



The Council
of the Inns
of Court

Executive Summary

COIC'S RESPONSE TO THE BAR STANDARDS BOARD'S CONSULTATION (2016) ON THE FUTURE OF TRAINING FOR THE BAR: FUTURE ROUTES TO AUTHORISATION

1. The Inns of Court have given detailed consideration to the BSB's Paper through their duly constituted committees and working groups [[Response Section I](#)].
2. Having regard to the range of knowledge and diversity of experience of their members as practitioners; their close contact with Bar students and recently qualified barristers; and the extensive training programmes which they deliver, the Inns are highly qualified to comment on the BSB's proposals [[Response Section II](#)].
3. The Inns agree with and support the regulatory objectives pursued by the BSB and the guidance issued by the LSB [[Response Section III](#)]. The key question for regulators and the profession is: what system of education and training is best suited in practice to satisfy these agreed criteria? [[Response Section III para 15 and Section IX para. 99](#)].
4. The current 3-part structure of training for the Bar, i.e. (1) the academic stage (a university degree); (2) the vocational stage (the Bar Professional Training course (BPTC)); and (3) pupillage has stood the test of time and should be maintained: [[Response Section IV paras. 16 & 17](#)]. They should be undertaken in the existing sequence, for the reasons set out in [Response Section IX paras. 103-104](#).
5. The Inns note that the BSB will continue to allow holders of Lower Second Class degrees (2.2s) as well as Firsts and 2.1s to take the BPTC. Opinion within the profession is strongly divided on this issue. If the BSB decides to continue to admit holders of 2.2s on to the BPTC, they should be very explicitly warned about the difficulty they will meet in obtaining pupillage [[Response Section IV paras 19-21](#)].

6. Membership of an Inn of Court The Inns agree with the BSB that every Bar student should be a member of one of the Inns of Court, and that the authority to call candidates to the Bar should continue to vest in the Inns. Membership of an Inn is not a ceremonial matter, but confers upon students and newly-qualified entrants significant and substantial professional educational and pastoral benefits at no or low cost which could not be replicated by other institutions [Response Section IV paras.22-27.]
7. The Inns also support the decision that holders of degrees which are not Qualifying Law Degrees (QLDs) must take the conversion course (Graduate Diploma in Law (GDL)) before embarking on the BPTC [Response Section V para. 32].
8. The Academic Stage The BSB proposal that a more 'flexible' approach should be taken to the accreditation of law degrees as QLDs, abandoning the requirement that the syllabus should contain the core subjects recognised in the current Joint Statement as 'The Foundations of Legal Knowledge', is very strongly opposed by the Inns. This is a serious issue. It fundamentally affects the standing and competence of the profession. For that reason it is discussed at length in Section V of the Response. Key objections are summarised below.
- (1) A sound academic knowledge of the core subjects is fundamental to successful training on the BPTC and pupillage and cannot be delayed until later stages in qualification.
 - (2) A distinction must be made between the quality assurance of degree courses and their content. While quality assurance can be delegated to another agency (e.g. the QAA for Higher Education) course content, i.e. what a barrister has to know at the point of authorisation to practise, cannot. It remains the responsibility of the regulator.
 - (3) The BSB offers no evidence in support of its proposal to abandon the core subjects.
 - (4) On the contrary, all professions require possession of a specified core of knowledge and of defined skills before admission to practice. In this respect the Bar is no different from other professions, or trades or occupations based on skill and knowledge. The Bar's clients and the public expect no less.
 - (5) On this topic the regulator should give full recognition to the views of the practising profession and not contemplate reaching conclusions in conflict with those views unless for exceptionally strong and proven reasons and then only after further dialogue with the practising profession with a view to achieving agreement.
 - (6) By abolishing the core subjects from the QLD the BSB is unwittingly setting a problem for itself. If a provider presents a degree course as a QLD which omits some of the core subjects, e.g. land law, the law of contract or criminal law, is the BSB nevertheless

going to accredit it as a QLD? If so, on what ground? What are the criteria which the BSB will use?

