and then Examination in Professional Practice and Management (RIBA Part 3).

- **Medicine** (minimum 7 years): \textit{5 year} undergraduate degree (MBBS, MB etc i.e. Bachelor of Medicine and Surgery) - this course integrates the old pre-clinical and clinical courses with most time devoted to communication skills, problem-based learning and practical clinical tasks; \textit{2 year} Foundation programme after graduation carried out in salaried employment within the NHS - Trainee doctors are entitled to full registration with the GMC at the end of the Foundation One year based upon achievement of specific competencies (skills). During the 2 year postgraduate Foundation programme trainee doctors are required to demonstrate their abilities and competencies against set standards.\textsuperscript{43} Further, lengthy periods of specialist medical training then follow (see: www.mmc.nhs.uk/pages/home).

- **Accountancy** (minimum, usually 6 years): \textit{3 year} undergraduate degree (vocational route possible also); typically \textit{3 year} training contract during which time the examination modules are completed, leading to ACCA qualification (modules can be completed over a longer period of up to 10 years).

48. What is significant in the above examples is the length and apparent intensity of the period of \textit{compulsory study} medical and architecture students, in particular, must undertake to qualify, especially when comparison is made with the present arrangements for the Bar. Qualification (i.e. call to the Bar) may be achieved after just one year’s training on a vocational course; the practising certificate may then be obtained after another year spent in pupillage.

\textsuperscript{42} For instance, the Board of Engineering Council UK now requires an appropriate Masters degree or learning to Masters Level for qualification and registration as a Chartered Engineer.

\textsuperscript{43} Medical training is currently under review pursuant to a Department of Health initiative called ‘Modernising Medical Careers’: see www.mmc.nhs.uk
49. So, in effect, the Inns of Court confer the professional title “Barrister” after a minimum of just 4 years study, and the Bar Council awards a practising certificate after a minimum of 5 years (i.e. 3-year degree, 1-year BVC and 1-year Pupillage). In comparison, a solicitor may be admitted to the Roll and then apply for a practising certificate usually only after a minimum of 6 years study and “on-the-job” training (i.e. 3-year degree, 1-year LPC and 2 years as a trainee-solicitor).

50. A position where a student can acquire a professional title (“Barrister”) after just 4 years study and without any “on the job” experience is a peculiarity which appears to set the Bar apart from other major professions. In these circumstances, it is imperative that the vocational training course for the Bar is delivered at a high level over a significant period of time.

51. It is to be noted that the length of institutional vocational training courses for the legal profession in some other common law jurisdictions is often significantly shorter than in England and Wales. The comparison is not, however, altogether helpful. In a number of those jurisdictions, some practical vocational training is already undertaken at undergraduate level at University before entry on to an institutional vocational course. This is in contrast to the position in England and Wales, where the undergraduate law degree comprises the academic stage of a lawyer’s training.

52. Moreover, law is often taught in other jurisdictions as a second degree or for a longer period than is usually the case in England and Wales. For instance, the LLB at Melbourne University, Victoria, Australia is a four year course for undergraduate entry and three years for Graduate level entry. Significantly, the

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44 In Australia, the practical training courses vary in length; some are as short as 15 weeks (New South Wales). In New Zealand, all law graduates seeking admission to practise must undertake a 13 week practical skills based training course. In Canada, in the year following graduation a student must “article” in order to fulfil requirements for being called to the Bar in a Canadian province. During the period of articles, the graduate will complete a vocational training course typically of about ten weeks’ duration.

45 In Australia, for instance: “The distinction between the academic and the practical stage is beginning to crumble. There are now some law schools who are accredited by their admitting authority to include some or all of the practical legal training requirements within the law degree. This might make the program longer or it might force the exclusion of elective subjects in substantive law”, Legal Education in Australia (2000) by Stephen Parker, Monash University, Australia. In Canada, some interpersonal skills required for the practice of law is usually included at LLB level.
Melbourne degree contains an Advocacy Programme which “… teaches practical skills in the court room. Students work with barristers from the Melbourne legal profession in a court room experience”. It also has a Legal Internship programme which: “allow students to gain credit for research arising out of at least 6 weeks of full-time work in an approved organisation”.

Masters Level

53. Currently not all BVC courses carry an academic award upon successful completion, and of those that do, differing terminology is used to describe the award. The position needs to be standardised. On successful completion of the BVC, students should normally receive a Postgraduate Diploma in Professional Legal Skills for the Bar. No Provider should design or deliver the BVC at a level which would not qualify for the award of a Postgraduate Diploma.

54. Students should, however, have the option of converting the Postgraduate Diploma into a Masters, in the same calendar year that they take the BVC. The conversion to LLM could follow one of two models: the dissertation model or the entire course upgrade model.

55. The dissertation model would involve the writing of a dissertation of appropriate length (say, 15,000 - 20,000 words), based on significant research, and relating to professional legal practice or skills or procedure.

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46 See Melbourne Law School brochure available at: www.undergraduate.law.unimelb.edu.au
47 Courses at the College of Law and Nottingham currently do not carry an academic award.
49 A postgraduate diploma is 120 credits at Level M.
50 A Master’s award would be 180 credits at Level M.
51 This is the dissertation length that City University (ICSL) has stipulated for its LLM in Professional Legal Skills for the Bar; see www.city.ac.uk/law/vocational/bvc. Although, dissertation lengths for Masters
56. The entire course upgrade (to Masters) model would permit subjects such as evidence, civil and criminal litigation to be taught at Masters Level. The Advanced elective knowledge modules proposed above,\(^{53}\) for instance, could be taught at Masters Level.

57. The Masters option should be adopted for these reasons:

1. The student who obtained a Masters degree would hold a valuable educational qualification and acquire skills which could go some way to offsetting any perception that the BVC was poor value for money;\(^{54}\)

2. Qualifications are not only about attainment of knowledge, they are also about skills. There is no reason in principle why a Masters degree should not have as its primary focus “skills”, and the application of specialist knowledge in a practical and procedural setting.\(^{55}\)

3. Many students presently undertake an LLM either before or after the BVC in the belief that some specialist level knowledge might make them more attractive to Chambers.\(^{56}\) Increasing the value of the BVC qualification by permitting the BVC to be a pathway to an LLM, would also represent a better investment in education for those unsuccessful in obtaining pupillage.\(^{57}\)

4. For those who do obtain pupillage, the student will enter pupillage better equipped for undertaking specialist work in their pupillage chambers, whether that work is civil, criminal and/or family.

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Degrees are normally 20,000 to 30,000 words, a shorter dissertation length such as the ICSL one would be desirable.

\(^{52}\) In literature advertising its new LLM in Professional Legal Skills (BVC conversion to LLM), the City University (ICSL) gives some examples of the possible areas for dissertation, e.g.: funding litigation, role of the expert witness (evidence and procedure); enforcing residence orders (aspect of a specialist area of practice); effective cross examination (development of particular skills) etc.

\(^{53}\) See paras.17-18, above.

\(^{54}\) See Task Force on Funding Entry to the Bar (2003), para.7.18(2).

\(^{55}\) The QAA descriptor for a Masters qualification is consistent with the aims and ethos of the BVC. Additional requirements to justify award at Masters Level with regards to reasoning and research skills can be met by way of a dissertation.

\(^{56}\) Some 22% of the students enrolling on the BVC had obtained a Masters degree: see *BVC (Bar Vocational Course) Student Survey on Aspirations for Practice at the Bar* (2006).

\(^{57}\) ‘Mastering the skills of the Bar’, Deveral Capps and James Gray, *The Barrister* (Issue 26).
(5) From the academic year 2006-2007, City University provides an opportunity for students taking the BVC at the Inns of Court School of Law to convert their postgraduate diploma in Professional Legal Skills into an LLM in Professional Legal Practice. When the City University Senate considered the LLM option before its introduction, the Board of Studies took the view that the introduction of the LLM option would give its law school a “competitive edge”. Institutional vocational trainers elsewhere are likely to follow City University’s lead. BPP has recently announced its intentions (subject to validation and approval by its Academic Council) to give students the option of converting the BVC and LPC into a Masters degree in Professional Legal Practice. Northumbria University already provides an option for an LLM in Advanced Legal Practice or an MA in Legal Practice and Policy by the completion of a legal research module and a project on a legal topic of the student’s choice while studying for the BVC or the solicitors’ Legal Practice Course (LPC).

(6) In other common law jurisdictions, some institutions appear to be moving towards provision of a Masters as an option on their professional legal practice courses. For instance, Monash University, Melbourne, Australia, offers a “pathway” from the Postgraduate Diploma in Legal Practice, Skills and Ethics to articulation into a Masters, i.e. LLM (Advanced Legal Practice).

(7) There is significant support for provision of a Masters for the vocational course for the Bar, both within the profession and amongst Providers.

58 Further, in the circumstances, there is a sound argument that in future the entire course should be run as an LLM course, rather than the Masters only being available as a student option as presently proposed. In some jurisdictions, the

58 ICSL has recently been renamed ‘The City Law School, London’. Reference will continue to be made to the ICSL in this Report because of the familiarity of the name.

59 For the academic year 2007-2008, it seems that City University has renamed the qualification an “LLM in Professional Legal Skills”, the words “skills” replacing “practice”: (see website).

60 City University Senate, 8 March 2006. On its website, the ICSL currently states that: “The pilot LLM option being run in 2006-07 is already proving very successful. Although only 25 places guaranteed, the quality of applications was such that 34 places were offered. We are doubling the places available for 2007-08 and will continue to monitor and respond to demand. To ensure quality, an offer of a place will depend on the quality of the dissertation proposal put forward by the student”.


62 www.law.monash.edu/ac/pdlp/llm-pathway.html
professional legal qualification for entry to the Bar is an award at Masters Level or above.\textsuperscript{63} Indeed, the current Inns of Court School of Law (ICSL) strategy appears to be to bring all BVC subjects up to Masters Level.\textsuperscript{64}

59. Before it could be mandated that all BVC providers teach the course at Masters Level it would be necessary to justify the change objectively. It could be argued, for instance, that the scope and volume of legislation and case law in recent years (including European Union, ECHR, criminal law legislation etc.) together with an increasing level of specialisation at the Bar, and the demands for “excellence” made of barristers, all mean that professional training to Masters Level is now required in order to equip fully a student for practice at the Modern Bar.

60. A consideration of the Quality Assurance Agency’s (QAA) Descriptor for Qualifications at Level HE4: Masters Degree\textsuperscript{65} indicates that it is not necessary to change the nature of the BVC from one which essentially assesses “skills” into a traditional “academic” course in order for the course to qualify as a Masters. The basic nature of the course as a vocational one would not change; it would simply be delivered at a higher level.

61. Whether the Masters was available only as an option or whether the entire course was up-graded, some Providers would face the practical problem of not currently having staff sufficiently qualified to teach the relevant course units or supervise Masters Dissertation level research. This is a recruitment problem which could be readily addressed by the Providers recruiting the relevant personnel either on full or part-time employment or consultancy contracts, and/or by sharing the services of the relevant personnel with other institutions, and/or by entering into formal combinations or associations with Universities. The task for the

\textsuperscript{63} Whilst it is true that in the USA its professional law degrees integrate substantive black letter law content with vocational skills training, all professional law degrees are awarded at Doctorate level i.e. Juris Doctor or Doctor of Jurisprudence (J.D.). The Juris Doctor like the Doctor of Medicine is a professional doctorate. The American law school programme is a post graduate degree, and is considered to be a professional school programme.

\textsuperscript{64} ‘Integrating skills and knowledge - from courtroom to classroom’ - paper presented by James Griffiths and Paul McKeown, joint coordinators of the ICSL’s Evidence and Advance Criminal Litigation module.

\textsuperscript{65} See Appendix 3 to this paper. Revision of the QAA Descriptors is currently under consideration.
profession is to set the standards: the challenge for the Providers should be to meet them.

62. The other problem for private BVC Providers is that they may not have Degree Awarding Powers - and so would require a link with a University to be able to award a Masters Degree. Theoretically, this could have the effect of driving up costs at those Providers.  

63. There should be a common designation for all Masters courses for professional training for the Bar of England and Wales. The fact that this is (or would be) a Masters in the Bar’s own vocational course should also be readily apparent on the face of the designation of the degree, so as to avoid any confusion with other professional vocational courses in law. It is suggested that a designation such as “LLM (Professional Legal Skills for the Bar)” would be appropriate.

64. The Bar Standards Board should act now to regulate the content, structure and duration of all Masters Programmes in vocational training for the Bar of England and Wales.

Bar Council Prescriptions and Costs

65. The BVC is now a £20m industry. In September 2006, 1932 students enrolled for the BVC each paying out between £8,200 and £12,275 in course fees, although significantly, the majority of students would have paid out sums either just above or just below £12,000. The numbers on the course may be set to rise. There is

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66 However, see para.71 below.

