



**Bar Standards Board Consultation**

**The Future of the Bar**

**Response of the Criminal Bar Association**

**18<sup>th</sup> January 2018**

Question 1: *Should the BSB have regulatory oversight of students? Please explain why or why not.* Yes. While we believe that the Inns of Court, through COIC, are the best providers of professional education to Bar students, we welcome closer cooperation between the Inns and the BSB, for consistency between the providers. The active involvement of practitioners through the Inns will ensure that students are educated in the highest professional and ethical standards

Question 2: *Do you think the BSB should continue to require membership of an Inn as a mandatory part of Bar training? Please explain why or why not.* Yes. We welcome the BSB's recent statement of its commitment to continuing to require that Bar students are members of one of the four Inns.

Question 3: *If you answered 'yes' to question 2, do you think the BSB should continue to require "student membership" of an Inn or set the requirement at the point of (or just before) being called to the Bar? Please explain why or why not.* Yes: we think there is real value in maintaining the present position whereby "student membership" of an Inn is required by the Bar Standards Board.

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

See Q 1 above

Question 5: *Do you think the BSB should require DBS checks as part of the fit and proper person checks? If you do, who do you think should perform this function and why?* The majority of students do not ultimately practice at the bar. It would be disproportionate to require DBS checks as part of the fit and proper person checks. A more logical time would be before the start of the second six. The implementation of such a scheme is likely to involve considerable administrative and cost overheads. We would suggest that the BSB discuss this matter further with the Inns and conduct an impact and feasibility assessment before pursuing this.

Question 6: *Do you agree with our proposals to improve the current checks as described? Please explain why or why not.* Yes, although we have some concerns about the likely financial and administrative overheads of the approach suggested in paragraph 106. The Inns of Court would be best placed to comment on this.

Question 7: *Do you think that the Inns or the BSB should oversee student conduct? Please explain why.* We do not think this question is, or should be, conceived as binary. Both the Inns and the Bar Standards Board have roles, separate and joint, regarding oversight of student conduct. We rely on our answer given to question one, above.

We think the Inns are well-placed to investigate and/or act on complaints about issues including financial abuse by writing to heads of chambers and/or referring chambers to the Bar Standards Board if considered appropriate. A purpose of the Bar Standards Board is to ensure that the profession is regulated so as to detect punish and prevent abuse of its more vulnerable members. The Bar can and will work cooperatively with the Bar Standards Board on matters of common interest.

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

the Inns to take the lead in training and supervision of students: we support the proposition that students should congregate in a semi-formal manner in the Inn. For every person who says qualifying sessions are an anachronism, we can point out another who thinks qualifying sessions are enjoyable and worthwhile. We note that the Inns each promote valuable 'outreach' programmes for students from non-traditional backgrounds for barristers.

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

No

Question 10: *If you answered 'yes' in question 8, do think that other training providers could provide qualifying sessions? Please explain why or why not, including what elements would need to be delivered by or in association with the Inns themselves to ensure their benefits are to be retained.* No. However perhaps the Inns of Court might be given greater flexibility to "contract out" some of its qualifying sessions if there is a particular lecture or course that they think would be of benefit. The Inns would be best placed to comment on this suggestion, though.

Question 11: *Do you have any alternative suggestions for how qualifying sessions might help students meet the requirements of the Professional Statement?* See our answer to question eight.

Question 12: *Do you think we should allow pupillages to vary in length? Please explain why or why not.* Yes. The present flexible arrangements that permit variation of length of pupillage (typically, twelve or eighteen months) enables diverse groups – such as service personnel for whom arrangements can be made for completion of parts of pupillage whilst spent in chambers.

We think the minimum period for a qualifying pupillage should be retained. What matters is not length of pupillage – but consistency and high standards that can be properly monitored.

Question 13: *If you answered 'yes' to Question 12, please tell us if you think there should be minimum and or maximum length associated with this change and what should that minimum or maximum length be. Please explain why.* See answer to Q12

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

Question 15: *Do you think the minimum pupillage award should be raised? Please explain why or why not.* Yes: it should be raised to £18,000 in London and £14,000 elsewhere. We propose a differential between London chambers and those in the regions to reflect the higher cost of living in the capital. We propose an increase to match the London living wage.

£14,000 (£1,166 per month) is an increase which is in line with inflation since last revision/increase of the minimum award in September 2011.