- (7) The revised definition of a QLD raises serious difficulties of interpretation which are likely to be contested if an application for accreditation is turned down by the BSB.
- (8) The BSB will also be setting a trap for unwitting students. If a degree which omits one or more of the present core subjects can nevertheless be accredited by the BSB as a QLD, chambers and other training providers will react by scrutinising the academic record of applicants for pupillage and will be unlikely to recruit graduates who have not studied academically a subject regarded by them as important. Undergraduates taking a 'QLD' which omits core subjects will not understand that until it is too late. The proposal will set up distinctions between different law degrees which will be highly detrimental to students who are less well-informed.
- (9) The revised form of QLD is unlikely to comply with the LSB's guidance on what a barrister needs to know on Day 1.

9. The Inns also note that the BSB does not say how its proposed changes to the syllabus of the QLD will affect the GDL. Will the GDL continue to be based on the core subjects or not? This is a key issue for graduates who do not hold the QLD and have one academic year to acquire the same legal knowledge as QLD graduates. Nor does the BSB anticipate the possibility that the GDL might be affected by changes proposed by the SRA for the training of solicitors. An opportunity to re-focus the GDL for the benefit of the Bar might be missed [Response Section V paras 58-61].
10. The BCAT The BSB's intention to continue to require entrants to the BPTC to pass the Bar Course Aptitude test, but at a higher pass mark, is supported. The Inns agree that the present pass mark is too low, but raising it from 37/80 to 45/80 is insufficient. The pass mark should be struck at a level which equates more closely to the level of ability required to obtain a pupillage [Response Sections IV paras. 28-30, VI paras. 63-70 and VII paras 85-87].
11. Regulatory principles and guidelines The BSB measures the three-stage system, in its present and prospective new format, against a number of inter-related general regulatory principles and guidelines which the Inns support in principle (see paragraph 3 above). However the Inns repeat their long-standing and strong criticisms of the BPTC as it is at present configured and delivered, which clearly breaches those principles and guidelines, including but not limited to the requirements of affordability and accessibility [Response Section VII passim]. The BSB's own published statistics strongly reinforce those criticisms [Response Section VII paras. 74-82].

12. Options for change The Options on which the BSB is consulting for the future of the BPTC include in the Addendum to the Paper the Option advocated by COIC and the Bar Council ('the COIC/BC Option'). The Inns have given careful and detailed consideration to those Options, as set out in Sections VIII-XI of the Response. They regard the COIC/BC Option as the ideal solution to the problems addressed in the 2016 FBT paper.
13. Option A is the continuation of the present sequential stages (1) (2) and (3). It maintains the BPTC as the only route to call to the Bar in the form in which it is currently delivered by BPTC providers, but with some changes which are intended to encourage greater flexibility in teaching, and cost-reductions. The BSB itself is not satisfied that Option A should be the only route to qualification. Even allowing for the changes proposed to the present regime, the BSB does not believe that it will comply with its stated principles.
14. The Inns strongly agree with the BSB that Option A is unacceptable [Response Section VIII]. They agree that it offers students a diversity of locations where it can be studied, and has a strong appeal to international students; but it suffers from prohibitively high cost for many prospective students and a high failure rate. The number of domestic and EU students passing the course at the level of 'Competent' greatly exceeds the number of pupillages available within the self-employed and employed Bars. Inherent in Option A is a high cost- risk ratio which deters able students from economically stressed backgrounds.
15. Option B contains a variety of Options, B (i)-(iv). These various Options are put forward as equal co-existing Options, giving students the opportunity to choose which of a number of routes to authorisation to practise might suit each individual. The question is whether the options presented by the BSB under Option B represent real, viable options for prospective recruits to the Bar and are compliant with the guiding principles adopted by the BSB [Response Section II and paragraph 3 above].
16. Option B (i) is the same as Option A. The only change is that it will no longer be the only available route to qualification. The Inns maintain their criticisms of this Option on the grounds of expense, high student numbers and failure rate [Response Section IX para.100].
17. Option B (ii) involves combining study for the QLD and the BPTC on the same university course over a period of four years. Such a course has been offered by the University of Northumbria for many years. Other universities have always been free to apply to the BSB for accreditation of a similar course but have not done so. No rule change is required for it to become more widely taken up. The Inns note that this Option is already available to other potential QLD providers. The fact that they have not expressed any interest in it in the past suggests that there is likely to be little take-up of Option B(ii) in the future. The Inns therefore make no further comment [Response Section IX paras. 101-102].