67 For instance, BPP currently proposes to introduce an optional Masters upgrade to an LLM in Professional Legal Practice for both LPC and BVC students: see www.bpplawschool.com/programmes. BPP’s proposed designation would leave it unclear as to whether a student had obtained a Masters in the Bar’s own vocational course or the solicitors’ vocational course.

68 In time, a short form description such as “LLM (pls.Bar)” or similar, could take root.

69 In the academic year 2006/2007, 914 full time students paid course fees of £12,275 each; a further 240 paid fees of £11,795 each. In 2007/2008 the highest fees payable were £12,995 (BPP, London); the lowest fees are £8,500 (Cardiff).
concern both as to the rising costs of the BVC,\textsuperscript{70} and as to whether those costs represent value for money, particularly when compared to the costs for other postgraduate and Masters Courses in this country.

66. There is a view amongst some Respondents to the BVC Consultation Paper that one of the principal factors driving up the costs of the BVC is the Bar Council’s prescriptions for the course. The general point made was that, with the principal exception of Advocacy, the Bar Council should prescribe results and not methods, save where those methods will ensure higher standards. One Respondent opined:

“The Bar does not tell the universities how to teach their law courses, only what matters they must cover. By contrast, the current BVC Course Specification Requirements and Guidance, whilst asserting that each institution’s “autonomy” is a guiding principle, lays down detailed requirements and “good practice guidelines” as to class sizes, teacher/student ratios, books and methods of instruction. This dates back to the days when the bar’s own law school, the ICSL, designed the BVC, and the Bar required other validated courses to follow the ICSL model. It is difficult to justify in modern conditions, particularly since it prevents any effective price (or other) competition by insisting [that] every institution delivers its course in the same, expensive way”.\textsuperscript{71}

67. Particular criticism was directed by some Respondents at the Bar Council’s prescriptions on Library holdings for the BVC,\textsuperscript{72} and for computer facilities.\textsuperscript{73} The basic view expressed was that these prescriptions are excessive, outdated and expensive; that they fail to take account of the sophisticated information relating to the books actually used by students which is available to BVC Provider librarians; and that they fail to take account of the fact that most students now have their own personal computers and generally would need only access to Lawtel, Westlaw or other similar subscriptions in order to carry out their own research. Internet research methods would tend to mirror the way most practitioners now operate.

\textsuperscript{70} In March 2008, BPP announced an 11% increase in fees for the BVC from £12,700 to £14,150 for the 2008/09 academic year: Lawyers 2B.com, 12 March 2008.

\textsuperscript{71} Richard Salter QC: Response to the BVC Consultation Paper, para.9.

\textsuperscript{72} See BVC Course Specifications Requirements and Guidance, Annex 2, p.47.

\textsuperscript{73} Providers must meet a ratio of 1 IBM compatible PC to every 5 students.
68. In the case of library holdings specifically, there is much to be said for the Bar Standards Board refraining from imposing a standardised minimum holdings list, so leaving it to the Providers to satisfy the BVC Validation/Monitoring panel that their provision is sufficient to deliver the particular course design.

69. Accordingly, it is felt that the Bar Standards Board should carry out an in-depth review of the prescriptions for the course and determine the necessity, ambit and appropriateness of each current prescription. A full audit of the costs of each segment of the BVC course should also be carried out. There needs to be a cost-benefit analysis.

70. Prescriptions which are no longer justifiable on grounds of costs should be removed. The objective should be to ensure that the costs of the BVC are kept within reasonable bounds and truly represent value for money. This is particularly important in the light of anecdotal evidence which suggests that the high costs of the BVC may tend to deter some students from attempting to qualify for the Bar.74

71. Further, an entire course up-grade to Masters Level or provision of the Masters as a student option should not be treated as an opportunity for disproportionate and unjustifiable increases in fees. It would be helpful if the reasonable costs of a Masters programme or Masters option could also be independently assessed under the auspices of the Bar Standards Board.

The BVC and accessibility to the Bar

72. As the Entry to the Bar (Neuberger) Working Party has pointed out:

“A concerted effort is needed to render a career as a barrister as accessible as possible to those from less privileged backgrounds: in particular to those who are

less advantaged socially, educationally, financially, and to those who feel discriminated against on grounds of ethnicity, gender, physical ability or age".  

73. By improving the value and quality of the BVC in the ways suggested earlier in this Report, the Bar Standards Board can make a significant contribution to the Bar Council’s stated aim of ensuring that the profession is as accessible as possible to those from less privileged backgrounds. The profession’s generally unfavourable perception of the relative value of the BVC, which is matched by the criticisms of many who have recently completed the course, may actually contribute to restricting access into the profession for the less privileged. This is because when recruiting pupils, it appears that many chambers set greater store on a candidate’s undergraduate degree classification and where it was obtained, than they do on the BVC or the BVC grades obtained. Such an approach would tend to underscore the advantages those with a more privileged educational background may already have.

74. In his paper on the ‘Economics of Pupillage’, Dr. Rupert Macey-Dare opines that that the modern pupillage selection approach of the Bar may discriminate against students from disadvantaged backgrounds:

“This new tenancy selection approach [i.e. the minimum funding pupillage requirement] is very likely to adversely select against students from disadvantaged backgrounds, who, because of their initial life chances and backgrounds, are much less likely to arrive with an elite educational signal already on their c.v.s. Previously the added risk to chambers in taking on such speculative candidates as pupils, could be easily compensated for by chambers giving them unfunded first 6 month pupillages and seeing how they actually performed….

In any event the overall career prospects for students from disadvantaged backgrounds doing BVC in the early 1990s were remarkably good.” [Emphasis added].

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75 Final Report (Nov.2007), Chapter 2; para.1.
76 See paras.12-69, above.
77 ‘Economics of Pupillage’ (Spring 2007) at p.13, by Dr Rupert Macey-Dare of St. Cross College, Oxford University.
75. By improving the quality and standing of the BVC, the Bar can itself, take a significant step towards redressing the perceived differentials between those with “an elite educational signal on their cv.s.” prior to the BVC and those from disadvantaged backgrounds without such signals.

76. Perhaps the point is best illustrated by the following hypothetical example:

“Suppose you have to devise an 8 month training programme for the London Marathon for two groups of healthy individuals. The first group (Group A) are very fit and currently take regular exercise. The second group (Group B) only exercise occasionally and are only moderately fit. If you devise an exercise regime for the London Marathon which is light, the chances are that the individuals in Group A are likely to do better in the Marathon than the individuals in Group B because of their greater pre-existing fitness.

However, if you were to devise a rigorous training regime slowly building in intensity over the 8 month period, the chances are that you are much more likely to get individuals in both Group A and Group B to the starting line not only all better equipped for the race, but also with a good deal less to choose between them in terms of potential performance in the Marathon.”

77. As with the hypothetical London Marathon, so with the Bar. If students undergo a period of high quality training on the BVC – which is universally accepted as such – the chances are, that the historically disadvantaged student is much more likely to arrive at Day One in pupillage with vocational competencies and skills which match (and are perceived to match) those who come with “elite educational signals” on their CVs.
SECTION 3:

METHODS TO ENSURE STANDARDS AT POINT OF ENTRY
3. METHODS TO ENSURE STANDARDS AT POINT OF ENTRY

78. There are two steps which, if taken, would immediately improve standards at the point of entry on to the BVC. First, proficiency in the English language and/or second, a 2:1 law degree qualification (or equivalent), could be made minimum conditions of entry for the BVC. Further or alternatively, in the medium term an entrance examination for all applicants would ensure appropriate quality standards at point of entry.

Minimum standards of entry (1): Proficiency in English

79. Those who aspire to become barristers are seeking to make their living by use of the spoken and written word at a very high level of proficiency. It is essential that any student enrolling on the BVC should have attained a high level of competence in the English language.

80. Lack of competence in English amongst fellow-students has been a constant source of complaint by BVC students, past and current. It was a source of major complaint by many Respondents to the BVC Consultation Paper, and has played a major part in convincing many students and Pupils that the BVC did not represent value for money. The passage below is typical of the responses received on this topic:

“All members of Chambers who have recent experience of the course agree that a major problem … is the lack of basic literacy and English language proficiency of very many students on the course. Inevitably a disproportionate amount of teaching time is spent assisting those students simply to understand the exercise and addressing basic errors in grammar and vocabulary”.

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78 The “equivalent” would be appropriate passes on the Common Professional Examination (CPE)/Graduate Diploma in Law (GDL). For instance, for the CPE a “commendation” grade is set at 60%, which is 2:1 level.

79 See Response to the BVC Consultation by the Chambers of Richard Anerlay QC, para.13.
81. Students who are insufficiently competent in the English language adversely affect the quality of student experience on the course, the pace at which the course can be taught and they impede the progress of other more able students.

82. Candidates whose first language is not English or who obtained their qualifying degrees in a country where English is not the primary spoken language should have to demonstrate their competence in English by passing written and oral proficiency tests at an appropriate level.

83. The importance of language proficiency is recognised by the Bar Standards Board at Annex 3 of its *BVC Course Specification Requirements and Guidance (revised July 07)*:

“Practice at the Bar demands a high level of ability in the written and oral the English language. Consequently, students enrolling on the BVC are expected to be fluent in English, conversant with the rules of grammar and able to express themselves clearly and accurately both when they speak and when they write. Experience has shown that students who do not have sufficient ability in spoken and written English have great difficulty in following the course, and are likely to fail.

The Bar Standards Board policy on proficiency in English is set out below and applies to all students.

1. **Applicants should assure themselves** that their oral and written English language ability is at least equivalent to a score of 7.5 in all sections of the [International English Language Training System] IELTS.

2. On entry to the course students will be required to sign a statement that they are aware that this standard is required of all students who enter the BVC, and that they consider they have met it.

3. Though it shall not be required that students sit the test, those with any doubt as to the level of their oral ability are strongly advised to do so before enrolling on the course.

4. **Subsequent to being admitted to the BVC, should the BVC provider consider that a student’s language ability is unsatisfactory, it may require the student to take the IELTS** (at the student’s cost). Should the student then fail to achieve a score of 7.5 in all sections of the IELTS the provider may require the student to:

   A) withdraw from the course;
   B) intermit and improve their score prior to being re-admitted to the course;
   C) require the student to take such remedial training in the English language as the provider sees fit;
   D) impose such other requirements as the provider deems appropriate.”

[Emphasis added]
84. Regrettably, the present arrangements seem to have failed. It would appear that student self-certification of competence in the English language has, perhaps unsurprisingly, not resulted in candidates being rigorous enough in assuring themselves that their oral and written English is of the required standard. Moreover, the Providers (or at least some of them) have not been sufficiently rigorous in policing language competency and/or acting in cases where deficiency was patent.

85. Assessment of competence should not initially be left to student self-certification nor even ultimately to the Providers having to take steps to remove students from a course after they have paid substantial fees. The scope for uneven application is too great.

86. In principle, students whose first language is not English or who obtained their qualifying degree in a country where the primary language is not English could be required to produce evidence of having passed the IELTS at 7.5 in all sections before being admitted to the course. The Bar Standards Board could take leading counsel’s opinion as to whether such a condition or requirement would amount to unlawful discrimination under the Race Relations Act 1976 (as amended). If such a requirement or condition would not be unlawful, then observance of strict language requirements could be introduced as a condition of re-validation for the Providers.

87. However, even if (as might be expected) English language requirements did not amount to unlawful discrimination, requiring an applicant whose first language was not English to produce evidence of an IELTS pass at 7.5 prior to admission would still be dependent on the student being honest, accurate and rigorous, in the first instant. Such a revised policy is unlikely to lead to consistent application.

88. Moreover, there may well be many instances where an applicant whose first language was not English had a competence in the English Language which surpassed that of many home students. Why should such students have to produce evidence of language competence, and the home students not?
The problem of language proficiency would disappear completely if entry on to the BVC for all applicants, was made subject to passing an English language proficiency test for the Bar (“English Language Test for the Bar of England and Wales” or “ELTBEW”) irrespective of whether or not English was the student’s first language.

Alternatively, rather than making it a requirement for all students to take a proficiency test, the requirement could in theory be limited to those students who did not obtain at least a 2:1, on the basis that it could be assumed that those who have reached 2:1 level will have already demonstrated that they possess the requisite proficiency in English. However, the difficulty with this approach would be ensuring that all students (whatever their degree classification) were sufficiently proficient in English to merit entry on to the course. The mere fact that a student attained a 2:1 in law (or equivalent) is not, regrettably, categorical proof of proficiency in English sufficient for entry on to a vocational course for the Bar of England and Wales.

Interestingly, Cambridge University has now developed a language test for the professional legal sector: that is, the International Legal English Certificate (ILEC) which they assert is “the first internationally recognised test of Legal English” and that it is “tailored to the needs of the legal profession”. The ILEC model may deserve further consideration.

