THE COUNCIL OF THE INNS OF COURT

TRAINING REVIEW WORKING GROUP

RESPONSE TO THE BSB'S CONSULTATION PAPER

"FUTURE TRAINING FOR THE BAR: ACADEMIC, VOCATIONAL AND PROFESSIONAL STAGES OF TRAINING"

I INTRODUCTION

1. This Consultation Paper entered the public domain on 9th July 2015. It covers the three main pillars of education, training and qualification for entry to the Bar – the Academic Stage (the Qualifying Law Degree (QLD) or, for non-law graduates, the Graduate Diploma in Law (GDL); the Vocational Stage (the Bar Professional Training Course (BPTC); and the Professional Stage, (Pupillage)). It follows in close sequence two previous Consultation Papers, the first on a Professional Statement (i.e. a statement of the knowledge, skills and attributes which barristers should possess on the day when they are first qualified to practise) and the second on Continuing Professional Development.

2. The four Inns of Court have appointed the Council of the Inns of Court (COIC) to submit collective Responses on behalf of the four Inns of Court to each of these Consultation Papers. To carry this forward COIC set up a Training Review Working Group on which all the Inns have been represented. Responses to the first two Consultation Papers (which have already been submitted), and this Response, were prepared in draft by the Working Group and circulated to the Inns for consideration and comment by their committees. The Committees which have considered and approved these Responses are:

Lincoln's Inn:

The Education Committee

The Continuing Education Committee

The Planning and Development Group

Inner Temple:

The Education and Training Committee

Middle Temple:

The Education and Training Reform Working Group

The Education and Training Committee

The Executive Committee

Gray's Inn:

The Education Committee

A final draft in each case was then approved by the Board of COIC. COIC's Responses, including this Response, accordingly state the views which are common ground between all the Inns.

3. The Inns note that many of the issues addressed in this Consultation Paper concerning the BPTC and Pupillage have recently been addressed in two earlier detailed Reports submitted to the BSB on the BPTC (previously known as the Bar Vocational Course) and on Pupillage in 2008 and 2010 respectively. It is assumed that the members of the Board and the relevant committees of the BSB are conversant with these Reports, the recommendations made, and the manner in which the BSB has implemented those recommendations. The previous Reports are referred to in this Response.

4. <u>COIC and the Inns</u>

COIC and the Inns are well-qualified to address the questions raised in the present Consultation Paper. Their primary and most obvious qualification is that their members are engaged at the coal face in practice at the Bar and in sitting as judges. Beforehand they have undergone the training with which this

Consultation Paper is concerned, at all of the three stages identified. In addition many have acted as pupil supervisors.

5. The BSB will also be aware of the central and unique role which the Inns (together with the Circuits) play in the pre- and post-qualification training of prospective and newly-called barristers. Beyond the formal role of calling their student members to the Bar, on completion of the BPTC and other requirements, the Inns discharge important teaching functions prescribed in the Bar Training Rules: the qualifying sessions in the Inns for Bar students, and the delivery of the mandatory courses for pupils and new practitioners. This teaching is delivered voluntarily by a large body of experienced practitioners – senior barristers and sitting and retired judges, who are themselves trained to deliver that training. This function reflects the historic activities of the Inns, and in its present form has been carried out for many decades.

6. The BSB is also aware of the extensive programme of training and research into training carried on by COIC's Advocacy Training Council (ATC) (www.advocacytrainingcouncil.org). This work currently includes work on vulnerable witnesses undertaken through The Advocates' Gateway (www.theadvocatesgateway.org) and advanced training on professional ethics,

expert witnesses and the experience of foreign languages and the effective use of interpreters in court. The ATC also has an extensive programme of international advocacy training directed and delivered by experienced members of the Bar who are accredited advocacy trainers. The BSB will know that the ATC will become the Inns of Court Advocacy College at the beginning of 2016 expanding even further the ATC's educational function.

7. In sum, the Inns possess a body of knowledge and peerless experience which equips them to state with some authority what knowledge, skills and experience are required for successful practice at the Bar and what training is required to deliver the high standards of performance which the public is entitled to expect.

8. <u>The present Consultation Paper</u>

   This Consultation Paper focusses on the knowledge, skills and attributes which barristers must or should possess at the date when they first become fully qualified to practise, following the successful completion of 12 months' pupillage ('Day 1'). The BSB says that when it has had the opportunity to consider all responses to this Paper, which largely takes the form of a discussion of options, it will issue a further Consultation Paper not later than Easter 2016. In the second Paper it will set out its own specific proposals for change, where

change is shown to be necessary or desirable. The Inns intend to remain closely engaged at every stage in the consultation.

9. The three-part structure: overview

The Consultation Paper appears to favour in principle the present three-part structure of our qualification system. The Inns support this system and do not wish to see it changed. Of the three stages, the first, the Academic stage, faces some critical questions in the Paper. The second (the BPTC) is most under attack by students and the Bar. The Paper argues for the retention of the BPTC, and its current syllabus; but it looks at different ways in which it might be re-configured and made less costly. The importance of the Professional stage, practical training in pupillage, is emphasised. In the view of the Inns the importance of pupillage cannot be overstated. It is noted that the Paper contains proposals aimed at making pupillage more effective and better regulated. In this Response the Inns address detailed problems associated with each of these topics.

10. The Professional Statement (PS)

In the case of all three stages the BSB states that policy will be guided by the proposed PS, the subject of its first Consultation Paper. This answers one of the questions raised by COIC in its Response to that consultation, namely whether

the PS was merely aspirational or whether it was to be used as a regulatory tool. It can now be seen clearly as regulatory. But this in turn creates a problem for respondents to the present Consultation Paper. The consultation on the first draft of the PS has taken place but the second draft has not been published. It is hoped that the second draft will answer the criticisms of the first draft. That remains to be seen. Further, the Consultation Paper on the PS stated that that document would be supplemented or reinforced by 'Threshold Standards'. These have not been published at all. Unless and until the Inns have these documents, said to be fundamental to policy-making, their Response to this latest Paper can only be provisional. The Inns may wish to amend it later on.

11. <u>The three stages are connected parts of a single whole</u>

The BSB is right to treat the three stages of training as a connected whole, and to include them in a single Consultation Paper. The training and education of barristers may start at a particular point, when they begin to study the law, but there is no particular point at which it ends. The acquisition and maintenance of the knowledge, skills and attributes which equip barristers to practise their profession to the required standard is an iterative process which continues throughout their career. After Day 1 the path continues through the New

Practitioners' Programme to CPD for established and experienced practitioners, with the Specialist Bar Associations playing an important role

12. For many newly-called barristers Day 1 will be reached some five to eight years after they have left school. In the case of barristers qualifying later in their careers the route to Day 1 will be different. But for the benefit of all candidates for the Bar the three-part programme must be designed as a whole. The necessary knowledge, skills and attributes will be acquired successively during that programme. It follows that they should be taught at the points when they can be most efficiently taught and learnt. It would be a mistake to delay necessary learning to a point in the programme at which it would be too late for effective teaching. Equally, it would be a mistake to introduce it too early.