18. Option B (iii) combines pupillage and attendance on the BPTC over a two-year period. It raises a number of unanswered questions, including these.

(1) The mechanism and timing of the selection of pupils must take place either before or soon after they have passed the QLD/GDL. This is likely to lead to a conservative, risk-free approach to the selection of pupils. It is likely if not inevitable that this will favour candidates from the traditional recruiting grounds of the older universities.

(2) This Option is therefore unlikely to advance the cause of equality and diversity. On the contrary it runs the risk of working against candidates from less traditional backgrounds and creating divisions and distinctions between different types of pupillage.

(3) The BSB does not state whether the mandatory funding of pupils will extend over the whole of the two-year period. If it does the consequence will be that publicly-funded and many other chambers will be unable to adopt the scheme without reducing the number of pupillages they offer. At best it will be favoured by a small minority.

(4) The mechanics of the timetabling of training between chambers and BPTC providers will be difficult. It is implausible that chambers themselves will deliver the BPTC package as well as pupillage, and it is difficult to envisage BPTC providers willing or able to offer the flexible timetable that chambers would require.

(5) No market research has been carried out to discover whether the self-employed Bar generally would wish to enter into the more detached relationship between chambers and pupils implicit in this scheme.

The Inns do not believe that Option B (iii) offers a realistic option for training organisations, except possibly for a small minority of specialist well-resourced chambers [Response Section X paras.107-115]

19. Option B (iv) is described as an Option likely to appeal (if at all) only to the employers of barristers practising at the employed Bar. This is said to include employers such as Government departments and other entities in the public and private sector. It creates the possibility of pupils or trainees accomplishing each of the three stages in any order they prefer or in the order which is offered to them by their training organisation. Variables include pupillage- degree- BPTC; degree-BPTC- pupillage; BPTC-pupillage-degree; and so forth. Each version appears to aggregate to a five year course of training.

20. The Inns are mystified by Option B (iv). Figure 4 (5) in paragraph 120 of the Paper, which indicates vertical as well as horizontal movement between stages or modules, is not sufficiently explained. It is not clear whether the BSB intends that any of the three formal stages could be blended with any other stage, as under Option B (iii) . The BSB appears to envisage that the pupil or trainee will be sponsored by their training organisation for the whole of the five-year period. The Inns cannot see why any training organisation would wish to do that, given the availability of graduates in the market; and they doubt whether any academic institution would find it practical or economical to participate in this scheme. The Inns do not consider that this Option offers any or any significant opportunity for change or reform [Response Section IX paras. 116-125].
21. The Inns conclude that Option B taken as a whole does not offer any significant change to the present system, with its well-known and well-documented defects [Response Section IX para. 126].
22. Option C is labelled the ‘Bar Specialist Option’ for reasons which the Inns cannot understand. It is the least coherent of the various Options. It is not favoured by the BSB, even as an option alongside the choices offered under Option B.
23. Option C starts with a novel qualifying examination called the Bar Entrance Examination (‘BEE’), testing “*knowledge and understanding of legal procedure in the context of sound legal knowledge*”. It is assumed that candidates would have to pass the BCAT before they can sit the BEE; but neither a QLD, nor a GDL combined with a non-law degree or, it appears, any other kind of degree will be required before this examination is undertaken. On passing the BEE candidates will be permitted to enter a three-month training course “*in place of the current BPTC*”, concentrating on the acquisition of advocacy skills and the skills required for pupillage.
24. The BSB makes the questionable claim that this most closely resembles the SRA’s current proposals for solicitors, but finds it objectionable on a number of grounds, including that it is difficult to reconcile with its preferred ‘step-by-step approach’; that it represents a ‘significant departure’ from present arrangements; and that it creates difficulties for the BSB in devising an appropriate BEE in the light of its more laissez faire approach to the QLD.
25. The Inns reject Option C in its entirety and cannot understand why it has been proposed at all [Response Section X paras.129-135]. They point out that it also appears to breach the principle that the Bar should (with few exceptions) be a graduate-only profession. They also disagree that it bears any significant resemblance to the SRA’s current proposal for solicitors, which are discussed in Section XII of the Response.]