In the short term, the Bar Standards Board should remind the Providers of their responsibilities to remove students from the BVC where students fail to demonstrate the necessary spoken and written English language proficiency, (irrespective of whether the student is a ‘home’ or foreign student). Further, the Providers should also be politely informed that their files will be inspected on this issue for the purposes of re-validation, in order to determine whether their approach on this important issue has been satisfactory.

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80 Cambridge First, 21 May 2006.
93. By the Bar placing greater emphasis on English language proficiency, the Universities may themselves take greater note of this as an assessment factor on their own undergraduate law courses, and might consider having specific non-assessed programmes to improve written English.²⁸¹

Minimum standards of entry (2): the 2.1 degree classification

94. Admission to the BVC could be restricted to those who attain at least a 2:1 honours degree classification in their law degree (or equivalent), or an appropriate pass mark on the CPE/GDL. Such conditions could be made to apply, save in special circumstances.

95. Special circumstances might exist, for instance, where an applicant, having obtained a 2:2 honours degree (or lower) at undergraduate level, was nonetheless able to demonstrate that he/she had compensated for that earlier classification by subsequently obtaining, say, a Masters degree. Taking a Masters could be of particular value to mature students who may have obtained a 2:2 classification many years previously, at a time when degree classifications may have been set at different levels, or may not have been perceived as mattering to the extent that they do today, or might matter in the future.

96. Whilst it is recognised that academic excellence does not always translate into success at the Bar, the future of the profession is dependent upon attracting the most able undergraduates to choose the Bar as a career. Those likely to be successful at the Bar should be capable of obtaining a 2:1 degree classification. Knowledge that a 2:1 is required for entry onto the BVC is also likely to encourage some students to put more effort into obtaining the necessary degree classification. A 2:1 entry requirement is also more consistent with the award of an LLM at the end of a year of vocational training.

²⁸¹ A member of the Working Party recalls his own University experience where all first year students had to take a critical writing (non-law) course in the first term of their freshman year.
97. Imposition of a 2:1 (or equivalent) entry requirement for the BVC is potentially justifiable on the following grounds:

1. A high level of academic achievement is required for competent practice at the Bar, across all specialisms;
2. A high level of practical reasoning and analytical skills, consistent with a 2:1 degree classification is required for practice;
3. The volume and content of legislation and case law in the recent past has led to an increased requirement in practice for being able to grasp and apply legal principles in professional practice, such as is consistent with a 2:1 degree classification for an undergraduate course;
4. Students obtaining a 2:2 degree classification for undergraduate degrees tend to struggle to obtain a pupillage, and in the absence of a pupillage will not be able to qualify for practice as a Barrister. It is therefore wrong to encourage such students to spend up to £13,000 on BVC fees when it is unlikely that there will be a place for them among the practising ranks of the profession.
5. Assessed competencies for practice at the Bar require a 2:1 degree classification.
6. There is strong anecdotal evidence that many students enrolled on the BVC lack the requisite legal knowledge of substantive law and/or the necessary research skills. There is deep concern that other more able students are held back as a result.

98. Before the Bar Standards Board could impose a 2:1 (or equivalent) requirement for entry on to the BVC, it would be necessary to justify the requirement on objective grounds rather than use it as a simple mechanism for reducing numbers on the BVC. Failure to do so could potentially amount to unlawful

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82 The expression “or equivalent” should be taken to include an appropriate pass on the CPE/GDL. On the CPE “commendation” is basically equivalent to a 2:1 (i.e. 60%).
83 Although a student successfully negotiating the BVC will be entitled to be called to the Bar and obtain the title “Barrister” that newly qualified barrister will not be entitled to hold a practising certificate until satisfactory completion of pupillage.
84 See Gray’s Inn Response to the BVC Consultation Paper, para.20.
85 See Section 5 ‘Disparity between numbers on the BVC and Pupillage’, below.
discrimination. This would be so if the condition or requirement disproportionately affected certain ethnic groups adversely, and the condition or requirement was unjustifiable. It should be noted, however, that at large many postgraduate courses already have a 2:1 entry requirement.

99. Further, the Bar Standards Board also needs to consider the imposition of a 2:1 degree classification (or equivalent) as a minimum condition for entry, in the context of wider changes which are likely to be made to the existing University degree classification system. Following publication of the Higher Education White Paper *The Future of Higher Education* (2003), the Universities UK set up *The Measuring and Recording Student Achievement Steering Group*, under the chairmanship of Professor Robert Burgess, Vice Chancellor of the University of Leicester (“the Burgess Group”).

100. In its Second Consultation Paper in September 2006, the Burgess Group opined that the current system of classification of University degrees was “no longer fit for purpose”. The basic concern expressed was that there are too many inconsistencies in the current system. However, the Burgess Group noted that:

“.. Among all types of respondent - HEIs, employers, student bodies - and others - there was emphasis on the need for consistency in the reporting of achievements (albeit with a different understanding on the part of the different players of what might entail). There was no enthusiasm for providing ‘ranking’ information or information on the relative performance of students with their cohort”. [Emphasis added]

101. Having considered various alternatives, the Burgess Group interim view was that:

“A new classification system of Pass/Fail supported by a combined Diploma Supplement/Transcript would go some way to reducing inconsistencies and better representing the achievements of students. To support this, institutions also need to consider their assessment strategies in the context of this change”.

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86 *Cm 5735, DfES 2003*. The White Paper stressed the importance of transparency, especially in terms of differences between the achievements of different students.

87 [www.universitiesuk.ac.uk/consultations/universitiesuk/](http://www.universitiesuk.ac.uk/consultations/universitiesuk/)


89 The Burgess Group’s Second Consultation Paper: (Sept. 2006), para.6.
102. In the Fifth Draft of our Working Party’s Report, we observed:

“The conclusions of the Burgess Group apparently have widespread support across the Universities, and in Government. In the circumstances, any change by the Bar Standards Board to a 2:1 minimum condition of entry for the BVC might well be a short term measure at best, as the chances are high that the current system of degree classifications will be abandoned in the medium term. The Burgess Group proposes to publish a Final Report and recommendations in 2007. In the event of change to a new Pass/Fail system supported by a Combined Diploma Supplement/Transcript, the Bar would have to reconsider and re-define the criteria for entry onto the BVC. It might, for instance, be appropriate to consider the percentage marks received for the core subjects and mandate that a student must obtain at least 60% (this would approximate to a 2:1 under the current system).

At this stage, it is impracticable to take this discussion much further as we are considering a change to degree classifications that may or may not happen, and if it even if it does occur we shall have to wait and see the precise form it takes. Whether a new system (of the kind proposed by the Burgess Group) would make it too difficult and time-consuming for the Providers to assess whether each individual applicant had attained a level stipulated by the Bar Council remains to be seen. However, if that were to be the case or might be the case, then it might be more appropriate for the profession to have its own entrance examination to enable it to test all applicants on a level playing field”. [Emphasis added].

103. The Burgess Group has now submitted its Final Report. Their proposals will be considered in the Discussion section below.

Minimum standards of entry (3): an Entrance examination

104. An appropriate entrance examination specifically honed for the Bar of England and Wales is likely to raise significantly the quality of students enrolling on the BVC.

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90 For instance, following his Department’s own White Paper, The Higher Education Minister, Mr Kim Howells stated that: “the existing honours degree classification system has outlived its usefulness” (The Independent, Nov. 4, 2004).
91 Second Consultation Paper, para.67
93 See paras.109-111, below.
105. There is already a National Admissions Test for Law (LNAT) which is currently used by about 10 law schools in this country. Information about LNAT is set out in Appendix 5 to this paper. LNAT results are used to inform admission decisions in a number of ways. As was pointed out by a Department of Constitutional Affairs Working Group on Diversity in the Legal Profession:

“The way in which [LNAT] results are used can aid diversity by justifying admission of a candidate who might not otherwise be offered a place because they did not have the required A-level results. It could, however, act as a barrier in that offers are made to those with the required A level results and those with the highest LNAT scores without considering other aspects of the application”

106. The Bar Standards Board / Bar Council and the BVC Providers should consult with the consortium which produces LNAT with a view to producing an entrance aptitude/knowledge test tailored for future practice as a barrister. Alternatively, the Bar Standards Board could look to its own existing Aptitude Test for lawyers transferring to the Bar which it has produced in association with BPP. A less rigorous form of examination appropriate to the stage of development being tested (i.e. point of entry to the BVC), could be produced. Associated costs would have to be factored into any proposal for the introduction of an entrance examination. The Working Party would expect such examinations to be inexpensive and self-financing.

107. An entrance examination test might well be desirable, not only as a means of restricting those without the necessary language proficiency from entry on to the BVC, but it would also have merit as a means of testing an applicant’s potential for practice at the Bar which might not necessarily be ascertainable purely from degree results. An applicant might well attain a First or a 2:1 in his/her degree.

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94 The precise number may have changed recently, but in 2007 10 Universities participated in the scheme: Birmingham, Bristol, Cambridge, Durham, Exeter, Glasgow, King’s College London, Nottingham, Oxford and University College London. LNAT was first administered on November 3 2004. Source: Wikipedia. Nigel Bastin, former head of the Education and Training Department of the Bar Council, produced a discussion paper for the Rules Committee of the Bar Standards Board dated 9 May 2006 in which he first brought LNAT to the Committee’s attention. The BVC sub-committee has been in discussion with LNAT. We understand that use of LNAT by one or two Universities has been discontinued. The reasons why, should be explored.

108. What needs to be further considered is a specific BVC entrance examination set centrally by the Bar Standards Board (or a Bar Examinations Board), and/or by the Inns of Court, and tailored to testing the skills and basic legal knowledge required for entry on to the BVC. Such an examination might test: basic knowledge of the general principles of English law, legal and logical reasoning, reading and comprehension of legal and non-legal texts, and written skills.

109. Whilst the testing of oral skills would be desirable, it is likely to present too many difficulties (logistical and possibly legal) to be able to implement in a practicable and cost-effective way.

110. The design of any entrance examination and the level at which the pass mark would be set, should not be to rule out competent students from the possibility of practising at the Bar. The design should be set at a minimum level, with the simple objective being to preclude admission to those applicants who (on objective, tenable and legally justifiable criteria) are considered too weak at point of entry for satisfactory completion of a re-vamped BVC and/or potentially for practice at the Bar of England and Wales.

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96 Some BVC students’ lack of basic knowledge of the general principles of English law was highlighted as a source of concern by some Respondents to the BVC Consultation Paper. It is also an impediment to the pace at which the course could be taught.

97 Note that in 1995 the Inns of Court School of Law (then the sole Provider of the BVC), devised a draft aptitude test. In the event, it was not proceeded with apparently because of the excessive amount of time it would have taken (presumably to administer and mark), and because of the costs involved. A copy of the ICSL’s draft aptitude test and draft application form is available to members of the Bar Standards Board from Bhavna Patel, secretary to the Working Party.
Discussion

111. In the Foreword to the Burgess Group’s Final Report, Professor Burgess states:

“Like the Scoping Group before us, we have found the UK honours degree classification system wanting. We considered different forms of summative scale – shorter and longer – but the challenges we have identified are associated with any form of summative judgement. By this phrase summative judgement we mean the overall judgement made about a student’s performance. For an honours degree in the UK higher education system, this is usually expressed in the form of First, Upper Second, Lower Second, Third, Pass or Fail. The evidence is conclusive that, while it endures, it will actively inhibit the use of wider information.

The persistence of a system that concentrates on a single summative judgement results in a fixation on achieving a number that is considered ‘good’. This drives the behaviour of academic staff and students and works to the detriment of the currency of other information. When they leave university, graduates deserve more than a single number to sum up their achievements. We have concluded that this wider information could be conveyed through the European Diploma Supplement and an expanded academic transcript.

We recommend developing what we are calling, at least in the interim, a **Higher Education Achievement Report (HEAR)** as the key vehicle for measuring and recording student achievement. The HEAR will need to be considered and developed by the sector and tested with other groups that have an interest in this – particularly students and employers. Our approach is to develop a reporting system that proves itself by realising a wide range of opportunities without destabilising the existing system.

Our proposals have been carefully constructed to build upon existing developments and, in practice, largely involve accelerating existing trends. We have identified a clear destination point of academic year 2010/11, by which time the HEAR should be in place most likely alongside the existing honours degree classification system.\(^{98}\)

\[\text{[Emphasis added].}\]

112. It should be noted that the Burgess Group’s final deliberations revealed that “establishing a replacement system for the current honours degree classification was fraught with critical dangers that would need to be fully addressed before such a radical change was made”. Nor was there consensus among wider stakeholder groups about a replacement approach; and some stakeholders

remained largely unconvinced about the need for radical change. The Burgess Group concluded:

“With all of this in mind, we have tempered our proposals by recommending a stage of detailed exploration, development and testing to be carried out in parallel with, and complementary to, the continuation of the existing honours degree classification system at a pace which we trust the sector will find reasonable.”

