



**South Eastern Circuit Response to the Bar Standards Boards
Consultation on the Future of Training for the Bar: Future Routes to Authorisation**

The following answers reflect and incorporate the views of Ross Talbot, Jodie Woodward, Michael Polak and Philippa McAtasney QC.

Question 1:

Do you agree with the BSB's proposal not to seek changes to s207(1) of the LSA 2007? If you do not agree, please state why not.

We Agree.

Question 2:

Do you agree with the BSB's proposal to maintain the principle the Bar remain a graduate profession? If not, please state why not.

Yes with a system which allows for exceptions in specific personal academic circumstances. The comment in paragraph 46 of the Consultation Paper that an applicant for the Bar should "normally" have a degree provides for cases which are exceptional.

Question 3:

Do you agree with the BSB's proposal to maintain the normal expectation of a minimum degree classification of 2:2? If not, please state why not.

Yes



OPTION A – EVOLUTIONARY APPROACH

Question 4:

Do you agree with our analysis of this option’s capability to meet the requirements of the Professional Statement? If not, please state why not.

Yes

Question 5:

Do you agree with our analysis of this option’s capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.

Yes

Question 6:

Do you agree with our analysis of this option’s capability to meet the LSB’s statutory guidance? If not, please state why not.

Yes. Although, one of the contributors to this joint document noted from experience that there were differences in the quality of the teaching and courses, across both tutors and providers, whilst undertaking what was then the BVC. It may be that the BSB will have to monitor the providers carefully to ensure they are indeed meeting the requirements.



Question 7:

Do you agree with how ethics is taught and assessed under Option A? If not, please state why not.

No. Should not be a separate examination. Ethics should be integrated into the different areas of study [as it was in the BVC], but not just for the sake of doing so. Ethical considerations should be integrated where possible, without taking examinations and assessments in a certain direction just to engineer an ethical test into it. In the USA, an ethics examination is undertaken separately to the Bar examinations and is a pre-requisite to being able to be called to the Bar, with a time frame on how long a candidate has to pass it from taking their examinations (3 years). Something similar to this may be a consideration to ensure that those entering the profession, do understand their responsibilities and obligations. Ethics should also inevitably be part of standard training in pupillage.

Question 8:

Do you agree with the cost analysis we have set out above for Option A? If not, please state why not.

Yes. Option A would be the least likely to allow students to receive any “public” funding for their studies. That being said we have interpreted paragraphs 88 – 94 of the Consultation Document as meaning that the total annual cost of oversight and assessment of training is put at £1280K per annum. That appears to be an incredibly high figure when looked at against the anticipated number of pupillage or training places.

Question 9:

Do you agree with the higher education implications we have set out above for Option A? If not, please state why not.

Yes



Question 10:

Do you agree with the equality and diversity implications we have set out above for Option A? If not, please state why not.

Yes. The inflexibility may negatively impact BAME, female and mature students disproportionately. We think that the major issue is one of cost and refer back to the answer to Question 8. Option A will still provide barriers to those who are from a low-economic background and cannot afford the training, but are exceptionally bright and would flourish in the profession if given a chance. Option A will continue to put barriers to those we wish to encourage to the bar and we will not have a representative legal profession if women, BAME, and low-economic backgrounds cannot break through because of the prohibitive cost

OPTION B - MANAGED PATHWAYS APPROACH

Question 11:

Do you agree with our analysis of Option B's ability to meet the requirements of the Professional Statement? If not, please state why not.

Yes. It meets the requirement of the professional statement. The inherent flexibility ensures there can be more creativity in meeting these requirements. That being stated Option B is not in any way fully formed and is difficult entirely to support when so much depends on the exact approved routes. Different specialties at the independent Bar may need different approaches within an Option B route. The Chancery Bar suggestion for example would conflict with a standard and effective pupillage at the Criminal Bar. This runs the risk that a student would have to decide on the type of law which he sought to follow with a very limited chance of change without cost and delay. Whilst this happens to some extent already, the independent Bar at present does allow room for manoeuvre and change because all pupillages are structured in the same way.

We do see the room for manoeuvre aspect of the present system as a real positive and would not wish to see it altered. In addition, at what we will call the "advocacy Bar", there is considerable benefit in the divided year of "watch and learn" followed by "practice and learn" during the second six months.



Question 12:

Do you agree with our analysis of Option B's ability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.

Yes although we cannot accept the content of paragraph 139. The concept of legal clinics or advice centres providing work based learning akin to the existing pupillage would, we think, require immense supervision and is unrealistic as a basis for training for the independent Bar. Whilst we accept that this consultation has to consider a wider market place, we see a risk akin to that contained in the answer to Question 11.

Question 13:

Do you agree with our analysis of Option B's ability to meet the LSB's statutory guidance? If not, please state why not.

Yes but always dependent on the detail of the specific training routes which are approved.

Question 14:

Do you agree with our view of how professional ethics is taught and assessed, and how ethical behaviour and professional integrity are fostered, under Option B? If not, please state why not.

No. Ethics should not be separately assessed. It should be fully integrated. It is a subject which works within practical examples produced within all parts of a legal course.



Question 15:

Do you agree with the cost implications we have set out above for Option B? If not, please state why not.

Not entirely. We do not support the separation of ethics with or without its additional cost. The remaining observations in the Consultation paper are possibly justified although they are unquantified and vague.