26. The COIC/BC Option is the only genuinely viable and attractive alternative to Option B. It is discussed fully in the Addendum to the Paper and Section XI of the Response, paras. 136 sqq.
27. In summary under this Option the three-stage sequential system is retained, but the existing curriculum of the BPTC is split into two Parts, allowing students to prepare for Part 1 (the knowledge-based centrally- examined part of the curriculum) in any way which suited them, including private study. Part 2 would then consist of the skills-based part of the course, delivered by providers as at present. This could dramatically lower the cost of study for the Bar. It would also eliminate at an early stage candidates likely to fail the course, and give others the opportunity at a low cost to reconsider their prospects of a career at the Bar.
28. The merits of the COIC/BC Option have been reinforced by the BSB's Paper. In summary –
- (1) It is open to candidates who have passed the QLD or have another degree plus the GDL, and have passed the BCAT. The class of degree will be that which is prescribed by the BSB.
 - (2) It is based on and adopts the existing syllabus of the BPTC. It does not require the BSB to devise a new or different exam. It consists simply of the subject papers within the BPTC which are knowledge-based and centrally examined.
 - (3) Students would be free to prepare for this part of the BPTC as they think fit. The choice is theirs. The COIC Option is offered as one non-exclusive available route to qualification. It promotes flexibility and makes the course more affordable.
 - (4) Students must pass Part 1 before proceeding to Part 2. Even if they pass, they will still have the opportunity to reconsider their career, and withdraw before making further financial commitments to training.
 - (5) Study for Part 1 is not tied to any geographical location.
 - (6) More details of the way in which this Option might work are set out in paras. 148-150 of Section XI of the Response.
 - (7) Ideally all students, however they are preparing for the BPTC examinations, should be required to pass Part 1 before they undertake Part 2.
29. Criticisms of the COIC/BC Option on the ground that it is pedagogically less effective than Option A/B(i) and that is detrimental to the interests of international students are discussed in paragraphs 141-147 and 151-153 respectively of Section XI of the Response.
30. Alignment with the SRA's proposals for solicitors. The BSB claims that its proposals should be compatible with the SRA's proposals for the education and training of solicitors. No reason is given for that. The Inns have studied the SRA's proposals. They are described in more detail in Section XII of the Response paras. 155-167. They are highly controversial among solicitors,

and that alone suggests that great caution should be exercised before they are either adopted or adapted for the Bar.

31. In summary the SRA proposes that the solicitors' profession should cease to be a graduate-only profession and that the route to authorisation to practise (i.e. admission to the Roll of Solicitors) should be achieved in fixed stages: preparing (in a variety of possible ways) for a Solicitors' Qualifying Examination (SQE) Stage 1; having passed SQE Stage 1, undertaking two (or two further) years of work-place training; and finally taking and passing SQE Stage 2. The syllabus for SQE Stages 1 and 2 is heavily biased towards the practicalities of practice as a solicitor. The old structure of the QLD or GDL followed by the Legal Practice Course and a training contract is abolished.
32. The Inns cannot detect any structural or educational parallels between the proposed new regime for solicitors and any of the BSB's proposals, including its Option C. The critical differences between the SRA's proposals and the Options offered by the BSB for the education and training of barristers are set out in paragraph 165 of Section XII of the Response. The demise of the GDL for solicitors (if that happens) will give the BSB the opportunity to consider how the GDL can be continued for the benefit of the Bar [Response Section XII para.167].
33. Qualifying Sessions. The Consultation Paper also refers to other reforms to the BPTC, including (paragraph 35) the BSB's oversight of the Inns' qualifying sessions. The Inns have a Joint Working Group actively reviewing qualifying sessions and look forward to collaboration with the BSB on this issue.
34. The teaching of ethics. In paragraphs 82-86 of its Consultation Paper the BSB raises the question of the effective teaching of professional ethics. Section XIII of the Response contains a summary of the work which the Inns of Court College of Advocacy is currently doing on this complex issue. The College looks forward to future discussions with the BSB on the teaching and learning of professional ethics.