113. So the position is, that for the time being the current degree classification system will remain, but what is now being proposed is that, that system should run side by side with an expanded academic transcript, i.e. the Higher Education Achievement Report (HEAR). The proposal is that HEAR will be a single document, based on, and developed from the current academic transcript and incorporating the European Diploma Supplement, and that it will be a document that Universities are prepared to verify. It is also proposed that HEAR will be the central vehicle for recording all university-level undergraduate student achievement at all UK higher education institutions.

114. The issues raised above with regards to minimum standards of entry for the BVC need to be considered further, in the light of the Burgess Group Final Report. We have previously identified three possible methods, for ensuring appropriate standards at point of entry for the BVC. We turn to consider each of those methods now.

115. **Entrance Examination.** An Entrance Examination for all applicants for the BVC could test in a single examination the following: (i) aptitude for practice at the Bar of England and Wales; (ii) basic knowledge of the core law subjects; and (iii)

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100 The European Diploma Supplement has been “developed by the European Commission, Council of Europe and UNESCO/CEPES [and] is intended to provide a specification for a pan-European Transcript. It differs from the UK transcript in providing more detail about the programmes of study, the languages of instruction and assessment and information about the national educational system and awards frameworks in which the programme of study was undertaken. The UK has agreed to implement DS as part of the Bologna agreement”. The Burgess Group Final Report, p.46.

proficiency in English. There are advantages and disadvantages with such a proposal.

116. *Advantages of an entrance examination.* The advantages are that there would be a standard, single test for all candidates tailored to the assessed requirements of the profession. Such an examination would also produce the collateral benefit of removing differentials between degrees taken at different institutions. Whether a student obtained a 2:1 or 2:2 degree classification would be irrelevant. Every student would be measured by the same criterion: performance on the Bar’s Entrance Examination. It would also put an end to the administrative burden of the waiver system under Schedule II of the Consolidated Regulations of the Inns of Court and Bar Council.

117. *Disadvantages of an entrance examination.* The disadvantages with an Entrance Examination might be said to be that: (i) it would represent an additional academic hurdle for students to overcome, which for many students would arguably be an unnecessary one owing to their degree performance (2:1 and above); (ii) the examination would have to be fitted into an already crowded academic timetable; and (iii) an additional academic hurdle might also act as a further disincentive to those from disadvantaged backgrounds in choosing the Bar as a career.

118. *Entrance examination recommended.* In the Working Party’s view the arguments in favour of an Entrance Examination significantly outweigh the arguments against it. An Entrance Examination testing aptitude in terms of logic and reasoning skills, aptitude as basic legal knowledge and proficiency in the English language would represent a qualitative improvement in entry standards for the BVC. Such improvement would undoubtedly be in the public interest, as well as in the interests of the profession.

119. An Entrance Examination would also present every candidate with a level playing field, remove the differentials between different University degrees and would go a significant way towards ensuring that no one with the potential to succeed at the
Bar would be lost to the profession simply by reason of degree classification alone. Just as importantly, it would also weed out those candidates who notwithstanding previous high academic performance lacked, on an objective assessment, the aptitude (or potential) for practice at the Bar.

120. **Content of an entrance examination.** The content of any entrance examination would be of vital importance to its efficacy. It is essential for the Bar to remember that it is a profession which has as much to do with force of personality as it is does with force of intellect; and that merit may be measured and calibrated in more ways than one. That intellectual merit is one thing, but the merit of sound judgment another. That the advocate with moral courage to defend a man against whom the world rails, is as important to our system of justice as the lawyer who possesses great legal acumen. That the Bar has always been a place which has not merely accommodated within its ranks the maverick and the nonconformist, but it has also been a vocation where independent spirits have been able to thrive unshakeable in their sense of doing the right thing in the interests of justice even when legal or public convention might dictate otherwise. There is a risk that intellectual merit could be over-emphasised to the exclusion of other types of merit which have always been essential to the Bar, and remain pivotal to the public service provided by the profession.

121. Consequently, any entrance examination should include as criteria elements which test the candidates as a whole, in terms of the wider merit required for practice at the Bar and not simply in terms of academic or intellectual merit. Moral dilemmas which call for judgment, and not emotion, could be one way of testing an aspect of this “wider” merit. In setting questions to assess wider merit, the Bar Standards Board might require assistance not only from legal academics and lawyers, but also from experts in the field of psychology, and sociology, and perhaps from other disciplines. A profession which makes its living by giving advice to others should not assume that it too, in turn, cannot benefit from advice.

122. **Avoiding Bias.** It would be of particular importance for the Bar Standards Board to ensure that the contents of any entrance examination was devoid of cultural,
ethnic, social or gender bias. Consideration would need to be given to forming a panel of experts drawn from various disciplines, and from a variety of backgrounds. The panel would be given the task of vetting the contents of each draft examination paper for unintended bias, before approval was given for the paper to be submitted for examination. Bias is more likely to be avoided if the examination itself focussed on legal settings of a kind every law student should be familiar with, and so avoid setting questions which relate to areas of general life experiences which could be subject to (unintended) cultural, social or racial bias.

123. *Research.* Bearing in mind that the Burgess Group has intimated that in the medium to long term there is likely to be a move away from the current system of degree classification, there is good reason for the Bar Standards Board to carry out its own research *now* into the most appropriate model for any entrance examination. Thereafter, in the view of the Working Party, the Bar Standards Board should introduce (as soon as practicable) an Entrance Examination for all BVC applicants.

124. However, it is recognised that even if the Bar Standards Board was minded to introduce an Entrance Examination, it would take time to fully devise, trial and implement. In the *meantime*, what ought the Bar Standards Board to do about entry standards? It is in that context that we now move the discussion on to the question of an English language proficiency test and the 2:1 degree classification

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102 For instance, a contractual document or a factual situation in relation to a criminal offence etc could be presented to the examinees who would then be asked questions about it or to compose an essay/advice in relation to it. What would be assessed would the student’s ability to identify the issues, logic and reasoning skills and whether the student expressed him/herself in plain, effective English.

103 In the USA, the Law School Admission Test (LSAT) has come in for criticism on the grounds of cultural and racial bias. For instance, in 2001 the California Law Review published a study carried out by Testing for the Public (a non profit organisation) which found that LSAT was culturally biased in the sense that it creates an artificial barrier to entering the legal profession. LSAT remains highly controversial. For instance in the Winter 2006 issue of the St John’s Law Review alone, no fewer than 10 articles addressed the LSAT-racial/cultural bias issue: see link [http://findarticles.com/p/articles/mi_qa3735/is_200601/?pnum=28&opg=n17179604](http://findarticles.com/p/articles/mi_qa3735/is_200601/?pnum=28&opg=n17179604)
(or equivalent) as minimum conditions of entry, pending introduction of an Entrance Examination.

125. **English Language Proficiency Test.** As a method of improving standards at point of entry, it is felt that an English Language Proficiency Test is unobjectionable. There is an overwhelming case for all BVC candidates to be proficient in English for the reasons already identified. An English Language Proficiency Test for the Bar of England and Wales could be set by appropriate agencies under the auspices of the Bar Standards Board.

126. Further, the Bar Standards Board could set itself the task of devising a methodology with the object of fairly and lawfully selecting and requiring certain BVC applicants to take an English language proficiency test.

127. However, doubts persist as to whether any formula (however well devised) would be sufficiently adept to be capable of achieving the objective of precluding all students who lack the necessary language proficiency from enrolling on the course. Untested assumptions about language proficiency based purely on degree classification, national or ethnic origin or the place where the degree was obtained could easily prove to be wide of the mark, and uneven and unfair in application. In the circumstances, the Working Party’s view is that the fairest approach would be to require all BVC applicants to be tested for proficiency in the English Language.

128. **The 2:1 degree classification (or equivalent).** Making entry on the BVC conditional on a 2:1 degree classification (or equivalent) would be administratively straightforward and attract no additional expense. Pivotal to the adoption of such a measure, however, would be the Bar Standards Board’s collation and evaluation of data as to whether a 2:1 requirement would unlawfully discriminate against any relevant group.104

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104 See Section 6 of this Report (‘Equality and Diversity’), below.
129. In the event that the Bar Standards Board felt constrained by its consideration of the data and evidence to move away from making the 2:1 (or equivalent) a minimum condition of entry, there is an alternative approach to consider. This alternative approach would incorporate the additional educational information which will become readily available as a result of the Burgess Group’s proposals and the Bologna Process. We deal with this alternative approach below.

130. CATVAT. The alternative approach is this. Minimum educational requirements for entry on to the BVC could be made subject to attainment of the following:

   (1) a 2:1 degree Classification or above (or equivalent, e.g. CPE, GDL at “commendation” level i.e., at least 60%);\(^{105}\) or

   (2) a 2:2 degree classification overall but where the student can demonstrate by Academic Transcript attainment of a 2:1 level (i.e. at least 60% as a mark) in each of the core academic law subjects required for practice at the Bar of England and Wales;\(^{106}\) or

   (3) The Bar Standards Board could also put in place a Voluntary Aptitude Test for Practice at the Bar of England and Wales (“the Voluntary Aptitude Test”). The Voluntary Aptitude Test would be available to those persons who fell outside the categories in paragraphs (1) and (2) immediately above.\(^{107}\) Such persons would therefore still be able to qualify for entry on to the BVC by passing the Voluntary Aptitude Test.

The formal mechanism by which this might be achieved would necessitate an amendment to the Consolidated Regulations of the Inns of Court and the Bar Council,\(^{108}\) along these lines:

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\(^{105}\) In the language of the Burgess Report this basis of entry would be made on a “single summative judgment”.

\(^{106}\) For the CPE course there are 7 foundation subjects: Contract, Tort, Criminal Law, Constitutional & Administrative Law, European Law, Land Law, Equity and Trusts. Entry requirements for the BVC could be made subject to attaining a 2:1 standard in each of these 7 core subjects that the profession stipulates is necessary for practice as a Barrister. See also The Golden Book, pp.58-63 which lists the elements of each of these “seven foundations of legal knowledge” that a BVC candidate is expected to be familiar with at point of entry.

\(^{107}\) Note, for instance, that CPE students who obtained a “Pass” grade would fall outside categories (1) and (2) and under this proposed scheme would therefore need to take the aptitude test in order to qualify for admission to an Inn of Court and entry on to the BVC.

\(^{108}\) The current version is dated 1 October 2007.
(a) It would become a new requirement under Regulation 12 that the “Qualifying Law Degree” which the Bar Standards Board considers satisfactory is an upper second or above degree classification (or equivalent), or at least 60% in the seven foundation law subjects referred to in paragraph (2) immediately above. Persons meeting these requirements would then fall within “Category I” for admission to an Inn of Court. In the current Consolidated Regulations, Schedule 2, Category I applies to:

“Persons who have completed the Academic Stage in accordance with Regulation 12, and are thus qualified for admission to the Vocational Stage.”

(b) Passing the Voluntary Aptitude Test could added to Schedule 2, Category II of the Consolidated Regulations, as an additional method by which admission to an Inn of Court might be attained, or could do away with the need for waivers altogether: Category II applies to:

“Persons who have not yet completed the Academic Stage and therefore have not yet qualified for admission to the Vocational Stage.”

As at present, a candidate who could not qualify for admission to the vocational stage based on academic performance would still be able to do so by way of waiver under Schedule 2 Category II of the Consolidated Regulations.  

131. A variegated approach which considers degree classification, academic transcript and aptitude could represent an effective way forward. For convenience, we call this the Classification, Academic Transcript and Voluntary Aptitude Test (CATVAT) model. CATVAT could achieve the objective of improving standards at point of entry, but at the same time would not exclude any person who has or might have an aptitude (or potential) for practice at the Bar. We recognise that

109 See Appendix 8 for waivers under Schedule 2 of the Consolidated Regulations of the Inns of Court and Bar Council (October 2007).
aptitude (or potential) might not always be readily apparent in a single summative academic judgment.  

132. Voluntary Aptitude Test. Aptitude tests are not unknown to the Bar. There is already a Bar Standards Board Aptitude Test for solicitors and qualified lawyers from other jurisdictions who wish to qualify for practice at the Bar of England and Wales. Although the content of an aptitude test for entry to the BVC would clearly differ, the underlying principle would not. Taking into account the stage of development being tested, the basic objective would be the same in both cases: to ascertain whether the individual concerned has the aptitude (or potential) to practice as a competent Barrister in England and Wales.