13. One of the principal themes of this Response therefore is to look at the content of training delivered during the course of the entire programme; to ask the question whether the right training is being provided; and to consider whether it is delivered at the right time by the right Providers. The Inns are also concerned to ensure that access to a career at the Bar is, so far as possible, freely available to all those who are capable of achieving excellence in the profession,

irrespective of their personal background, history or circumstances. This is an equally important theme.

14. The role of the BSB

In addressing the BSB through this Paper the Inns work on the premise that the BSB will be concerned exclusively with the standards of knowledge and skill and the personal attributes required, in the public interest, for successful practice at the Bar, and how career opportunities should be shaped for entry into our branch of the legal profession. The BSB, it is assumed, will not allow itself to become side-tracked into extraneous considerations as to what other types of education and training might be appropriate for practitioners in other sectors of the profession. The Inns return to this important point in discussing the Academic Stage in Part II of this Response.

15. The BSB's Questions

The Inns have not found it possible to answer the BSB's questions (QA1-8, QV1-22 & QP 1-28) in the terms in which they have been expressed. The general tenor of the Inn's approach to these questions is explained in the next three parts of this Response.

II THE ACADEMIC STAGE: QLD & GDL

16. **This Part of the Response addresses the BSB's Questions QA1-8.**

17. The QLD is taught by some 91 universities, or institutions having equivalent status, in England and Wales. The QLD is also delivered by the Universities of Edinburgh and Dundee and Trinity College Dublin. The degree serves the dual function of a free-standing university degree and one of the academic pathways into legal practice in England and Wales. The law degree, as it is taught in many of our leading law schools, is respected throughout the world. English and Welsh universities attract large numbers of students from abroad to their undergraduate law courses. Graduate law courses are equally popular. The academic community which supports this enterprise, in respect of the standard of its research and publications, enjoys a high reputation. Only a minority of law graduates plan to enter legal practice here: approximately 40%. Any consideration of the role of the QLD as a route to practice at the Bar must take into account the distinct academic character and appeal of the QLD as well as the requirements for practice at the Bar.

18. The present syllabus was originally agreed between the Law Society and the Bar Council following the recommendation of the Ormrod Committee, some 40 years ago, that the legal profession should primarily be a graduate-only profession, but not limited to holders of degrees in Law. Graduates in other subjects should however be required to undergo a conversion course offering equivalent academic study of the principal components of our jurisprudence.

19. In their Joint Statement, subsequently endorsed by their regulator-successors, the Law Society and the Bar Council accordingly agreed that a law degree would count as a 'Qualifying Law Degree', exempting potential recruits to the solicitors' profession as well as to the Bar from post-graduate academic study, if they had been taught and examined at their university in (originally) 5 core subjects: Contract, Tort, Criminal Law, Equity & Trusts, and Property Law. European and Public Law have been added later. Those who do not hold the QLD were and are required to study these core subjects in the one-year conversion course (GDL).

20. Paragraph 1.1 of the draft PS stipulates that, at Day 1, barristers should "*have a knowledge and understanding of the basic concepts and principles of public and private law".* In the Inns' response to the Consultation Paper on the PS we questioned the vagueness of this requirement, given that, by Day 1, barristers

would have been taught the 7 mandatory core subjects, within the QLD or GDL. Since one of the purposes of the PS is to inform clients and the public of what barristers know – or should know - at Day 1, it would in the Inns' view have been helpful if they could be given the details.

21. It can now be seen why this looser formula within the PS was adopted. The proposals for the Academic stage set out in the present Consultation Paper call the 7 core subjects into question. However there is a significant internal inconsistency in the Paper on this issue.

22. The discussion begins at paragraph 60 with a suggestion that some at least of the core subjects should be dropped, that other subjects should be put in their place, and that the mode and style of instruction should be changed. The reasons given are in the opinion of the Inns unconvincing. The proposal is strongly challenged.

23. Paragraph 60 of the Paper states that, at present, students must study *"certain subjects that began as a list of what were regarded as a 'core' some 40 years ago, plus some that have been added since then in an <u>ad hoc</u> manner."* The reference to 40 years is simply a reference to the publication of the Ormrod Report. The way in which core subjects found their way into the QLD, in

response to that Report, has been explained above. The date is otherwise irrelevant. Five of the 7 subjects - Contract, Tort, Criminal Law, Equity and Trusts and Property Law - had been regarded as the foundation of legal learning for periods extending far further back in time than the Ormrod Report and the Joint Statement. That is why they were selected for inclusion within the QLD when it was established. They were not selected because they represented fashionable professional and academic thinking at the time, and they have not now become outmoded. They constitute what many would still - rightly - regard as the foundation of the law of the land. They have their equivalents in other systems of jurisprudence, not least the continental European and Scottish systems descended from Roman Law. They are not to be dismissed in the casual language of paragraph 60.

24. Furthermore it is not correct to say that the other two topics - European and Public Law – have been added *"in an ad hoc manner"*. There were and are sound reasons why these two topics, coming on to the legal landscape in the latter part of the 20th Century, are now required to be learnt alongside the other five. Many would regard all seven as indispensable both for students of the law and for the modern practitioner.

25. Paragraph 60 ends: *"the list of required subjects contains things that some barristers may never use (for example Trusts, Crime) and does not contain other subjects which are of great importance."* The *"other subjects"* are not specified.

26. Apart from this omission, the Inns draw attention to the shift in language in this paragraph, which is significant. It speaks of subjects which a barrister might *"use".* The Paper has at this point lost sight of the broader academic aim of acquiring *"a knowledge and understanding of … basic concepts and principles …".* It may well be that barristers practising criminal law do not regularly "use" the law of equity and trusts. Nor for that matter would they regularly use the law of contract. Other barristers will not regularly use criminal law. But it is quite wrong to say that barristers can have a conceptual understanding of the whole of our legal system without having studied them. Nor can anyone safely practise in ignorance of them, as any practitioner will testify. In the real world cases will often involve more than one area of law, those areas overlapping or interacting to a significant degree. For example, a barrister dealing with a civil case must be alive to the possibility that a party might have committed a crime, specifically so as to consider any privilege against self-incrimination or the possibility of a defence of illegality. Equally, a barrister dealing with a criminal allegation of theft must have an understanding of what constitutes 'property belonging to

another' which sometimes requires a knowledge of the law of contract, equity and trusts and even land law.

27. Moreover there is in truth no dichotomy between the substantive law represented by the core subjects on the one hand and an understanding of basic concepts and principles on the other. They are one and the same thing.

28. Paragraph 61 of the Paper continues down this mistaken track. It states that *"it is hard to find evidence that knowledge of the <u>required</u> subjects is any more "essential" than knowledge of many other subjects."* That depends entirely on what the BSB means by "essential". The failure again to specify the "other subjects" makes it difficult to know what test of "essential" the BSB is applying at this point.

29. The Inns believe that all barristers have to have an understanding, to the standard of a university degree, of the whole of our jurisprudence. They also believe that the 7 core subjects remain the best proxy for what it is "essential" for all barristers to know at that level, before they become immersed in specialist practice.