£18,000 (£1,500 per month) is an increase which is in line with the London living wage, a wage endorsed by the government, since last revision / increase in September 2011 of minimum award

'Living wage' is calculated for a person who works 35 hours per week. Pupils invariably work more than 35 hours – whether undertaking work for other members of chambers (necessary to improve prospects of tenancy, with commercial value to chambers); preparing their own cases (frequently the night before a hearing); and being available to attend Saturday course and working on Bank holidays (with commercial value to chambers).

A modest increase of this scale should not deter chambers from keeping the same number of pupillages they presently offer, or from offering any.

No Chambers on the Pupillage Gateway advertised pupillages with awards at £12,000. The vast majority of sets have increased their award inline with inflation. Of pupillage awards currently advertised on the 'Pupillage Gateway', out of 38 vacancies (from a search of crime sets in London) the only awards less than £18,000 can be broken down as follows:

- 1 for £17,500
- 1 for £16,000
- 1 for £15,000
- 2 for £14,000

### **The London living wage is a reasonable minimum**

The Bar and the BSB need to take action together to make the beginning of a career at the Bar at least minimally viable financially, until entrants have had a chance to build up their practices. We cannot afford not to recruit from as wide a pool of talent as possible. A somewhat better minimum financial offer to pupils will help. The BSB has an important role in ensuring compliance.

Further pupils are especially prone to financial vulnerability when arrangements to do with conduct of, and expectations of payment for, Magistrates' Court work are unclear and unstated. In November 2017, the CBA circulated a letter issued to all heads of criminal chambers. **Copies of the letter and supporting papers are appended.** We asked what if any structures chambers have to support pupils. Our membership at large, and those on the executive committee, were asked to alert heads of chambers and chambers' management committees to the letter and its plea for replies by return. The letter elicited responses from chambers about arrangements for, and reassurances on, securing payments for pupils of work undertaken in the Magistrates' Court.

Question 16: *If you answered 'yes' to question 15, should we use the National Living Wage or the Living Wage Foundation benchmark for the minimum award? Please explain why.* Yes.  
See answer to Q15

Question 17: *Do you think the current exemption from the funding rules for transferring lawyers should be removed? Please explain why or why not.* We think there are, and remain, good reasons for the current exemption from the funding rules for transferring lawyers. In our experience, the reality is that the bulk of transferring lawyers do not need to rely on the financial certainty of a minimum pupillage award; transferring lawyers have – we are unaware of exceptions – either (a) made a straightforward economic decision that founding a career at the Bar of England & Wales is more lucrative than is remaining in the legal field where previously transferring lawyers were employed or (b) have sufficient resources in reserve or in credit.

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

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

We express no view on this point.

Question 20: *Do you think the BSB should allow pupil supervisors to supervise more than one pupil? Please explain why.* No. Proper supervision of a pupil takes considerable time and effort.

Question 21: *Should the BSB prescribe pupil supervisor training outcomes? Please explain why or why not.* We agree that the BSB should prescribe pupil supervisor training outcomes which we think chambers would view as a floor, not a ceiling.

Question 22: *How should the BSB seek assurance that outcomes in pupil supervisor training are being delivered?* Please see our answer to Q19.

Question 23: *Should organisations be required to provide this assurance during the authorisation process? Please explain why or why not.* As immediately above: we are content not to express a view on this point. What matters is adequacy of assurance given. The exact stage at which organisations are required to provide this assurance – whether or not during the authorisation process – is secondary to this.

Question 24: *Should the provision of pupil supervisor training be opened up to other providers (other than the Inns)? Please explain why or why not.* No. The Inns are best placed to provide pupil supervisor training. The interests of other providers, by definition, would be profit-driven.

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

pupil supervisors with the 'training the trainers' advocacy and ethics programme hosted by all four Inns of Court. The Inns should be asked to respond to this proposal.

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

Question 27: *Should delivery of mandatory courses for pupils be opened up to other training providers? Please explain why or why not, specifically considering the risks and benefits.* We have no view on the number or kind of training providers. The important thing is that providers should continue to be appraised and accredited by the Bar Standards Board.

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

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

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

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

Question 32: *Do you think there is anything which we have omitted and that we should take into account when considering transitional arrangements?* No.

**January 2018**

*Questions about this consultation response should be sent to Aaron Dolan, secretary of the Criminal Bar Association, [aaron.dolan@criminalbar.com](mailto:aaron.dolan@criminalbar.com).*