133. In setting any voluntary aptitude test at the pre-BVC stage, it would be important to ensure that a candidate’s aptitude was tested at a level appropriate to the relevant stage of development, i.e. at point of entry for the BVC, rather than some later or higher notional stage. A voluntary aptitude test could also be used as a template to help develop an Entrance Examination for all applicants. Over, say, a period of three years the performances of candidates on the aptitude test could be followed through to performance on the BVC and the obtaining of pupillages. The Bar Standards Board would then have data to evaluate whether performance on the aptitude test was predictive of performance on the BVC; whether the pass mark on the aptitude test was being set at the right level, and so on.

134. Further, there is no reason why any student who so desires should not take the voluntary aptitude test; even those who under the CATVAT model would otherwise qualify for entry on to the BVC by reason of degree classification (or academic transcript evidence) alone. A student might genuinely wish to ascertain

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110 A summative judgment is “the overall judgment made about a student’s performance. For an honours degree in the UK higher education system, this is usually expressed in the form of First, Upper Second, Lower Second, Third, Pass or Fail”: Burgess Group Final Report, p.48.

111 This Aptitude Test is run by BPP under the auspices of the Bar Standards Board. See Bar Standards Board Aptitude Test 2008 Handbook at: www.bpplawschool.com/documents
whether he or she has the aptitude for practice as a Barrister, and might prefer to find that out before committing substantial expenditure to the BVC year.\footnote{112}

135. Performance on the aptitude test could also form an additional point of reference for sets of chambers when considering applications for pupillage. For applicants with an average academic performance, high performance on the aptitude test could well enhance their CV and their prospects of being offered a pupillage.

136. The CATVAT model would be consistent with the Bologna Process and the Diploma Supplement,\footnote{113} and is sufficiently flexible to accommodate proposed or anticipated changes in higher educational assessments as they develop.

\footnote{112} Candidates opting to take the Voluntary Aptitude Test who would ordinarily be required to take a English proficiency test, could be assessed for language proficiency within the aptitude test itself, so avoiding the need to take a separate language proficiency test.

\footnote{113} The main objective of the Bologna process is to create a European Higher Education Area by 2010. “The Diploma Supplement is a document issued to all students by higher education institutions on the successful completion of any higher education qualification. It describes the qualification they have received in a standard format that is designed to be easily understood and straightforward to compare” and “The Diploma Supplement is primarily used as a recognition instrument”; see UUK Europe Unit – Guide to The Diploma Supplement). For further information on the Bologna Process see: www.europeunit.ac.uk/sites/europe.
SECTION 4:

FINAL ASSESSMENT OF COMPETENCE BEFORE PRACTICE
4. **FINAL ASSESSMENT OF COMPETENCE BEFORE PRACTICE**

137. The assessment of competence to enter the profession is a complex one. There are a number of “interested parties”: the eight BVC Providers; the Inns of Court; the Circuit Bar Associations (“the Circuits”); the Specialist Bar Associations (“the SBAs”); and individual sets of chambers, in particular those who allow students to draw down on their pupillage awards during their BVC year.

138. Three areas fall for consideration: first, the nature of the final examination for the BVC; second, the involvement of the Inns, the Circuits and the SBAs in professional training; and third, the skills taught on the BVC.

**The Final examination**

139. It is imperative that any assessment of competence is controlled by the profession. In terms of knowledge acquired and skills taught, the BVC must reflect the needs of the whole profession. Consideration should be given to there being only one “Finals” examination for all students on the BVC, irrespective of the number of institutional providers. One Final examination would ensure a level playing field for all students. It would also set a national standard which would assist not only prospective applicants for the BVC when choosing between different Providers, but would also be helpful to sets of chambers when assessing candidates for pupillage.

140. **Setting the examinations.** Were the examinations to be set centrally, it would have to be done by, or under the auspices of, a Bar Examinations Board specially set up for the purpose. A simple model might comprise a Board of eight to ten

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114 The eight are: (1) BPP Law School; (2) the College of Law; (3) Inns of Court School of Law/City University; (4) University of Northumbria at Newcastle; (5) Cardiff Law School; (6) University of the West of England at Bristol; (7) Manchester Metropolitan University, (8) Nottingham Law School.

115 I.e., the Bar Standards Board and the Bar Council.
individuals made up of representatives from the Bar (self-employed and employed), BVC Providers, and such other expert assistance as deemed appropriate. On the assumption that the syllabus had been previously agreed, the Board would set common examination papers for those parts of the course that were to be examined unseen. The examinations could follow traditional and/or multiple-choice formats.

141. Further consideration needs to be given to the practicality of centrally setting the “skills” assessments. Whilst knowledge modules are particularly susceptible to central setting, as it can be mandated that all examinations are to begin at the same time, the same is unlikely to be true of the skills assessments. Some Respondents to the BVC Consultation paper referred to what they considered to be formidable logistical and examination security difficulties that would (in their opinion) militate against any central setting of the skills components. The Working Party is not in a position to evaluate the extent to which this might be so. The Bar Standards Board when considering this issue is likely to require assistance from specialists in education.

142. Marking the examinations. Examinations could be marked or assessed locally at the Provider where a student was registered, although the marking schemes should be laid down centrally by a Bar Examinations Board. The marking would need to be moderated by the Bar Examinations Board with external examiners. It would be necessary to be vigilant about confidentiality. A single examination day and commencement time per subject, would need to be agreed. Decisions would need to be made in advance as to the proportions to be tested in this way; as between course work and practical assignments, for example. On the whole, moderation ought to be a relatively straightforward process.

143. Importantly, at a time of league tables and consumer choice, one Finals examination centrally set and monitored could provide the student consumer with an additional instrument for assessing the effectiveness of the teaching and/or the quality of students at each of the Providers.
144. “Outcomes” versus “process”.\textsuperscript{116} The method of examination proposed above might permit preparation for the Finals examination by means other than attendance (physically or on-line) at a BVC institution. Should students wish to study privately for the examination, they would be able to do so (although they would still have to attend an examining institution in order to sit the examinations, for which a fee would be payable).

145. This raises questions which relate to a wider debate taking place in higher education circles at national and pan-European level. To what extent should the emphasis be put on learning outcomes as opposed to the process of having been through a particular taught course, of a certain length and situated in a certain place? In a recent paper delivered at the Edinburgh Bologna Seminar, Stephen Adam, a UK Bologna Expert stated:

> “Learning outcomes are statements of what a learner is expected to know, understand and/or be able to demonstrate at the end of a period of learning. They are explicit assertions about the outcomes of learning – results of learning. Learning outcomes are concerned with the achievements of the learner rather than the intentions of the teacher (expressed in the aims of a module or course). They can take many forms and can be broad or narrow in nature. They are usually defined in terms of a mixture of knowledge, skills, abilities attitudes and understanding that an individual will attain as a result of his or her successful engagement in a particular set of higher education experiences. In reality, they represent much more than this. They exemplify a particular methodological approach for the expression and description of the curriculum (modules, units, qualifications and level, cycle and qualifications descriptors associated with the ‘new style’ Bologna qualifications frameworks’).\textsuperscript{117}

146. Learning outcomes are now said to be recognised as a basic building block of European higher education reform:\textsuperscript{118}

\textsuperscript{116} “Outcomes” or intended outcomes, describe what students should know and be able to do as a result of their learning experiences: see the Burgess Group Final Report, p.47. “Process” usually refers to the teaching programme a student undergoes, for a certain duration and in a certain place.


\textsuperscript{118} ‘Learning Outcomes Current Developments in Europe etc.’, p. 4.
“European countries are increasingly referring to learning outcomes when setting overall objectives for their education and training systems and when defining and describing qualifications. There is a strong move from focussing on input factors like the duration, location and the pedagogical content underpinning a qualification, towards what a learner knows and is able to actually do at the end of a learning process”119

147. In the context of the on-going debate in higher education of “outcomes” versus “process”, it is incumbent on the Bar Standards Board to give further consideration to the question of whether attendance at an accredited institution is a necessary pre-requisite for sitting the BVC examinations.120 Similarly, further research is required to determine the efficacy of the course being broken down into modules which could be assessed as and when the student was ready to take them, subject to a ‘sunset clause’.121 Attention would also need to be given to maximum periods of registration.

148. In theory, there could then be these models for taking the BVC:

- **Model 1**: full time attendance at a BVC provider (1 year)
- **Model 2**: part-time attendance at a BVC provider (2 years)
- **Model 3**: Integrated as part of a qualifying law degree122
- **Model 4**: non attendance at a BVC provider save for assessments,123 but taking all the modules over a number of years (5 years maximum)124

119 ‘Learning Outcomes Current Developments in Europe etc.’, p. 5.
120 In other words, is the “process” as important as the demonstrable “outcome”? 
121 I.e., a specific period by which all modules would have to be completed.
122 Northumbria University remains the only BVC Provider to offer such a degree.
123 If the course is to be taught to Masters Level, then a private study route may not be acceptable to the Universities. It may be necessary to consider a distance learning mode of tuition. Many LLM courses are now taught by Distance Learning Programmes.
124 Model 4 might be particularly appealing to someone contemplating a career change or the parent of a young family, for instance. The person changing career could continue working full-time whilst taking the assessments; the parent of a young family could be at home looking after the children during their infancy and still be preparing for an entry to the Bar. The maximum period of 5 years has been selected because
149. The first three Models are already in place for the BVC, and are quintessentially process-based approaches to vocational training; and they are expensive. Model 4 is an outcomes-based approach; and because of the substantially lower costs associated with it, is a model which would be consistent with improving access to the Bar. Adoption of Model 4 would also inevitably mean that the Bar Standards Board would have to change its position on ‘The Attendance Rule’ for the BVC.

150. However, the Universities may well voice objection to the award of a Masters degree to candidates who did not have to attend a course, in person or on-line by distance learning. It may be that the answer to this conundrum would be to award a Masters only to those students who attended the BVC (in person or on-line) and successfully completed the course. Those who did not attend such a course (in person or on-line) would only be able to obtain a postgraduate diploma. The difference between the two awards could be justified on the basis of a differential in credits at QAA Level HE4.

151. Consider the hypothetical cases below:

**Illustration 1:**

Delroy graduated with a 2:1 degree in law from a ‘New’ University, in 1995. He wanted to go to the Bar, but was unable to fund himself through Bar School. Course fees and living expenses would have been too great, and he was already in significant debt. Delroy obtained employment at an Advice Centre. He was able to pursue his interest in advocacy by taking on an increasing case load, which included representing members of the public before statutory Tribunals. Delroy regularly appears against solicitors and barristers, and performs creditably against them. He is respected by the Tribunal chairmen before who he regularly appears. Delroy would like to go to the Bar now, but is troubled by the costs associated with the BVC. He has a wife and two young children and that is currently the period of validity of the BVC certificate. Clearly, if a student took 5 years to complete the course, he/she should have to commence pupillage the next year in order to keep within the 5 year validity period. Failing that, the module or modules which were out of time would have to be re-taken to bring it within a rolling 5 year validity period.

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125 See the BVC: Course Specification Requirements and Guidance (revised: July 07), p.6.
126 See Elias Report p. 24, para.6; and note BVC Sub-Committee decision on 2 May 2007.
knows that his £25,000 a year salary would not be enough to cover the costs of the course and his family's living expenses.

**Illustration 2:**

Hannah graduated with a 2:1 law degree from a Russell Group University in 1993. She took a Masters in law, and then went on to become a Law Lecturer. Hannah is a lay magistrate and regularly sits on Juvenile and Family cases in the Magistrates’ Court. Hannah now wishes to go to the Bar to specialise in Family Law. She intends to take a short advocacy course. Hannah feels confident that she will be able to teach herself the knowledge parts of the BVC course, and considers that she has sufficient ability to pass the skills assessments without having to attend a course at an institutional Provider. She believes that the course fees for the BVC she would save could be put to better use during her pupillage year.

**Question:**

Provided that they meet all entry requirements, should Delroy or Hannah be permitted to take final assessments for the BVC without first having to go through the process of a taught course at an institutional Provider?

152. On the general issue, the basic question the Bar Standards Board needs to address (with expert assistance), is this: subject to possessing the necessary skills, core legal knowledge, intellect and character, are there tenable grounds for preventing an aspirant for the Bar from qualifying as a barrister solely on account of having not been through the “process” of attending (in person or on-line) a taught BVC course? Should students be permitted to take the BVC examinations in order to demonstrate that they have attained the learning outcomes specified in The Golden Book, whether or not they have attended a taught vocational course?

153. In his recent paper on learning outcomes, Stephen Adam, a UK Bologna Expert, characterised the modern approach to learning outcomes as a ‘paradigm shift’:

“In 1962, Thomas Kuhn wrote ‘The Structure of Scientific Revolution’, and developed the concept of ‘paradigm shift’. Kuhn argues that scientific advancement is not evolutionary, but rather is a ‘series of peaceful interludes punctuated by intellectually violent revolutions’. **A paradigm shift is a change**

127 See Bar Vocational Course: Course Specification Requirements and Guidance (revised: July 2007), pp.27-45
from one way of thinking to another. It is a transformation in thinking that is driven by change agents. In the context of learning outcomes a case can be made that they are an essential part of a Bologna paradigm change driven by the imperatives of the need to respond to globalisation. They are at the heart of an educational revolution that has been slow to gestate but is beginning to have a profound impact”.  