30. Paragraph 81 of the Paper, by contrast, supports this point of view: *"Students completing the academic stage need to have an understanding of the two main branches of English and Welsh law, i.e. public law and private law. The former would normally include criminal, constitutional, administrative and human rights law, while the latter would normally include basic concepts and principles of contract, tort and property law."* This paragraph recognises that students cannot gain any insight into the basic concepts and principles of the law which the PS calls for unless they study core subjects. It is at odds with paragraphs 60 and 61 and cannot be reconciled with them.

31. The argument presented in paragraphs 60 and 62 of the Consultation Paper is also flawed in practical terms. If some of the core subjects are dropped from the Academic stage, it has to be asked at what later stage (if at all) they will be taught. Both the present structure of the BPTC and pupillage and the proposals for reform of those stages proceed on the assumption that students and pupils will have previously learnt the relevant substantive law, at the Academic stage, which will equip them to embark on the next stages of training. It is difficult to see how students undertaking the BPTC can begin to make sense of that syllabus without having studied the core subjects in advance. The focus at the two later stages is on understanding how the law is applied in action, and on developing

practical, professional skills such as advocacy. There is no space or time, within the later two stages of qualification, for learning academic law. That must and can only happen during the Academic stage.

32. Moreover, the Consultation Paper does not appreciate how career paths will be severely limited for candidates whose academic legal education has missed out one or more of these key areas of law. Applicants for pupillages in chambers practising criminal law will have no prospect of selection or even interview if they have not studied that branch of the law as part of their academic training. Chambers specialising in land law will not be interested in candidates who have no prior knowledge of the subject. The broad range of the 7 core subjects gives students maximum flexibility in their career choices and the ability to change and adapt their plans as their preferences and circumstances change and new opportunities present themselves. Moreover the service which lawyers with a narrow and partial education in the basic law of the land are able to render to clients and the public will be correspondingly incomplete.

33. The problem we have just described above is not limited to career opportunities at the beginning of a barrister's practice. There is for many individuals fluid movement between different areas of work later on in their careers. For example, a barrister who has specialised in criminal practice may wish to

undertake regulatory work. Narrowing the academic base will curtail some of these options.

34. Subjects which are suggested to go into the place of one or more of the core subjects are selected from the draft PS (see para. 63: "Applying the Professional Statement to the Academic Stage"). They include *"Respond[ing] to the needs and sensitivities of those from diverse backgrounds and circumstances....."* and *"Act[ing] with the utmost integrity and independence at all times, in the interest of justice, representing clients with courage, perseverance and fearlessness ..."*

35. These are admirable moral qualities which barristers ought to possess; but the fostering of these attributes cannot be imposed as a requirement in an academic degree syllabus. They should be developed during the Vocational and Professional stages. The authors of the Paper seem to have lost sight at this point of the intrinsic academic value of the QLD. They appear to regard it simply as a training-ground for barristers, who constitute a mere 10% of the practising profession in England and Wales. They seem to wish to construct a syllabus which advances the non-academic elements of a Professional Statement tailored for a small segment of the profession.

36. The notion that an academic degree course, undertaken by a large body of national and international students, with wide-ranging interests and ambitions, can be driven by a professional regulator, concerned with a small niche of domestic practitioners, is mistaken. The virtue and value of the present regime, stipulating study of the 7 core subjects, are that it reflects a rational consensus between the academic community and the profession which has stood the test of time; and there is no sound reason for interfering with it. Our discussions during this consultation period with leaders of many of our law schools confirm this opinion.

37. From the point of view of the academic community, the core subjects form the bedrock of legal studies. They are the foundation on which other challenging and innovative studies and research can be based. It may be doubted whether a degree can properly be called a law degree if it does not deliver an understanding of the basic law of the land, represented by those areas of knowledge. But maintaining the core subjects does not prevent the development of other fields of study such as criminology, socio-legal studies, legal history, Roman Law, international, commercial and business law and many other areas of interest which are thriving at undergraduate and post-graduate levels. The suggested course outlined in paragraph 82 may be one possible

format for delivering the QLD, provided it comprised the core subjects; but the BSB would be greatly exceeding its remit if it were to impose that individual, idiosyncratic design on all law schools.

38. From the point of view of the practising profession, study of the core subjects imparts knowledge of, and can inspire critical thinking around, first principles. The breadth of the core keeps all career options open for students and pupils. It also means that those providing the next two stages in training do not have to cover ground which ought to be taught at the Academic stage. It enables the next cohort of teachers and trainers to concentrate on other elements of the PS.

39. Moreover, changes to the content of the QLD cannot be considered without assessing their downstream effect on the GDL. Recruits to the profession who do not have a law degree have one academic year in which to catch up with the law graduates. The GDL course is pared down to a black-letter study of the law of the land. It should not be overloaded with additional subjects for which hard-pressed students and staff do not have time to study or teach. The 7 core subjects fit the bill.

40. The Inns are aware of discussions taking place within the academic legal community as to whether the syllabus of a law degree should be changed to

exclude core subjects in order to make room for other areas of study. Universities are of course free to design their courses as they think fit; but the BSB should not, in the opinion of the Inns, play any part in that debate. As previously stated the responsibility of the BSB is to maintain standards for the Bar. A degree course which does not deliver the areas of knowledge held to be essential for practice at the Bar should not be regarded as a QLD, and its graduates should be required to make good any gaps in their knowledge by undertaking the GDL.

41. Class of degree

Finally, the Paper raises the often-debated question as to whether access to the profession should be restricted to holders of First Class or Upper Second Class degrees. This question was fully considered in the Report of the BSB's Working Party on the Review of the Bar Vocational Course (July 2008) in the following passage:

> *"79. For a number of reasons we do not think that students should be excluded because they have failed to get a First or 2:1 Class degree. There are many reasons why good students do not achieve a 2:1: wrong choice of degree subject, or of a special subject within the course; illness or other personal circumstances affecting their performance in*

the examination; achievements in activities outside their academic work – debating, sport, journalism and other writing, music – which are alternative indicators of high future potential.

80. We also bear in mind that there is now a very wide range of degree courses, offered by more than 100 universities. Discriminating against holders of 2:2 degrees will provoke invidious comparisons between universities and degree subjects.

81. We also take note of the fact that a 2:2 degree is not a bar to obtaining a pupillage, even though many sets of chambers feel they have to exclude these graduates automatically in order to cope with the number of applicants. .....

82. We are not attracted to the suggestion that the regulator should be burdened with exercising a discretion in the case of students falling below the 2:1 level. Students

with a Third Class degree [now ineligible] *already present difficulties to the officer who has to perform this function. Hard decisions have to be made and there are too many borderline cases .... "*

42. This advice was accepted by the BSB at the time. This question, having been raised again in the Consultation Paper, has been debated within the Inns. There is no settled opinion among their members. Opinion is sharply divided. In this Response the Inns summarise the opposing arguments as they have been stated in the discussions.

