

COVID-19: A Protocol for Pupil Barristers

The Legal Sector Workers United,

Recognising that these are unprecedented times;

Recognising that chambers have multiple considerations during this time, in particular, financial stability;

Emphasising the need to protect pupils and the public, including vulnerable clients, and in line with government advice;

Supporting calls for courts to immediately transfer all hearings online and adjourn hearings that require in-person attendance, save in ‘exceptional circumstances’ as should be clearly defined by the relevant courts;

Recognising the concern that pupils bear a disproportionate burden to attend magistrates’ courts and county courts which are, at the time of writing, still having in-person hearings;

Remaining committed to access to justice for our clients;

Highlighting the imbalance of power between members of chambers and pupils;

Highlighting the culture of expectation on pupils and enormous pressures as a result of their precarious position, to the extent that they may feel unable to say no to requests by chambers;

Calls upon all chambers, Inns of Court, and the Bar Standards Board to adopt the following protocol with respect to pupils (including third six pupils);

1. All Inns of Court should set up a joint *COVID-19 Fund* to support chambers in their duty to fund their pupils. This will predominantly be used to support chambers who pay the minimum pupillage award, and chambers funded primarily through legal aid work.

2. Chambers should commit to funding pupils throughout the COVID-19 situation and to the conclusion of their pupillage, including any period of suspension and/or period of extension of pupillage.¹
 - i. For first six pupils, chambers to pay pupils the monthly amount agreed upon commencing pupillage, or the living wage a full-time worker would expect to earn per month, with London weighting as appropriate (whichever is higher).
 - ii. For second six and third six pupils, chambers to pay pupils (a) the minimum agreed guaranteed monthly earnings, AND (b) the additional monthly amount pupils would legitimately expect to earn in ordinary circumstances to compensate for any loss of earnings, OR the monthly living wage a full time worker would expect to earn per month, with London weighting as appropriate (whichever is higher).
 - iii. All payments to continue when pupils are on sick leave and/or self-isolation.
 - iv. For third six pupils, where there is no guaranteed earnings agreement already in place, chambers should immediately agree a guaranteed earnings scheme for the duration of the COVID-19 situation, and in line with guaranteed earnings for first six pupils (as set out in paragraph 2.i. above).
 - v. For third six pupils, where pupils are required to pay chambers rent, chambers should suspend this immediately.
 - vi. For any pupils who transition from second or third six to tenancy during this period, chambers should continue to provide new tenants with guaranteed earnings, and suspend payment of chambers rent for this period.
 - vii. We emphasise that the onus here is on chambers to provide the necessary financial support to its pupils.
 - viii. Where this is likely to have a serious and significant impact on chambers financially, chambers have the option to apply to the Inns of Court for financial support from the *Covid-19 Fund*, or from other sources, as specified by the BSB guidance².

¹ Chambers are reminded that these are their obligations in line with [BSB Guidance](#), namely that AETOs should continue to meet their obligations to fund pupils during any period of illness.

² BSB, *Financial Support Measures for Self-Employed Barristers and Chambers*, 19 March 2020, <https://www.barcouncil.org.uk/uploads/assets/d03f4440-ea92-4192-bae2798897db96ee/16892c38-d144-4d36-b05943f6ae498aa6/Financial-support-measures-for-self-employed-barristers-and-chambers.pdf>.

3. Chambers should take all necessary steps to facilitate the smooth transition of first six pupils into their second six.
 - i. Chambers should recognise that there is no requirement by the Bar Standards Board for pupils to complete court advocacy during pupillage in order to obtain their practising certificate.
 - ii. As far as possible, chambers should transition pupils to their second six on time and provide them with opportunities to undertake online and telephone hearings.
 - iii. As far as possible, chambers should avoid sending second six and third six pupils to in-person hearings and conferences (including in cells and custody suites); respecting their individual agency in making these decisions. Where in-person hearings are necessary as per court guidelines, chambers should ensure appropriate precautions and safeguards are in place.
 - iv. Under no circumstances are chambers to put pressure, directly or otherwise, on second six or third six pupils to attend in-person hearings.
 - v. If necessary, where second six pupils are unable to undertake a sufficient amount of court work, chambers should provide them with paperwork to allow them to continue their training. Pupils should be appropriately remunerated for any paperwork undertaken in their name or adopted by members of chambers.
 - vi. Chambers should consult pupils on the best approach for their training.
 - vii. Under no circumstances are chambers to penalise pupils who express a preference not to attend court. Indeed, this should be the default position of chambers.
4. The Inns of Court should ensure that all compulsory pupils training is available to be completed online.³ This should not be done in person.
5. Chambers should ensure that any compulsory in-chambers training is available to be completed online. This should not be done in person.

³ NB: Inns such as Middle Temple (March 2020) have recently demonstrated that this can be achieved.

6. Chambers should take all steps necessary to facilitate the smooth transition of second and third six pupils to tenancy:
 - i. Chambers should, as soon as practicable, make clear, and amend where appropriate, their requirements for completing pupillage, in line with BSB guidance that court advocacy is not compulsory. The requirements should be tailored to the circumstances of individual pupils. They should be formulated in consultation with pupils and in such a way that pupils are not unjustly disadvantaged by the COVID-19 situation.
 - ii. Chambers should maintain objective and transparent criteria for tenancy.
 - iii. Under no circumstances are chambers to penalise pupils who express a preference not to attend court. Indeed, this should be the default position of chambers.
 - iv. Chambers should hold tenancy interviews as close to the intended original date of interview as practicable and online if necessary.
 - v. Chambers should take all necessary steps to avoid delays in making tenancy decisions and/or communicating these to pupils.

7. Chambers should produce a written COVID-19 policy and provide pupils with a copy as soon as reasonably practicable. The policy to set out, as a minimum, the following:
 - i. Plans in place to ensure pupils work from home safely and effectively in line with government guidance, e.g. remote access, laptops, upholding required health and safety standards.
 - ii. Plans to ensure reasonable adjustments are granted to pupils with disabilities, where requested by the pupil.
 - iii. Plans in place to ensure full pay for pupils, including those who are unwell and/or self-isolating, as outlined in paragraph 2 above.
 - iv. Plans in place to transition first six pupils to their second six, as outlined in paragraph 3 above.
 - v. Plans in place to suspend chambers rent for second and third six pupils, as outlined in paragraph 2 above.
 - vi. Plans in place to ensure pupils complete the required Inns of Court or compulsory in-chambers advocacy training, as outlined in paragraphs 4 and 5 above.

- vii. Plans in place to transition second six and third six pupils to tenancy, as outlined in paragraph 6 above.
- viii. Plans in place to allow pupils agency over their decision to continue attending in person hearings, as outlined in paragraph 3 above, consistent with protecting their health and safety and with all relevant PHE guidance.

Legal Sector Workers United
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