154. In the context of learning outcomes, the BVC and Day One competencies for pupillage, the ‘paradigm shift’ involved may well be a recognition that what is critical is for students to demonstrate that they meet the requirements which make them fit for Day One in pupillage, rather than the journey they have taken to get there.

Other interested parties

155. There needs to be better liaison between the BVC Providers and the Inns, Circuits and SBAs, with the Bar Standards Board acting as a conduit. An holistic approach should be adopted which ensures that the BVC covers the core basic skills, which can then be enhanced and further developed by the Inns, Circuits and SBAs.

156. Pursuant to this holistic approach, the BVC would continue to cover the teaching of core skills in written and oral advocacy, but at a level which meets the approval of the Advocacy Training Council. There would then be more in-depth training on the Pupillage and New Practitioner courses. The training on the BVC needs to lay a foundation for and also complement the training provided by the profession after the BVC, and not be at variance with it.

157. Further, the Working Party endorses the initial view set out in the BVC Consultation Paper that there should be more practitioner involvement in the setting of outcomes, the preparation of materials, the monitoring of courses and

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129 As currently set out in the Outcome Specifications for Advocacy: see BVC Course Specifications and Requirements (September 2006), p.27.
the assessment of students on a vocational course. At the Training for External Examiners sessions held by the Bar Standards Board in 2007, there was a good deal of support for a common bank of case studies and questions.

With particular regard to advocacy training, the Bar Standards Board should enter into consultation with the Advocacy Training Council with a view to establishing a workable and integrated framework for the BVC and for training by the Inns during pupillage. Incidentally, the Bar Standards Board is currently considering the provision of a formal register of Advocacy Training Council accredited tutors at each Provider. This is to be encouraged.

The Inns of Court have a significant interest in the BVC, in that each year they award collectively in excess of £3.5m on scholarships and bursaries, much of it directed towards students taking the BVC. Annually, sets of chambers seem to be providing more money for students to draw down from their pupillage awards during their BVC year. This trend is likely to continue as chambers compete with each other and with solicitors for the best legal talent.

Consequently, the Inns and sets of chambers are likely to be increasingly concerned to ensure that BVC students in whom they are investing considerable sums of money receive a standard of vocational training that effectively equips them for pupillage. There should be a mechanism, forum or medium via which the views of the Inns Scholarship Committees and heads of chambers’ pupillage committees could be regularly transmitted to the Bar Standards Board and ultimately the BVC Providers.

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131 Two training sessions for External Examiners were held in May 2007, and were given by Dr Valerie Shrimplin, Head of Education Standards, Bar Standards Board, General Council of the Bar.
132 See the table of “Who’s offering what for Pupillage years”, in The Lawyer (23.10.06) p.4.
133 See article in The Lawyer (23.10.06) titled: ‘Battle for top pupils pushes chambers salary benchmark to £40,000’.
134 The Training for the Bar Committee would appear to be one such body. Further, each year the BVC Providers hold an annual conference attended by course tutors, and representatives from the Bar Council/
Skills training

161. The BVC should place greater emphasis on skills training and development. In particular, at present there is no requirement for any institutional provider to guarantee a minimum amount of time “on their feet” a student can expect during the BVC advocacy course. This, and the time spent on other skills-based training sessions, should be prescribed by the Bar Standards Board when reconsidering re-validation.\(^\text{135}\)

\(^{135}\) At present, the Working Party is given to understand that students at one particular Provider receive almost three times as much time on their feet than those at another particular Provider.
SECTION 5:

DISPARITY: BVC NUMBERS AND AVAILABLE PUPILLAGES
5. DISPARITY: BVC NUMBERS AND AVAILABLE PUPILLAGES

The problem

162. The current problems caused by the disparity between the number of students enrolled on the BVC and the number of pupillages available in any given year, are well known. The BVC (Bar Vocational Course) Student Survey on Aspirations for Practice at the Bar\textsuperscript{136} shows that some 71.5% of the respondents had applied for pupillage, but over half (51%) had not received an offer of interview; and nearly half of those who did obtain interviews (49.8%) failed to receive an offer of pupillage.

163. The figures quoted on the Bar Council Website\textsuperscript{137} show an increase in BVC enrolments since 2002:

<table>
<thead>
<tr>
<th>BVC Year</th>
<th>02/03</th>
<th>03/04</th>
<th>04/05</th>
<th>05/06</th>
<th>06/07</th>
<th>07/08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enrolments</td>
<td>1332</td>
<td>1406</td>
<td>1697</td>
<td>1745</td>
<td>1932 \textsuperscript{138}</td>
<td>1964 \textsuperscript{139}</td>
</tr>
</tbody>
</table>

(NB. The figures for 2004/05, 2005/06, 2006/07 and 2007/8 are each in excess of the original figure of 1500 licensed places).

164. On the other hand, the figures for the numbers in pupillage since October 2002 remain steady in the 500s:\textsuperscript{140}

\textsuperscript{136} Dated March 2006, published 16 October 2006.
\textsuperscript{137} www.barcouncil.org.uk/education/careers/statistics/.
\textsuperscript{138} The original figure was 1958; this was reduced to 1932 as a result of withdrawals.
\textsuperscript{139} BVC Enrolment Figures 2007/8 for actual numbers: source Bar Standards Board (NB at the time of collation, the figures from UWE, Bristol which form part of the total of 1964, were unconfirmed).
\textsuperscript{140} www.barcouncil.org.uk/education/careers/statistics/.
### Date of pupillage | Number
---|---
1 October 2002 & 30 September 2003 | 586
1 October 2003 & 30 September 2004 | 518
1 October 2004 & 30 September 2005 | 556
1 October 2005 & 30 September 2006 | 515
1 October 2006 & 16 December 2007 | 353

: See Appendix 4 to this Report for more detailed information on BVC student numbers in the period 1998 - 2006/7.

165. The trend therefore is upwards in the numbers taking the BVC, set against a constant figure in the order of 500 plus (or thereabouts) starting pupillage each year.\(^\text{141}\) The pool seeking pupillage in any one year is in reality likely to be significantly greater than the number of students successfully completing the BVC in that year, due to re-applications. Discounting those from overseas jurisdictions who are not looking for a pupillage, the pool seeking pupillage each year is likely to be in the order of 2,500.\(^\text{142}\) There are no hard figures to support this estimate, but it is a reasonable figure bearing in mind that those unsuccessful

\(^{141}\) However, it should be noted that the most recent figures show a fall in the number of pupillages for 2006-07, i.e. 456 pupillages as a median of the 1\(^{st}\) and 2\(^{nd}\) six month pupillages commenced in October 2006. It is too early to determine whether this is the start of a new trend or simply a ‘blip’.

\(^{142}\) Some 77.4% of BVC students intend to practise at the self-employed Bar: see Bar Council BVC Student Survey on Aspirations for Practice at the Bar Full Report (2006). This means that on current figures about 1350 will be seeking pupillage from a BVC year; only about 500 will be successful. This leaves about 800, 80% of who (see below) will continue to re-apply for pupillage in successive years. The number re-applying for pupillage from any given BVC year is likely to be highest in the year or two after completion of the BVC, but would then tend to tail off towards the end of the 5 year period of validity for the BVC certificate.
in obtaining pupillage first time around may enter the process annually, over a two, three or four year period.\textsuperscript{143}

166. A significant number of those who do not obtain pupillage will do something else (such as para-legal work or another degree) in order to improve their CVs and enhance their prospects of obtaining pupillage in the future. The BVC certificate is valid for five years. Consequently, a large number of those unsuccessful in obtaining pupillage in the previous four years will still be seeking pupillage in any given year.

167. On the basis of the above figures,\textsuperscript{144} there is a one-in-five chance of selection for a pupillage. This should be mentioned in all official literature going out to prospective BVC students. The disparity in numbers ought to be a matter of concern to the profession for a number of reasons:

1. Students have had to pay considerable sums of money to obtain their first degree and then attend the BVC. Debts of up to £30,000 whilst doing the BVC are by no means rare. In fact, 30.6\% of the BVC students responding to the recent Bar Council survey stated that their current level of debt was £20,000 or above.\textsuperscript{145}

2. Any student entering the BVC should, subject to passing the course, have a realistic prospect of obtaining a pupillage, if that is their intention. (Prior to compulsory pupillage funding, this was generally the position).

3. The Inns of Court together grant more than £3.5m in scholarships and bursaries. The increase in numbers on the BVC decreases the chances of a student getting an award as well as depressing the value of any awards given, simply because there are so many who need to share the available funds.

4. Unless the numbers on the BVC bears reasonable parity with the number of pupillages available, the profession will not be able to

\textsuperscript{143} 80.5\% of all students participating in the recent BVC survey stated that if they did not get pupillage they would continue to re-apply, whilst 53.5\% indicated that they would take other legal work, and 26\% stated that they would try to establish a career outside the legal profession: \textit{Bar Council BVC Student Survey on Aspirations for Practice at the Bar Full Report} (2006).

\textsuperscript{144} Approximately 2,500 BVC graduates are seeking something in the order of 500 pupillages each year.

\textsuperscript{145} \textit{Bar Council BVC Student Survey on Aspirations for Practice at the Bar Full Report} (2006): Question 18.
fund students at the vocational stage to the extent desirable to prevent lack of resources being a barrier to entry.

(5) A disgruntled majority of disillusioned former BVC students is building up amongst those who wanted to come to the Bar and have been unable to realise their ambitions. This group will have met all the standards the profession has set for them by way of an appropriate degree classification, Qualifying Sessions\(^\text{146}\) at their Inn of Court, and passing the BVC. These BVC graduates would also have invested a considerable amount of money along the way. It is incumbent on the profession to ensure that those who meet its qualifying standards should have a reasonable opportunity of obtaining a pupillage.

168. The problem of disparity between those seeking pupillages and the number of places available is likely to worsen, unless immediate steps are taken to address the problem. At a recent BVC Providers’ Conference,\(^\text{147}\) the Providers made clear their wish to increase the number of places on their BVC courses. New BVC courses recently opened in Leeds,\(^\text{148}\) and Birmingham.\(^\text{149}\) Another Provider is planning to open a new BVC course in London, from September 2008.\(^\text{150}\) By September 2008, the numbers enrolling on the BVC may well exceed 2000.

**Remedies**

169. The solution to the disparity problem lies in increasing the number of pupillages available, or reducing the numbers enrolling on the BVC and/or making the BVC a worthwhile stand-alone qualification.\(^\text{151}\) The profession should also publish

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\(^{146}\) To earlier generations ‘Qualifying Sessions’ were known as “Dining”.

\(^{147}\) Birmingham, July 2006.

\(^{148}\) BPP opened the new BVC Leeds course in September 2006, with 48 full-time and 48 part-time students.

\(^{149}\) The College of Law opened a new BVC course in Birmingham in September 2007.

\(^{150}\) An application for validation will be made in the near future by Nottingham Trent University in partnership with Kaplan Law School which is based in Cannon Street, London.

\(^{151}\) The solution may not lie with the Bar Standards Board /Bar Council placing a numerical limit on the numbers who can enrol on the BVC, even if they thought it a desirable policy. It is debateable whether or not a restriction on numbers would be anti-competitive and unjustifiable. Expert advice would be required.
information showing the correlation between a BVC Provider and the numbers and percentage of students from that institution who go on to secure pupillages.

**(i) Increasing the number of pupillages**

170. There are two steps the Bar Standards Board / Bar Council could take to increase pupillages which deserve immediate consideration; namely, the introduction of part-time pupillages and the facilitation of more employed pupillages.

171. In an earlier Draft of our Report we considered and developed the concept of Part-time Pupillages. That earlier Draft was forwarded to the Entry to the Bar (Neuberger) Working Party for its consideration. In its Final Report, the Entry to the Bar (Neuberger) Working Party positively endorsed the concept of Part-time Pupillages.

172. The Bar Standards Board / Bar Council have recently turned down applications from the Army Legal Service and the Financial Services Authority to become accredited pupillage organisations. This was unfortunate. If the current rules are an impediment, then those rules ought to be re-examined to determine whether there is any room for greater flexibility.

173. The Entry to the Bar (Neuberger) Working Party has also advanced the concept of a Funding Pool for Pupillages. It deserves the profession’s support.

**(ii) Reducing the numbers on the BVC**

174. The true objectives of any measures taken with regard to the BVC should be to raise the quality in terms of content of the course and its delivery, improve the quality of the student body and/or to reduce costs, wherever appropriate.