43. It is said on the one side that there is no reason for departing from the previous position. After the award of their degree potential students still have two rounds to go before reaching Day 1. It is argued that access to those later rounds should not be barred to candidates who have fallen below the level of a 2:1 at their university. They should of course be given a clear warning that a 2:2 will prevent them from serious consideration, even at the preliminary sifting stage, by many pupillage selection committees; but they may feel - justifiably - that they have other qualities to offer the Bar which can be balanced against a lack of academic success, and will wish to press their claims. Cutting out holders of 2:2s (in any

degree subject) from the pool of competition would (it is said) be unfairly discriminatory and could deprive the profession of able recruits.

44. On the other hand it is argued that acceptance of the earlier advice can be seen in hindsight to have propagated a myth that people with a 2:2 degree have a realistic opportunity to pursue a career at the Bar. In fact, very few chambers will interview applicants for pupillage who have a 2:2 degree. Others therefore believe, both on academic and practical grounds, that the time has come for the line to be redrawn so that, save in exceptional circumstances, a 2:2 degree would be a bar to embarking on the Vocational Stage. In 2010 / 2011 (which appears to be the last year in which data were collected by the BSB) 25% of students on the BPTC had a 2:2 degree. That would mean that up to a quarter of students had no realistic chance of acquiring pupillage. Imposing a 2:1 requirement would put an end to a plainly unacceptable state of affairs whereby false expectations are created among people seeking to become a barrister.

45. The Inns are however unanimous in stressing that, if the BSB were to decide that holders of 2:2 degrees should no longer be eligible to undertake the Vocational

Stage, there must be provision for a relaxation of that rule in exceptional circumstances. It would therefore be a condition of a general ban on holders of 2:2 degrees that the BSB would have in place a system for dealing with applications for waivers. A blanket ban on all holders of 2:2 degrees would be too blunt an instrument.

46. Five options.

Paragraph 89 of the Paper sets out five options for the future of the Academic stage. Option (a) is the most prescriptive. It follows the present pattern, upholding the idea of a mandatory core and prescribing the content of each subject. Option (b) is the same as (a) except that prescribed study-time is substituted for prescribed course content. Option (c) prescribes study of *"the basic concepts and principles of public and private law as a whole",* leaving institutions to decide for themselves how this might be achieved. Options (d) and (e) in varying degrees abandon the idea of prescription altogether. For the reasons stated the Inns support Option (a).

47. The Bar of England and Wales is held in high regard throughout the world. Barristers are respected not only for their forensic skills but also for their deep knowledge of the law. To dilute the quality and content of the academic core requirements would place that reputation seriously at risk.

III THE BPTC

48. This Part of the Response addresses the BSB's Questions QV 1-22.

49. Part 2 of the Paper, dealing with the Vocational stage, begins with a clear and readable account of the BPTC as it is at present established. It reminds readers that the course was set up as recently as 2010 as a replacement of the Bar Vocational Course, following the 2008 Review. The Paper unequivocally states that *"The BSB does not propose to abandon a vocational stage of training"* (para. 96). It then suggests a number of different ways in which current criticisms of the course can be met by reform.

50. COIC and the Inns have already adopted a clear policy for the reform of the structure and cost of this course, in the light of independently-researched evidence from their Bar students and newly-qualified members. The Paper discusses a somewhat larger set of issues affecting the course, including but not limited to the problems of costs and standards, which have been of particular concern to the Inns; but this wider discussion is diffusely presented and not always easy to follow.

51. The issues raised in the Paper may be placed in this order: syllabus; admission to the course; numbers and career prospects; standard of teaching; examinations and marking; cost; the role of the regulator; and options for reform. The Inns will offer answers to all of the questions raised and will, in addition, address a question of paramount importance to their members which is not raised: how to increase the number of pupillages.

52. Syllabus

There appears to be general agreement that the syllabus should consist of the following subjects:

(1) Professional Ethics.

(2) Civil Litigation, Evidence and Remedies.

(3) Criminal Litigation, Evidence and Sentencing.

(4) Advocacy.

(5) Opinion-writing.

(6) Drafting.

(7) Conferencing.

(8) Resolution of Disputes out of Court, including negotiation, mediation and arbitration.

The first three are currently examined centrally by the BSB. The remaining five are examined locally by the Provider of the course.

53. The practical knowledge and skills which this course imparts are intended to form a logical link with the study of the 7 core subjects at the Academic stage: first, know what the law is; secondly, learn how it is applied in practice. The content of the syllabus must always be susceptible to adaptation and change, reflecting changes in the law and practice. Maintaining the correct link between the first two stages of training is equally important. There is no evidence to suggest that the link at this point in the training spectrum is not successfully made.

54. Paragraph 100 of the Paper sets out a list of desired skills for barristers, based on focus-group research: technical skills, verbal and written communication, problem-solving and the ability to learn. It comments that these findings correspond with the relevant parts of the PS (as it presently stands). Paragraphs 120-129 note changes in the current legal services market, including funding; litigants in person; the arrival of IT, de-regulation; specialisation and commercialisation. It is however left open for discussion as to how the current

syllabus, approved by the LETR (see para. 120), meets these different sets of demands. The way in which they might connect is not explored or explained.

55. By contrast, the most obvious issue for the practising Bar, is the role which the BPTC plays as the connecting link between the Academic stage and pupillage. Is it the right preparation for pupillage?

56. The Paper provides some evidence that the current BPTC syllabus is on the right track. It gives pupil supervisors, and the Inns and Circuits who deliver the formal pupils' courses, a sound foundation for the next stage of training. Absent that training on the BPTC, training in pupillage would be much more burdensome. The Paper reports that pupil supervisors consider their pupils to be reasonably well-prepared when they arrive for the third stage of training: see para. 149 and Appendix D, para. 426. This view is taken despite the fact that the style of work encouraged on the course may not be the same as the house-style favoured in the pupil's chambers or indeed in some courts ("I have to tear up their opinions and start all over again", saying "Good morning, your Honour", etc.)

57. The problems raised in paragraphs 120-129 may be thought to be less relevant at the Vocational stage, although Bar students must be forewarned about them.

The Practice Management section of the pupillage course (see below) might be the better place for direct instruction on these topics.

58. Admission to the course

There is a widely held view that there are too many students attending this expensive course, compared with the number of pupillages currently available. There is an equally widely held view, supported by the high failure rate that too many of the students who are accepted do not have the ability successfully to complete it. Our research shows that, for example, in April 2014 1663 candidates sat the Civil Litigation paper. 955 candidates passed and 708 failed, a failure rate of 42.6%. In the same year (August) 554 candidates sat the Civil Litigation paper. 189 candidates passed and 365 failed, a failure rate of 65.9%. On a broad assumption that most of the 365 who failed in August were sitting the examination for a second and final time, they will have failed the entire course. The aggregate amount of wasted fees, taking an average fee of £16,500, is some £6.2 million.