Question 16:

Do you agree with the higher education implications we have set out above for Option B? If not, please state why not.

Yes. The flexibility allows more options for interaction with other higher education courses.

Question 17:

Do you agree with the market risk analysis we have set out above for Option B? If not, please state why not.

No. The BSB analysis underestimates the potential for a stark reduction in pupillages offered and also the potential for regional providers to be disproportionately affected. Many Chambers (and the Inns of Court) support and fund pupillage to the limits of their ability. We see a real potential for reduction in numbers financed and offered to the substantial detriment of the profession. We doubt whether paragraph 160 is correct and that sufficient pupillages will “of course” remain.

Question 18:

Do you agree with the equality and diversity implications we have set out above for Option B? If not, please state why not.

Yes. The increased flexibility should assist those from the backgrounds described. However, it may be that the BSB have underestimated the potential for those outside of London to be disproportionately affected by the changes. As an example, a disabled individual or mother of young children may be advantaged



by the flexibility on offer but then severely disadvantaged if a great deal more travel is required. It may be that the provinces should be offered incentives for ensuring that they continue to provide, away from London, quality education and routes into the profession.

OPTION C – BAR SPECIALIST APPROACH

Question 19:

Do you agree with our analysis of this option's ability to meet the requirements of the Professional Statement? If not, please state why not.

Yes. A qualifying examination to test academic capabilities prior to embarking on a route to qualification may be one possibility. Such a qualifying examination would reduce the risk of qualification without the ability to have gained full knowledge. It is possible for someone to write-learn answers for a multiple choice test, without having a full grasp on the subject as required

Question 20:

Do you agree with our analysis of this option's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.

Yes. Although the BSB may have underestimated the difficulties that mature students / carers / mothers etc may still have in attending a three month short-course BTPC.

Question 21:

Do you agree with our analysis of Option C's ability to meet the LSB's statutory guidance? If not, please state why not.

Yes



Question 22:

Do you agree or disagree with our understanding of how Option C promotes the professional principles, ethical behaviour and integrity? If not, please state why not.

Yes although we have significant concerns that there would be insufficient opportunity to engage with ethical issues on a three-month course. The professional principles etc considered in this question can never be driven home in a three month course. Obvious ethical considerations could be considered during a short course, but reducing exposure to 'role models', and the length of time that students would be in contact with them, also reduces the potential impact on ethical behaviour and the potential for tricky areas to arise and be discussed, prior to embarking on the vocational side

Question 23:

Do you agree with the cost implications we have set out above for Option C? If not, please state why not.

Yes

Question 24:

Do you agree with our analysis of Option C's impact on the higher education training market for the Bar? If not, please state why not.

Yes. The shrinkage of the market would have negative impact on all; with a disproportionate impact on BAME, women, disabled individuals and those in the regions.



Question 25:

Do you agree with the equality and diversity implications we have set out above for Option C? If not, please state why not.

No. Although the BSB have recognised the potential for richer students being able to afford better pre-entrance examination training, they have in our view underestimated the impact on those from financially disadvantaged backgrounds. This option will favour those students who are able to afford the best training and those who are able to attend the greatest amount of training. This disadvantages poorer students and those with other commitments.

GENERAL

Question 26:

After having given consideration to the three options above, please tell us which option is most appropriate and why you think this is the case.

We do not consider that this question can helpfully be answered with one option. We rule out C for the reasons set out above. B may well have potential but until the detail is known is almost impossible to evaluate. B for the moment is too vague. We do not think that it can properly be evaluated without a clear indication of the methods that are to be used. Advice centres as one example would in our view be highly unlikely to provide adequate training.

One of our contributors suggested the following solution:

"I feel that the solution is somewhat simple although I am bound to accept that there may be other issues which need to be addressed.

In the structure of my solution the Bar Exam and Course (BEC) would be available to those who had received pupillage. This would end any preconceptions from pupillage providers that those applying for pupillage should have completed the course. This would almost totally solve the value problem of students completing a qualification which is useless to them if they do not attain pupillage. Once a prospective barrister attains pupillage (to start a year later) he or she would have to pass a Bar Exam which would cover civil and criminal litigation. The candidate could either study themselves or utilise training provided by private providers or the Inns at small price. Once the Bar Exam was passed the candidate would be able to start



pupillage. During the first six months of pupillage, pupil barristers would undertake an advocacy course of at least 4 hours a week, one evening a week. The Inns could charge a small amount for this, but as this could be at a low cost given that the course could be delivered by Benchers of the Inn voluntarily. This would help solve part of the cost problem as identified above.

The quality of the advocacy training provided by the Inns is much higher than that provided by the Course providers and would likely continue to be so. The litigation section of this course could be assessed by a standardised test as is currently done and students could choose to attend private colleges and pay for assistance in preparation of this test or if they do not need or have the means to do this, they could prepare themselves.

The advocacy component would be delivered by the Inns in the first six months of pupillage one evening per week. The ethics section of the course could be run by the Inns in conjunction with the advocacy component."

This suggested solution envisages pupillages being awarded potentially on a general academic record alone. Many Benchers already provide substantial student/pupil training and it is doubted that there is capacity for yet more.

Since considering all contributors views for this joint document we have seen the proposal of The Bar and the Council of the Inns of Court: a course in two parts: the first of which is entirely web-based and consists of acquiring knowledge of civil and criminal procedure and evidence. This approach appears to have immense cost attractions.