175. There are three methods by which one or more of these objectives could be achieved, but which at the same time are also likely to have the incidental effect

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152 Fourth Draft (June 2007).
of reducing numbers enrolling on the BVC. First, all applicants could be required
to take an English language proficiency test; second, the minimum entry standard
could be raised to a 2:1 honours degree classification; and third, an entrance
examination could be set which would test a student’s aptitude (or potential) for
practice as a barrister.

176. **Language proficiency.** There is an impression that problems with language
proficiency are significant at a number of Providers. Many, who now gain access
to the BVC, would not if appropriate language requirements were introduced.

177. **Degree classification.** As previously stated, a 2:2 degree classification (or
equivalent) is probably too low an entry requirement for a vocational training
course for the Bar of England and Wales. The direct effect of raising the entry
standard to a 2:1 degree classification (or above) would be a substantial reduction
of numbers on the BVC. On current the figures currently available this could lead
to a reduction of numbers enrolled on BVC by anything up to 25%.

178. Currently, there is a serious and profound risk that a student who passes the BVC
and qualifies as a barrister will never be able to obtain a practising certificate
owing to the restricted supply of approved pupillages. Dr Rupert Macey-Dare
argues in his paper ‘Practicing Certificate Risks’ in the Market for Advocacy, that
the perception of this risk of never being able to secure a pupillage is much more
likely to deter potential applicants from minority groups from ever training for the
Bar, than outdated perceptions of stuffiness or snobbery.

179. By retaining a 2:2 minimum entry level for the BVC the profession may,
perversely, be contributing to deterring some well-qualified students from
minority ethnic groups or disadvantaged backgrounds from ever choosing the Bar
as a career. If the profession is to widen its social base, then arguably it needs to
focus its attention on the better qualified and more able minority and

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155 In the Bar Council’s BVC survey, 24.7% of BVC students obtained a 2:2 degree classification and a
further 1.4% obtained lower grades. On the other hand, 16.8% obtained Firsts and 57.1% obtained 2:1s.
156 Spring (2008).
disadvantaged students who might be more willing to choose the Bar as a career were the risks involved in obtaining pupillage not so great.

180. *CATVAT.* Earlier in this Report, we considered another approach which we have called the CATVAT model. Adoption of CATVAT would cause some reduction in absolute numbers enrolling on the BVC in any given year. What is difficult to judge at this stage is the extent of the reduction.

181. *Entrance examination.* In the medium term, enrolment on the BVC could be made conditional on passing an entrance examination. This is considered above, in Section 3 of this Report. An entrance examination would give the profession effective control over the quality of persons entering its vocational course, and ultimately the profession. Raising the quality standards for entry by an appropriate entrance examination is also likely to result in a significant reduction in the numbers enrolling on the course in any given year.

(iii) Making the BVC a worthwhile stand-alone qualification: the case for the LLM

182. Earlier in this paper a recommendation was made that the BVC should be converted by student option (initially) into a Masters degree. An LLM in *Professional Legal Skills for the Bar* is more likely to be perceived by employers outside the Bar as a more worthwhile qualification than the present BVC. It would mean that a BVC student would leave the course with a qualification of perceived value, an LLM being immediately and internationally recognisable as a qualification of high value. At present, the prevalent view is that the transferable value of the BVC as a stand-alone qualification (i.e. not including Call to the Bar and the degree of Utter Barrister) is low.

183. Whilst upgrading the BVC in its entirety to an LLM would not in itself reduce numbers on the course, it would render the disparity between the numbers seeking pupillage and available pupillages less significant, as a student would leave the

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157 CATVAT stands for (degree) Classification, Academic Transcript and Voluntary Aptitude Test: see paras.130-136, above.

158 See paras.53-64 and 182-185, above.
BVC with a high level degree, together with reasoning, practical and presentational skills which are likely to prove attractive to an employer of legal or non-legal services.

184. Individual Providers should be made to satisfy the Bar Standards Board and/or a Bar Examinations Board (amongst others) that they are competent to teach the BVC at Masters Level, whether as an option or by way of upgrade of the entire course.

185. The point about making the BVC a worthwhile stand-alone qualification should not, however, be taken too far. The predominant responsibility of the Bar is to establish a course which is fit for preparing law students for practice as Barristers in England and Wales; its task is not to provide candidates with a liberal education or alternative career paths.

(iv) Publication of BVC Providers’ track record on pupillages

186. The Bar Standards Board and Bar Council should do more to help the prospective BVC student make an informed decision as to which BVC Providers have the best track-records in terms of BVC results (how many passed and at what level), and of the numbers who have gone on to obtain pupillage. The information could be limited to the past three years.

187. The Bar Standards Board should make this information, in respect of each Provider, readily available on its education website in tabulated form so that comparisons can be easily made.\(^{159}\) As a consequence, there will be a commercial imperative for the Providers to be competitive, raise their standards and make more strenuous efforts to assist their students obtain pupillage.

188. The relevant information referred to above should be made available not only on Bar Standards Board / Bar Council websites, but it should also be set out in an

\(^{159}\) At least one Provider in its promotional brochure refers to its “excellent track record in securing pupillages”. The evidence on which such assertions are made should be made available by the Providers in statistical form, so that the Bar Standards Board / the Bar Council can set the information out objectively in a comparative table.
information package sent out to prospective applicants following a request for an application for enrolment.\footnote{160}

189. Further, regard should be had to the Criminal Bar Associations’ suggestions as to the statistics which ought to be included in such an information pack.\footnote{161} It should be a condition of validation that a Provider makes the relevant information available to an applicant for the BVC at (or before) the time that application is being made for enrolment.

\footnote{160}{If applications are completed by email, the relevant Bar Council Information could be scanned by the Providers and placed on the internet with the application form.}

\footnote{161}{See Criminal Bar Association’s Response to the BVC Consultation Paper, paras.21-22.}
SECTION 6:

EQUALITY AND DIVERSITY
6. **EQUALITY AND DIVERSITY**

190. In exercising their functions, the Bar Standards Board and the Bar Council are each under a general statutory duty to have regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between people of different relevant groups.\(^{162}\) This general duty is aimed at dealing with systemic institutionalised discrimination against relevant groups (whether defined by race, religion, gender or disability).\(^{163}\)

191. Consequently, in the context of the BVC and training for Call to the Bar, the Bar Standards Board / Bar Council must consider how existing arrangements and any new proposals are likely to impact on the promotion of equality. Further, if the impact of any proposed measure puts or would put members of a subject group at a particular disadvantage, then in order to avoid a finding of unlawful indirect discrimination the Bar Standards Board / Bar Council would need to demonstrate that the proposed measure is **“a proportionate means of achieving a legitimate aim”**.\(^{164}\)

192. The legitimate aim behind all the proposed changes put forward in this Report is to raise the quality standards for Call to the Bar. This is in the public interest. Consumers of the Bar’s services are entitled to expect a minimum standard of quality for all practitioners. In Lord Carter’s recent review, this point was highlighted:

\(^{162}\) See: Race Relations Act 1976, s.71 (as amended); Equality Act 2006, s.52 (religion or belief), s.83 (sex discrimination - ‘the gender duty’); Disability Discrimination Act 1995, s.21(B)-(D) and Disability Discrimination Code of Practice (Services, public functions etc.) (Appointed Day) Order 2006 which brought into effect the Disability Discrimination Act 1995’s Code of Practice on 20.7.06, see further www.drc-gb-org.

\(^{163}\) Under section 81 of the Equality Act 2006, the Secretary of State may make provision by regulations prohibiting discrimination on grounds of sexual orientation in the provision of goods, facilities and services, education and the use and disposal of premises and **the exercise of public functions**.

\(^{164}\) For instance, see Race Relations Act 1976, s.1 (1A) (as amended); Disability Discrimination Act 1995, s.21D(5).
“The issue of quality was a vital part of Lord Carter’s thinking. This is why he proposed a minimum standard of quality for all practitioners, assessed through a system of peer review.”

193. The preliminary view of the Working Party is that the measures proposed in this paper appear to be proportionate to the legitimate aim of raising minimum quality standards for Call to the Bar and for entry into the profession. However, greater consideration of all the relevant evidence will need to be made by the Bar Standards Board.

194. The Bar Standards Board will also have to take independent legal advice, and satisfy itself that any proposed measure that it was minded to adopt was both lawful and diversity compliant. In other words, each proposed measure that the Bar Standards Board is minded to adopt (in particular those affecting entry on to the BVC) should be subjected to a full regulatory impact assessment before implementation.

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SECTION 7:

CONCLUSION
7. CONCLUSION

“When you’re finished changing, you’re finished”
- Benjamin Franklin

195. The Bar has faced a revolution in the provision of its professional legal services over the past 20 years. There has been the removal of the historic rule that a barrister cannot sue for his or her fees, direct public access, the abolition of public funding for most areas of civil work, the introduction of the Civil Procedure Rules sweeping away over a 100 years of procedure, the move away from litigation towards ADR, the Criminal Justice Act 2003, the growth in employed lawyers carrying out prosecutions in the Magistrates and Crown Courts, and now the impending implementation of much of Lord Carter’s Report. There may be more to come.

196. Sets of chambers have grown in the same period from an average size of about 15 practitioners to many now in the region of 50 or more, and with at least two sets with numbers considerably in excess of 100 barristers. The old general common law verities of practice no longer hold good: general sets are becoming more specialist. Specialist chancery and commercial sets are merging and becoming significantly larger. These developments are an accurate reflection of what is happening with solicitors and the particular demands placed on them by those who instruct them. The rapid expansion in legal services is set to continue, diversify and become even more specialised.

197. The Modern Bar is now increasingly diverse. Institutional barriers which once restricted women, minority ethnic practitioners and those from less advantaged socio-economic backgrounds from entry and progression in the profession are being consistently removed. But there is no room for complacency.

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166 See Bar Council’s Response to the DCA and LSC’s Consultation Paper entitled ‘Legal Aid: a sustainable future’: www.barcouncil.org.uk

198. There is pressing concern that many of the most able students and others with the potential to succeed at the Bar are being discouraged away from entry into the profession, as a result of expense and limited means. The Bar should be open to all by reason of ability, potential and application; and closed to none solely on account of lack of funds or the perception that owing to socio-economic background, one’s face (or voice) will not fit.

199. A modern Bar should be a diverse Bar; a Bar of all the talents. Talents are to be measured not merely in terms of intellect and legal knowledge, but also in terms of skill and force of personality. In modern conditions, one significant factor required for achieving this laudable objective of a culturally and socially diverse and talented Bar is the availability of sufficient funds to navigate the BVC and pupillage. It is in this context that the proposals in this Report dealing with the high costs of the BVC and the disparity between those seeking pupillage and the number of pupillages available, become particularly relevant.\(^{168}\)

200. Throughout all the changes the profession has faced recently, these central facts remain true and clear: the Bar provides a valuable public service, and the public is served by practitioners of considerable skill, integrity and endeavour. It is these qualities which put a premium on the barrister’s services. In his inaugural speech to the 2007 Bar Council, the Chairman of the Bar for 2007, Geoffrey Vos QC, stated:

“If there is one message for the future of the Bar as I see it, it is that we must devote ourselves to the pursuit of quality. Quality pervades every aspect of what I am going to say. I believe that if we can demonstrate to the public that we provide the highest standards of service, the future of our profession will be assured”.\(^{169}\)

201. The future of the Bar, however, ultimately lies not with established members of the profession, but with the quality of those coming through from the BVC. The profession must ensure that it is fit for purpose for the 21\(^{st}\) century. It can only do

\(^{168}\) These issues have been specifically addressed by the Entry to the Bar Working Party under the Chairmanship of Lord Neuberger: see Final Report (Nov.2007). See also article by Martin Bowley QC ‘Room for all Sorts: is entry to the Bar biased towards the affluent’: Counsel, February 2007.

\(^{169}\) Speech to the Bar Council, 11 December 2006.
so by ensuring that it has an institutional training course of the very highest standard. The profession should not settle for less.

202. The Bar Standards Board’s central statement of principle is that the BVC must - in the training it provides to students - “reflect the standards of excellence expected from barristers in the execution of their duties”. At present, the BVC significantly fails to reflect the requisite excellence. It is in need of urgent and far-reaching reform.

Post-script

203. Previous Drafts of this Report were made available to the Entry to the Bar Working Party (“the Neuberger Working Party”) to assist them in their work. A number of the recommendations in the Fifth Draft of our Report (June 2007) were positively endorsed by the Neuberger Working Party in their final report published in November 2007. In the same month, the Bar Standards Board set up the BVC Review Working Group under the Chairmanship of Derek Wood CBE QC (“the Wood Working Group”) to carry out an in-depth review of all aspects of the BVC.

204. We are now making this Report available to the Bar Standards Board and the Wood Working Group for their consideration. The Wood Working Group is due to report later this year.