59. It is also thought that a large number of the students who do pass the course and are called to the Bar still do not have qualities which would merit an award of pupillage, however many pupillages might be available. The presence on the course of students unlikely to succeed in the examinations, or in the competition

for pupillage, slows teaching down and has a detrimental effect on the progress of the more able students. These issues have been debated for many years. They are not new, and they do not go away.

60. On the simple question of numbers of students compared with the number of pupillages the BSB is quite clear. It cannot impose a cap or operate a quota system: see paragraphs 109 and 114-116. It is not possible to disagree with that.

61. On the question of admission standards, various stratagems have been proposed. Excluding students who do not have a First Class or 2:1 degree has been discussed earlier in this Response. The aptitude test, BCAT, was intended to act as an alternative filter; but the low pass standard insisted upon by the Legal Services Board (LSB) has rendered it ineffective.

62. The difficulty in providing a remedy to the problem of admission standards has prompted COIC, with the support of the Inns, to suggest a radical re-structuring of the BPTC. It has already been the subject of a detailed COIC study and is discussed in more detail below. It is associated with the issue of cost. The main feature of COIC's proposed re-structure is that the course should be divided into two Parts – 1 and 2. Part 1 would consist of the knowledge-based components

of the course (items (1) (2) and (3), but with the possible exclusion of (1) (Ethics), set out in paragraph 52 above), which are centrally examined. Students could prepare for Part 1 in any manner and with whatever support they might choose; but it would be a condition of entry on to Part 2 that they should have passed Part 1 first. It is proposed that students should be allowed only one re-sit, within a yet to be defined period, of a paper which they have failed first time round. The reason for this proposal is that limiting the number of opportunities to re-sit will ensure the integrity of the assessments and the quality of those ultimately passing the assessments. Consideration should also be given to limiting the time by which Part 2 must be undertaken in relation to the successful completion of Part 1.

63. Contrary to concern expressed by Providers, the CEB assessments taken at Part 1 are not proposed as an entry test, nor as a replacement for BCAT. A Part 1 knowledge based approach would however exclude, at an earlier stage, many of the students who, under the present system, attend the whole course at great personal expense and end up failing it. The BSB is already aware of this proposal. It is one of the options respondents are asked to consider. It also addresses the countervailing concern that the present course, because it is so expensive,

actively deters able students who would be capable of successful practice at the Bar.

64. Numbers and career prospects

This question overlaps the questions of admission and admission standards discussed above. The number of students undertaking the course each year has fluctuated between 1800 and 1500. Up to one third (see para. 111 of the Paper) are overseas students who in the main are not looking for pupillage in England and Wales. The remainder are competing for around 400 pupillages. The number of pupillages registered for 1st six pupils for 2013/14 was 397. Students who complete the course and are called to the Bar may apply for pupillage up to five years from the date of Call before taking the course again. In 2014 2100 candidates applied for the pupillages administered by the Pupillage Gateway. This number will be slightly increased by applicants applying exclusively to chambers outside the Gateway scheme. Assuming that the number of first six pupillages available for the year 2014 / 2015 remained approximately the same as in the previous year it can be stated with some confidence that there are five times more applicants for pupillage than there are pupillages available.

65. Solving the problem by reducing the intake of students has been discussed. An effective centralised Part 1 examination, which must be passed before students can enter the more skills based training for Part 2 is the considered suggestion offered by the Inns. Ameliorating the problem at the other end, by increasing the number of pupillages, is referred to in the next Part of this Response.

66. Standard of teaching

Paragraphs 140 -151 of the Paper set out in some detail the quality assurance processes which the BSB has in place for monitoring the performance of BPTC Providers and examining students. On the specific issue of the standard of teaching, paragraph 151(f) concedes that *"teaching is felt by some students to be of low or variable quality; this includes concerns that too few current practitioners are involved in delivering training."* This sentiment is more strongly expressed in the opinions of the students and new practitioners who took part in the BSB's Focus Groups: see Appendix D, paras. 434 sqq.

67. There is evidence of teaching to a high standard. Research commissioned by COIC itself supports this. Personal observation of teaching during the 2008 Review left members of that Working Group with very favourable impressions in many cases. The anecdotal evidence of students is not the only information

available. Some Providers have expressed dismay at the low regard in which tutors are held, reiterating that some tutors hold judicial appointments whilst most continue to keep in touch with practice to one extent or another either through continuing to practise or by contributing to academic legal publications. What remains clear is that the standard of teaching is not consistently good.

68. In the central activity of advocacy training, the Inns and the ATC, whose declared aim is 'Excellence in Advocacy', have a special expertise. It forms a significant point of contact between the Inns and their Bar students. Training is normally delivered at residential weekends. Professional Ethics is sometimes added on to advocacy training sessions. The quality of training provided by the Inns, compared with the training delivered on the course, generates *"widespread satisfaction"*: Appendix D, para. 433.

69. In addition, the ATC trains and accredits the BPTC lecturers who deliver advocacy training on the course. The Hampel method is applied and proper emphasis is placed on case analysis as well as advocacy. ATC trainers also from time to time monitor the teaching which takes place and comment on it. The ATC's Training and Accreditation Committee oversees this function. Reports made by the T&A Committee of the ATC from time to time indicate concern about the variable quality of advocacy training delivered. The BSB should open

discussions with the BPTC Providers and the ATC (or its successor, the Inns of Court Advocacy College (ICAC)) to consider how advocacy trainers should be trained, re-accredited and, where necessary, re-trained to achieve a uniformly high standard of teaching. This would reassure students and allow for more parity between the standard of training on the BPTC and the standard of the Inn's training. The Inns and the ATC are not presently concerned with the delivery of other parts of the syllabus, and may therefore be unable to encourage a higher standard in the teaching of those subjects, in so far as that is necessary. Under present arrangements that is a matter for the BSB and the course Providers.

70. Examinations and Marking

The examination and marking of students' work is outside the remit of the Inns. They are however aware of problems recently encountered with the centrally assessed examination subjects. Some of the Inns have received complaints from students about the setting and marking of these subjects. Ethics is a recent example. These problems are a matter of concern because the success of the new Part 1 of the BPTC proposed by COIC will depend upon a reliable and efficient central setting and marking system. The BSB is conducting a separate review of the central assessments. The review should take account of possible

changes in the numbers of candidates. The Inns will be concerned to ensure that a credible system emerges from this review. It should be considered whether Professional Ethics, which is a hybrid mixture of knowledge and skills, should be moved to the proposed Part 2.

71. Cost

The high cost of attending the course – fees + living costs – and its impact on diversity of intake is notorious. It does not need to be discussed all over again in this Response. The issues are well explained in paragraphs 152-156 of the Consultation Paper.

72. Informal discussions with BPTC Providers indicate that, in so far as the Providers' overheads are the cause of high fees, the detailed specification for staff-student ratios (SSRs) imposed by the BSB, and the restrictions placed on the scope of teaching which accredited BPTC staff can undertake, are the main drivers. While it is also true that the BSB requires a generous provision of libraries, IT facilities and books for the students, we have been told that these do not have the same impact on overheads. This view was repeated at the recent annual Providers' Conference organised by the BSB. It is a subject which needs to be tackled by the regulator. No independent audit of the calculation of fees has ever taken place. The claims made by Providers that the BSB imposes unnecessary

overheads, and the impact which those overheads has on fees, are likely to be raised by them. They must be properly documented and evaluated with the starting point being an accurate assessment of the net unit cost of BPTC provision under the current regime.

73. Role of the BSB

This topic is briefly touched upon in paragraphs 117-119, but is much discussed in the Inns, especially their Education Committees. There is a tension, reflected in the Responses returned by COIC so far on the Professional Statement and CPD, between the need to ensure that the highest standards of education, training and performance are maintained at every point in the cycle of training and practice (which would point to tough regulation), and the desire for professional autonomy and self-rule (which would point to "light touch" guidance).

74. There is a further tension between the desire to make practice at the Bar more accessible to a wider pool of candidates and the need to get a grip on numbers. This produces conflicting worries that standards might either be lowered or alternatively pushed too high. The present consultation may be the springboard for raising fundamental issues of this kind, outside the envelope of the BSB's

Questions. A visit to the relationship between the regulator and the regulated community is overdue, apart from the present focused agenda. The independence of the regulator is of course sacrosanct; but a better understanding between the two parties would make work on both sides more effective.

75. Proposals for reform

The Paper outlines three Approaches to reform: (1) continuously improving current arrangements; (2) allowing any training that demonstrates the barrister has achieved the required outcomes; and (3) specifying and controlling only a final stage of training, following a barrister's [meaning "student's"] achievement of key outcomes.

76. Approach (3) is a restatement of COIC's recommendation to split the Bar course into 2 Parts as described above. The Inns continue to advocate this policy: freedom to prepare for Part 1, anywhere in the world, without having to join an Inn, and with or without support from course Providers or other materials; freedom to register to take the Part 1 examination on a date set from time to time by the BSB; freedom to decide, for any reason whatsoever, to discontinue studies at that stage; freedom to progress to Part 2 on condition that the

candidate (a) has passed Part 1 and (b) joins an Inn, if he or she has not already done so. Part 2 will, as heretofore, be delivered live by an accredited Provider at its premises. Beyond that, COIC has not been prescriptive in terms of timing and duration of Part 2.

77. COIC has not claimed that this formula will solve all the problems inherent in the BPTC. It will however address the question of cost. It is capable of making Part 1 significantly cheaper, both in terms of fees and living costs, by allowing (but not requiring) students to prepare for it otherwise than by attending an expensive course. It will also address the question of standards in part, by filtering out at the Part 1 stage students whose written and analytical skills are insufficient to deal with the fundamental areas of knowledge and legal understanding studied, and who are therefore likely to fail at the end or (if they struggle to pass) extremely unlikely to obtain pupillage. The advantages of the approach are listed on page 44 of the Consultation Paper (a)-(g).

78. The list of advantages is followed and balanced by a list of disadvantages (a)-(f). There is a concern that within this regime the regulator will lose control of the system in terms of quality assurance, admission, accessibility and diversity. The

Inns believe that these problems can be addressed by the BSB by setting appropriate standards for the passing of Part 1.

79. There is also a fear (point (b)) that *"by controlling the training resources for commercial advantage, Providers might prevent lower-cost opportunities for the initial training to emerge."* The Inns agree. This challenge may have to be met in due course.

80. The Part 1/Part 2 course does not prevent and indeed may encourage innovation. Providers can, for example, add elements to a Part 2 course to elevate the status of the course to a Master's Programme or to meet any particular visa requirements for international students who may need an extended period of study.

81. The Consultation Paper does not record a pedagogic argument against splitting the course as the Inns propose. The argument runs that BPTC training is "holistic" in that there is no hard and fast distinction between learning the knowledge-based subjects on the one hand and applying that knowledge in practical advocacy, opinion-writing and other similar exercises on the other. It is said that students can learn the knowledge parts of the course better, and that there will be fewer failures, if it is undertaken in the context of skills training.

82. This argument is unconvincing in an age of on-line training in which students have become increasingly more reliant and conversant with self-study. It sounds like making the best the enemy of the good. But apart from that, the modal shift in learning would not be very revolutionary. It simply involves moving the knowledge-based subjects back along the spectrum towards the 7 core academic subjects away from the practice-room. What is good for the law of tort must surely be good for practice, procedure and evidence. At worst it would represent a sacrifice of one teaching advantage for a greater good.

83. It is the Inns' view that splitting the course as proposed will improve the learning experience of students. In short, Part 1 of the course will focus on providing students with the required knowledge whilst, inevitably, introducing them to the practical context. Part 2 will introduce students to the skills whilst embedding the knowledge. The advantages of this structure are:

- Under the current regime, BPTC students cover the whole landscape of the knowledge areas only once. Under COIC's proposed two-part course, students will cover, for example, civil procedure whilst studying for the Part 1 examination and will then revisit that subject matter again in a skills context during the Part 2 Course. They will

therefore have at least two opportunities to understand and embed their learning by the completion of the vocational stage.

- Students will arrive on the skills course with a much better understanding of the litigation process than those enrolling on the current BPTC; they will already have a 'roadmap' of the whole litigation process. This means that the skills teaching can begin at a much higher level and progress at a greater speed. For example, opinion and civil advocacy sessions can, from the start of the course, deal with matters such as directions and costs allowing for much more realistic training. At present such matters are usually ignored in earlier sessions because students have no knowledge or understanding of those areas.
- Students acquire knowledge at different speeds and in different ways. The flexibility of the Part 1 course means that they can choose a method and pace of learning that best suits them. Many students training for the Bar will approach Part I training having already undertaken further academic study, or they will have practical and professional experience which means they can prepare for the knowledge exams quickly. By contrast others will be meeting concepts for the first time and will want and need more time to acquire the knowledge.

- Under the current regime, there is a tendency for students to focus predominantly on the centrally-set assessments and give less attention to the skills based learning. This problem would be completely overcome by the new 2 Part course.

84. The Inns do not agree that a Part 1 and Part 2 BPTC represents an inferior way of training as compared to the present course. The knowledge learnt for the preparation of Part 1 assessments will lead directly into the application of that knowledge in the process of preparing for the Part 2 course and assessments. It remains an 'holistic' or 'integrated' approach. It is a different, but arguably a more effective and flexible way of training. It takes full advantage and recognises the importance of the centrally-set assessments which, in the view of the Inns, were rightly introduced by the BSB.

85. The Inns know that BPTC providers object to unduly prescriptive regulation of the method of course delivery on the ground that it stands in the way of innovation and could increase cost. Splitting the BPTC in to two parts would immediately remove restrictions on the delivery of Part 1. In the areas covered by the proposed Part 2, such as advocacy training, effective learning depends on intensive direct personal contact in small groups with a trainer who has specific skills but there may still be other areas within Part 2 where

more flexibility is possible. The structure that the Inns support would be consistent with that.