April 2008

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170 Bar Vocational Course: Course Specification Requirements and Guidance (Revised: July 07), p.4.
APPENDICES
**APPENDIX 1 -**

**MEMBERSHIP OF THE WORKING PARTY**

Richard Wilson QC **(Chairman of the Working Party)**, a Vice-Chairman of the Training for the Bar Committee; member of the Governing Council of Sussex University

Catherine Addy, BVC Providers’ Group, and Chair of the 2007 Bar Conference Committee

Professor Gerald Bernbaum LLD, former Vice-Chancellor and Chief Executive of London South Bank University, a specialist in Education

Major-General David Jenkins CB CBE, former Under-Treasurer, Gray’s Inn

Bernard Richmond QC, Bencher of the Middle Temple, Member of Faculty - Middle Temple and Keble Advocacy Courses, Advocacy Training Council grade “A” Advocacy Trainer

Michael Sherry, Revenue Law specialist; also a qualified Accountant and former Chair of both the Tax Faculty of the Institute of Chartered Accountants and the Chartered Accountants’ Business Committee

Marcia Williams, Head of Diversity at the UK Film Council, and former member of the Lord Chancellor’s Working Party for Equal Opportunities in the Appointment of Judges and Queen’s Counsel

(\textit{In addition, each member of the Working Party was also a member of the Training for the Bar Committee at the time the Working Party commenced its work}).

Bhavna Patel **(Secretary to the Working Party)** Professional and Practice Training Manager for the Bar, Bar Council
### APPENDIX 2 -

**BVC ASSESSMENT FRAMEWORK: SUMMARY TABLE**

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<th>Subject</th>
<th>Assessment</th>
<th>Weighting</th>
<th>% of Total Marks</th>
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<td>2 x written unseen</td>
<td>2 x 7.5</td>
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<td>1 x 9 (4 + 5) 2 x 8</td>
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<tr>
<td>Drafting</td>
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<td>7.5</td>
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<td>Options</td>
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<tr>
<td>Legal Research</td>
<td>1 Practical exercise</td>
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<td>7.5</td>
</tr>
<tr>
<td>Professional Ethics</td>
<td>Pervasive Components in four skills assessments, plus submission of a satisfactory Evidence File</td>
<td>7.5</td>
<td>7.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>Max of 13</strong></td>
<td><strong>100</strong></td>
<td><strong>100</strong></td>
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APPENDIX 3 -

QAA DESCRIPTOR FOR QUALIFICATIONS AT LEVEL HE4:
(MASTERS DEGREE)

Descriptor for a qualification at level HE4: Masters degree

Masters degrees are awarded to students who have demonstrated:

(i) a systematic understanding of knowledge, and a critical awareness of current problems and/or new insights, much of which is at, or informed by, the forefront of their academic discipline, field of study, or area of professional practice;

(ii) A comprehensive understanding of techniques applicable to their own research or advanced scholarship;

(iii) Originality in the application of knowledge, together with a practical understanding of how established techniques of research and enquiry are used to create and interpret knowledge in the discipline;

(iv) conceptual understanding that enables the student:

• to evaluate critically current research and advanced scholarship in the discipline; and

• to evaluate methodologies and develop critiques of them and, where appropriate, to propose new hypotheses.

Typically, holders of the qualification will be able to:

(a) deal with complex issues both systematically and creatively, make informed judgements in the absence of complete data, and communicate their conclusions clearly to specialist and non-specialist audiences;

(b) demonstrate self-direction and originality in tackling and solving problems, and act autonomously in planning and implementing tasks at a professional or equivalent level;

(c) continue to advance their knowledge and understanding, and to develop new skills to a high level; and will have:

(d) the qualities and transferable skills necessary for employment requiring:

• the exercise of initiative and personal responsibility,
• decision making in complex and unpredictable situations, and
• the independent learning ability required for continuing professional development.

### APPENDIX 4 -

**BVC STUDENT NUMBERS:**

(1) **ENROLMENT FIGURES 2007/8**

(Validated and Actual numbers)

* At the time of collation, figures from UWE, Bristol are unconfirmed.

** Please note that UNN is the only BVC Provider offering an exempting degree. They are validated for 20 FTE places in this mode, meaning the total validated figure is actually 2162.

* | Provider                     | FULL TIME VALIDATED | FULL TIME ACTUAL | PART TIME VALIDATED | PART TIME ACTUAL | Exempting Students | TOTAL Validated | TOTAL Actual |
---|-----------------------------|---------------------|------------------|---------------------|------------------|--------------------|----------------|--------------|
BPP (London) | 264 | 301 | 96 | 92 | N/A | 360 | 393 |
BPP (Leeds) | 48 | 52 | 48 | 27 | N/A | 96 | 79 |
Cardiff Law School | 72 | 70 | N/A | N/A | N/A | 72 | 70 |
College of Law (London) | 240 | 270 | 48 | 48 | N/A | 288 | 318 |
College of Law (Birmingham) | 96 | 64 | N/A | N/A | N/A | 96 | 64 |
ICSL | 650* | 461 | N/A | 44 | N/A | 650 | 505 |
MMU | 108 | 117 | 48 | 46 | N/A | 156 | 163 |
Notts Law School | 120 | 117 | N/A | N/A | N/A | 120 | 117 |
UNN, Northumbria | 100 | 88 | 48 | 10 | N/A | 148 | 107 |
UWE, Bristol* | 120 | 112 | 36 | 36 | N/A | 156 | 148 |
**Total** | **1818** | **1652** | **324** | **303** | **9** | **2142** | **1964** |

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Source: Bar Standards Board

TiBC Working Party on the BVC: specification, standards and pupillage

93
## Totals

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Jude Hodgson

6 December 2006
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NATIONAL ADMISSIONS TEST FOR LAW (LNAT)

“The National Admissions Test for Law, or LNAT, is a test run by a consortium of UK universities (LNAT Consortium Ltd) in partnership with Pearson VUE, the computer-based testing business of Pearson Education. The test helps universities to make fairer choices among the many highly-qualified applicants who want to join their undergraduate law programmes.

The test is professionally written and calibrated by Edexcel for Pearson VUE.

The test's format and level are kept under review and its impact is closely monitored. LNAT Consortium Ltd is committed to widening participation in higher education and regards the LNAT as a possible aid to identifying untapped academic potential appropriate to degree-level legal education. Different participating universities may use the results of the LNAT in different ways and to different extents, but all regard the LNAT as just one element in a well-rounded admissions system. School-level qualifications, such as A-levels and their global equivalents, remain central to the selection process”.

“The LNAT is a two-hour test in two parts: a multiple-choice element (80 minutes) and an essay element (40 minutes).

The multiple-choice element consists of 10 argumentative passages, with 3 multiple-choice questions on each, making 30 questions in all. The questions are designed to test powers of comprehension, interpretation, analysis, synthesis, induction, and deduction. These are the verbal reasoning skills at the heart of legal education. The questions do not test (and do not require) knowledge of any subject except for the English language. This part of the test is machine-marked and the results are passed in numerical form to (only) those LNAT-participating universities to which the candidate has applied. Candidates will receive their marks after the admissions process is over.

The essay element gives the candidate a choice of questions on a range of subjects. Although these typically require some rudimentary knowledge of everyday subjects, the point is not to test that knowledge. The point is to test the ability of the candidate to argue economically to a conclusion with a good command of written English. This part of the test is not centrally assessed. Instead the essays are passed unmarked to (only) those LNAT-participating law schools to which the candidate has applied. The essays will be used by each university in the way that best suits its own admissions system.

The whole test is conducted on-screen. Because some candidates might otherwise benefit from better keyboard skills, and to encourage more economical writing, we have some guidelines about essay length. We suggest that the essay should ideally be between 500 and 600 words, and in any event not more than 750”.

APPENDIX 6 -
TRAINING FOR THE BAR COMMITTEE (TfBC) MEMBERS 2006-07

Duncan Matthews QC
(Chairman)

Louise Fluker*
Richard Wilson QC*
Douglas Day QC
Dorian Lovell-Pank QC
Timothy Dutton QC
Robert Francis QC
David Pittaway QC*
Richard Salter QC
Catherine Addy

Professor Gerald Bernbaum
Robert Brown
Mark Cannon
Rosina Cottage
Nicholas Cusworth
Scott Donovan
Suella Fernandes
Tricia Howse

Major-General David Jenkins
Paul Kirtley
Nicholas Lavender
Christopher McNall
Katherine Newton
Sarah Prager
Bernard Richmond QC
Michael Sherry
Marcia Williams

*TfBC Working Party on the BVC: specification, standards and pupillage

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APPENDIX 7 -

LIST OF RESPONDENTS TO BVC CONSULTATION PAPER ON THE VOCATIONAL STAGE OF TRAINING FOR THE BAR (2006)

Institutional Providers of the BVC
Cardiff Law School
The College of Law
University of Newcastle & Northumbria
UWE Bristol Institute of Legal Practice
Inns of Court School of Law
Manchester Metropolitan University

Inns of Court
Gray's Inn
Lincoln's Inn
Middle Temple
Inner Temple

Bar Council Committees
Equality & Diversity (Disability) Committee
Race & Religion Committee
Young Barristers Committee
Training for the Bar Committee (“TfBC”)
Sarah Prager – (TfBC)
Samuel Townsend – (TfBC)
Major-General David Jenkins – (TfBC)

Circuits of the Bar
The South-Eastern Circuit
Specialist Bar Associations

Administrative Law Bar Association

BACFI

Bar Access Group

The Criminal Bar Association

TECBAR - Technology and Construction Bar Association

Barristers’ Chambers

Blackstone Chambers

20 Essex Street Chambers

39 Essex Street Chambers

Falcon Chambers

Garden Court North Chambers

2-3 Gray's Inn Square Chambers

Keating Chambers

1 King’s Bench Walk Chambers

New Court Chambers

5 Paper Buildings Chambers

4 Pump Court Chambers

Six Pump Court Chambers

Stone Chambers

3 Verulam Buildings Chambers

Wilberforce Chambers

Young Street Chambers

Others

Danish Ameen - Young Street Chambers

Christine Cooper - Mature Student

Emily McKechnie - Wilberforce Chambers

Dr Jonathan Punt - Nottingham Law School

Paul Randolph – Barrister and BVC External Examiner

Richard Salter QC
(“Others” continued from previous page)

Michael Sherry - Barrister
Benjamin Wood – Pupil
    Pupil A
    Pupil B
    Pupil C
Sara Parkin OBE – Forum for the Future
APPENDIX 8 -

CONSOLIDATED REGULATIONS OF THE INNS OF COURT
AND THE GENERAL COUNCIL OF THE BAR
(1 Oct. 2007)

SCHEDULE 2

Educational Qualifications for Admission to an Inn of Court

Category I
- Persons who have completed the Academic Stage in accordance with Regulation 12, and are thus qualified for admission to the Vocational Stage.

Category II
- Persons who have not yet completed the Academic Stage and therefore have not yet qualified for admission to the Vocational Stage:
  
  (a) Persons holding a degree (other than an honorary degree) passed at a standard which the Bar Standards Board considers satisfactory in any subject or subjects conferred by a university in the United Kingdom or the Republic of Ireland or by the Council for National Academic Awards before its dissolution on 31st March 1993 or a license conferred by the former University College of Buckingham before that college was granted university status. For this purpose a degree means a degree obtained by examination after a minimum of 3 years study, although a research degree obtained by thesis, or a degree obtained by examination in less than 3 years, may be considered on its merits, including (if necessary) the qualifications on which registration for the degree was based.
  
  (b) Persons reading as students for such degree as is mentioned in paragraph (a) and who have passed the English Language Examination for the General Certificate of Education at Ordinary Level or have obtained the General Certificate of Secondary Education in English Language, or, exceptionally, have satisfied the Director of the Bar Standards Board that they hold an equivalent qualification or have otherwise demonstrated their competence in the English language to the satisfaction of the Director of the Bar Standards Board.
  
  (c) Persons holding a degree (other than an honorary degree) in any subject or subjects passed at a standard which the Bar Standards Board considers satisfactory and conferred by a university outside the United Kingdom and the Republic of Ireland, and who have obtained a Certificate of Academic Standing from the Bar Council.
  
  (d) Persons who have been accepted by the Masters of the Bench as mature students. Such an applicant must:
(i) have had considerable experience or shown exceptional ability in an academic, professional, business or administrative field;

(ii) ordinarily have reached the age of 25;

(iii) have obtained such academic and vocational qualifications as the Masters of the Bench may consider equivalent to a degree under paragraph (a) of Category II of this schedule or have attained such standard of general education as the Masters of the Bench may consider sufficient.

(iv) be able to satisfy the Masters of the Bench that there is a good reason why he should not be required to obtain a Qualifying Law Degree; and

(ii) be considered by the Masters of the Bench to be suitable for admission as a mature student.