86. The extent to which the Inns of Court Advocacy College might or might not become involved in providing training for this Part 1, either alone or in partnership with one or more Providers, is a secondary question. The adoption of Approach (3) would throw up interesting possibilities for the Inns' College which can be more fully reviewed when the BSB has clarified its own position in the next Consultation Paper.

87. <u>A surprising omission</u>

Finally, apart from passing references to the quality of advocacy training provided to Bar students by the Inns, the Consultation Paper is completely silent on qualifying sessions in the Inns, despite the fact that attendance at these sessions, before a student can be called to the Bar, is a requirement of the Bar Training Rules, of which the BSB is promoter and custodian.

88. The requirement for students to complete qualifying sessions lies at the heart of fostering and maintaining high standards of ethics and skills necessary to the independent and efficient resolution of disputes of all kinds. From advocacy

training days to student residential conferences and presentational skills training qualifying sessions make an enduring contribution to the knowledge, skills and attributes which barristers must demonstrate throughout their career. Requiring students to complete a minimum number of qualifying sessions ensures that they acquire the necessary foundation in and exposure to these vital attributes at the point of qualification. The risk of failing adequately to transmit the importance of such values to the next generation of practitioners is obvious.

89. At Appendix 1 to this Response is the section of the COIC 2011 Paper 'The Role of the Inns of Court in the Provision of Education and Training for the Bar', submitted to the research team preparing the Legal Education and Training Review (LETR). It describes the nature of qualifying sessions at that time being delivered by the Inns. It will be seen from that Paper that in 2010/2011 a total of 331 individual qualifying sessions were delivered across the Inns ranging from lectures, residential weekends involving lectures and intensive advocacy training, presentation skills sessions, voice projection workshops, debates, moots and public speaking competitions.

90. There is at present a review being conducted by the Inns' senior educational officers into the scope, content and quality of qualifying sessions, which has

already been reported to some Education Committees. This part of the Inns' educational function contributes strongly to training at the Vocational stage. It consumes considerable human and other resources. The Inns would value the BSB's comments on this branch of their activities.

IV PUPILLAGE

91. This Part of the Response addresses the BSB's questions QP1-28.

92. The Inns are appreciative of the way in which Part 3, as with Part 2, starts with a clear and comprehensive account of the present system (paras. 195-236). The last formal Review of Pupillage was presented to the BSB in 2010. Many of its recommendations have found their way into the system.

93. The Inns however comment on para 222 in which it is claimed that a pupil at the self-employed Bar is not protected by the provisions of either apprenticeship or employment law that are relied upon elsewhere. It is unclear what protection is missing. *Edmonds v Lawson* [2000] QB 501 decided that the pupillage relationship is contractual although it is not a contract of employment for the purposes of the minimum wage. Section 47of the Equality Act 2010 prohibits discrimination against pupils. The minimum sum payable for pupillage is set at the minimum wage at least. The BSB handbook contains detailed rules which govern every aspect of pupillage. It is difficult to see what protection is lacking under these rules, as opposed to a failure to abide by them in some instances.

94. Paragraph 236 of the Consultation Paper affirms that "*We do not contemplate abandoning this professional stage of work-based training."* A similar statement is made in paragraph 292: *"… we do not intend to remove the requirement for work-based learning or pupillage prior to authorisation to practise."*. The Inns welcome these statements, and will continue their existing policies of assisting pupils and supporting the institution of pupillage in every way they can. The Inns recognise that there are pockets in the self-employed Bar where standards in the quality of pupillage are not as they should be. This must be addressed; but it is right to say that in the majority of sets of chambers the standard is very high, with considerable human resources and sums of money being expended to ensure that this is so.

95. The Consultation Paper takes for granted that the formal advocacy training and practice management courses for pupils which are mandated by the Bar Training Rules, and are delivered by the Inns and Circuits to pupils (usually in their first six months), will continue. The Forensic Accounting Course (for pupils or new practitioners) delivered by a firm of chartered accountants will also continue. These courses are described in paragraphs 215-219. It is clear from the general discussion that the BSB does not intend to regulate these courses any more than it does at present.

96. The regulatory concerns of the BSB are focused elsewhere. The discussion again betrays the dilemma which the regulator faces between maintaining high standards (tight regulation) and allowing flexibility (light touch). The following five topics raise the question whether more regulation, or at least intervention by the BSB, is called for.

A) Accreditation of Approved Training Organisations (ATOs) & supervisors

The current practice in relation to ATOs is "once-accredited always accredited" unless there are special reasons, usually resulting from disciplinary proceedings, for withdrawing accreditation. Annexed to the 2010 Review of pupillage was a Report of a Working Group chaired by John Hendy QC which recommended a new system for training potential supervisors and, where required, delivering refresher training. Mr. Hendy's Report is still valuable and relevant. Supervisors now undergo training either within an Inn or on Circuit, and are nominated by their Inn (not the Circuit) to be registered with the BSB as supervisors accordingly. The Inns support this system. Accreditation is rarely withdrawn. The Paper records that, within the last 5 years, 73 out of 352 barristers who were disciplined were registered pupil supervisors.

B) Recruitment and selection of pupils

The Paper notes the considerable changes in practice which have been introduced since the 2010 Review. Selection committees must now be trained in the principles of fair and open selection and pupillages must be openly advertised on the Bar Council's Pupillage Gateway, even if the chambers or other organisation is going to implement its own selection processes outside the Gateway programme. Little monitoring of these processes takes place. The Inns agree that there is scope for increasing monitoring, subject to the availability of knowledgeable and qualified staff within the BSB. This problem is also raised below.

C) Training structure

Paragraph 261 of the Consultation Paper refers to an absence of "a clear and objective point of reference for the outcomes to be achieved during pupillage." On the contrary it is covered in detail in the BSB Pupillage Handbook and the associated checklists. Since the BSB approved 53 out of 55 applications for waivers in 2014 (see para 257) guidance on what is likely to be approved for a waiver is clearly not limited (cf para 261). Major variations in the structure of pupillage require the permission of the BSB (see para. 262).The Paper also refers to some changes in practice, within the existing structure, particularly at the self-employed Bar. The pupil/supervisor relationship nowadays tends not to be a single 12-month

or 6-month personal relationship. Pupils spend different periods within pupillage with different practising barristers, usually for sound reasons connected with training. This suggests a move away from personal to collective chambers responsibility, re-allocating the task of training to the organisation rather than the individual. In the view of the Inns this recognises the reality of pupillage today. It is a responsibility which heads of chambers or their appointed delegates have to face. A formal recognition that the primary responsibility for pupils rests with the training organisation rather than the individual should simplify the BSB's task of monitoring.

D) Bad experiences in pupillage

Paragraphs 263-267 discuss the ways in which bad practice, resulting in poor training or even the outright mistreatment or exploitation of pupils can occur. The funding rules are broken or overridden in some sets. The Inns are able to attest that they are from time to time consulted, in their pastoral capacity, by pupils who have grievances which they cannot raise in chambers. However, the fact that there is a low rate of reporting problems in pupillage (see para 264 of the Consultation Paper) may also mean that the rate of problems is low. Detailed guidance as to how complaints should be handled within chambers and as to when it might

be appropriate to make an external complaint is covered in the BSB Pupillage Handbook. Pastoral care and guidance outside chambers is freely available from the pupils' Inns and the Bar Council's Helpline.

E) Content and Quality of Training

The training which takes place within the ATO has to follow a set of rules, albeit that they are not at present over-prescriptive. The pupil must be shown to have had experience of and have satisfactorily performed in a number of generic activities set out in a checklist – advocacy, drafting, opinion-writing, ethics training, for example - plus where appropriate activities linked to the specialist nature of the organisation's practice. The draft PS echoes these activities, turning them into knowledge, skills and attributes. The practice of the supervisor(s) is to sign off the checklist without independent oversight, characterised in the Paper as "marking one's own homework." The Inns recognise that it is reasonable to question whether the system is built on excessive trust. It is necessary however to appreciate that because pupillages cannot be 'one size fits all' and because of the nature of what is being assessed the BSB cannot eliminate the need to trust those who have the closest connection with pupils' performance and progress. As things stand there is little evidence

that that trust is misplaced. There is reason to believe that pupillage in general provides effective training which does bring those who complete it to a standard where they are competent to practise independently.

If the standard of oversight is to be improved the BSB should publish ever clearer statements about the thresholds to be reached and how they are to be assessed in practice. Rules requiring ATOs to undertake training and assessment and to create clear records should be promulgated. The BSB should have mechanisms for auditing ATOs where there are grounds for concern and on a spot-check basis.

97. Role of the BSB

The question whether the BSB should be more closely engaged in oversight of pupillage depends, as stated previously, upon the resources available to the BSB. The Inns would not object to this provided that the supervision or monitoring was placed in the hands of individuals who had a clear understanding of practice at the Bar and of what should happen in a properly conducted pupillage. Regulatory resources should be directed at the areas identified by the BSB as those which are most at risk.

98. More pupillages

It is surprising that the Paper does not address the question which is of most concern to the Inns and the Bar: is it possible to increase the number of pupillages without sacrificing the quality of training and the integrity of the system? The Paper refers to the Inns' "matching funding" programme, supporting pupillages in publicly-funded practices. The BSB – rightly - is not willing to permit a system of unfunded pupillages. It seems to accept that the number of pupillages is not within its control. It may be right in its perception that the funding and opportunities available are functions of the market and philanthropy.

99. The Inns however are not content to take this somewhat negative view, and continue to work at the problem. Since the numbers at the self-employed Bar have probably for the time being peaked, particularly in the areas of publicly-funded work, it may well be the case that opportunities for pupillage in that area are not likely to increase. But one area which has not been properly explored is the private business sector, where the employment of in-house counsel is growing. This is a career path which is attractive to barristers who cannot or do not wish to obtain a conventional pupillage and tenancy. The Bar Association for Commerce Finance and Industry (BACFI) and one of the Inns have been looking

at a model of pupillage involving collaboration between a commercial organisation and a set of chambers whereby 6 of the 12 months would be served in an approved law office within the organisation and another 6 (and it might not matter where that 6 was placed) would be served in chambers, the whole period of training being funded by the commercial employer. BACFI has submitted its own Response to the Consultation Paper. It deserves serious consideration.

100. This and other possible variants would have to satisfy the BSB so far as standards of training were concerned; but some relaxation of the more formal rules of accreditation might be required. Examples cited by BACFI include the rules on advertising, the requirement to appoint an authorised training officer who may supervise a maximum of three pupils and the number of qualified lawyers in place. These rules merit review, as well as the restrictive definition of what counts as relevant 'forensic' experience. If opportunities of this kind were to arise in the market place the Inns would hope for a constructive and sympathetic approach from the BSB, and it would be helpful to find a statement to this effect in its final statement of policy. The Inns will continue to follow up these initiatives.

101. External training

One area of greater flexibility which is offered in the Consultation Paper is taking advantage of the system of certain 'external training' being treated as part of pupillage without the necessity of obtaining permission from the BSB: see paras. 293-296. This type of training is not to be confused with the model of pupillage referred to above. It works on the basis that the pupil is established in an Approved Training Organisation, but can serve some of the 12 months away from supervision in that place. Some caution needs to be exercised here. External training is allowed to be treated as a part of pupillage if the regulator is satisfied that the activity serves a genuine training purpose for the pupil. In that respect flexibility is to be welcomed. But external 'training', if it is not sanctioned by the BSB, can be manipulated to serve purposes other than the interests of the pupil. Time spent with professional clients of chambers, including instructing solicitors, could easily turn into the provision of free services for the client which might help its relationship with chambers but offer nothing of value to the pupil. This is an area in which the Inns would not wish the regulator to give up its powers of oversight.

102. Pupillage: Conclusion

The Inns have considerable knowledge and experience of the system of pupillage, the way in which pupils are trained, and the problems they face. They and the Circuits are probably the best-informed bodies on this aspect of practice at the Bar. They wish to maintain a close collaboration with the BSB in implementing improvements to the system.

103. Between the different Approaches to reform set out at the end of Part 3 of the Paper the Inns support Approach 1: continuous improvement of the current arrangements. The approach to reforming pupillage should be incremental based on increasing pupillage opportunities for barristers without compromising standards. Pupillage is a key area of training delivered by many organisations and people. Sudden and major change would involve considerable cost and generate uncertainty and risk.

104. Approach 2 (approval of any pupillage scheme proposed by a training organisation that can demonstrate the achievement of standards laid down in the PS) entails too great a risk of inconsistency of standards because of potential variations in the content and delivery of training. It is not likely to produce a greater number of pupillages, but will open the door to a less careful and conscientious treatment of pupils which will be difficult to detect.

105. Approach 3 (authorisation of candidates on the basis of their own evidence of having met the requirements of the PS) is fraught with danger, in terms of implementation and expense. In practice the evidence presented would probably consist of completion of a conventional 12-month pupillage without any element of accountability, scrutiny or certification by the training organisation itself. Adequately assessing that evidence in detail would place heavy burdens on the BSB and any doubt about the consistency or accuracy of its assessment would lead to loss of public confidence. Uncertainty about how the system might operate would be likely to deter entry to the profession and might well have adverse diversity impacts. It is not a viable option.

106. Within the framework of Approach 1 the BSB should move progressively towards a model of pupillage based on the authorisation and validation of training organisations rather than individual pupil supervisors. This reflects the reality of modern pupillage and is likely to lead to more effective regulation. Detailed changes should be introduced after further consultation.

107. Simultaneously more flexible rules should be developed for enabling pupillages to be undertaken within and in collaboration with a wider range of training

organisations. That should be one of the principal aims of reform in this area. This will require a measured review and revision of the detailed rules and standards set out in the existing Pupillage Handbook. Standards cannot under any circumstances be lowered. By whatever method ATOs are authorised and regulated, the BSB must continue to provide assurance that standards will also be applied fairly and consistently.

108. Regulatory change of the type described above will involve a high level of cooperation between the BSB and the profession.

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