



The Council
of the Inns
of Court

**RESPONSE TO THE BAR STANDARDS BOARD'S
CONSULTATION PAPER ON FUTURE BAR TRAINING:
SHAPING THE EDUCATION AND TRAINING
REQUIREMENTS FOR PROSPECTIVE BARRISTERS,
OCTOBER 2017**

INTRODUCTION

1. The Council of the Inns of Court (COIC) submits this Response on behalf of the four Inns of Court, after due consultation with them. The Response represents the views of all of the Inns.
2. COIC thanks the BSB for providing a clearly written and presented Consultation Paper for discussion. It is referred to in this Response as “the Paper”. Three main topics are identified: (1) the role of the Inns of Court in Bar training; (2) future arrangements for the work-based component of training, i.e. pupillage; and (3) the development of an authorisation framework for the accreditation of future providers of the Bar Professional Training Course (BPTC). They follow the decisions made by the BSB as set out in its Policy Statement of March 2017.
3. The Paper also raises two ancillary issues which the BSB wishes to resolve: provisions for the transfer to the Bar by lawyers with other legal qualifications; and arrangements for the transition from the present regime for the BPTC to the new scheme outlined in the March Policy Statement. These issues are incorporated into (3) above.
4. The Inns welcome the opportunity to maintain their continuing dialogue with the BSB on these issues. Each of these topics is of fundamental concern to them. The specific questions raised in the Paper are addressed in this Response, following the numbering of Parts and Questions used in the Paper. In answering these questions, the Inns have taken fully into account the BSB’s Professional Statement and Threshold Standard.

I THE ROLE OF THE INNS IN BAR TRAINING

Overview. It is common ground between the BSB and the Inns that the Inns provide important benefits to students in both their education and training and the financial and personal support of them and newly qualified barristers. This point is clearly made by the BSB in para. 46 of the Paper. It is repeated in paras. 66-69 of the Paper, where the BSB refers to the public function performed by the Inns in ensuring that they admit to membership only persons who are ‘fit and proper’ to practise at the Bar; to their role in maintaining high professional standards; and to the crucial role which they play in welcoming into the profession domestic and international students recruited from all backgrounds, the majority of whom will have had no previous connection with legal practice.

The central position occupied by the Inns in relation to Bar students is situated in a much wider landscape. Under our constitution the justice system is a crucial component, and in that justice system advocates play a crucial role. The Bar’s Code of Conduct emphasises the dual role played by barristers: the obligation to the court to ensure that cases are justly and properly determined, and their duty, according to law, and to the best of their ability, to serve any client requiring representation or advice in the area of law in which the barrister practises. The Inns are the principal actors in the upholding and teaching of these values.

The educational, professional and ethical training delivered by the Inns, both to students before Call to the Bar and to their practising members afterwards, is exactly aligned with the regulatory objectives set out in section 1 of the Legal Services Act 2007.

- By helping to train and support competent, high quality, ethical advocates they protect and promote the public interest.
- By ensuring that barristers are knowledgeable, independent and aware of their duty to the court they support the constitutional principle of the rule of law.
- By inculcating a professional culture that encourages pro bono advice and representation they improve access to justice.
- By instilling, at the heart of their training, the values of integrity, independence and proper standards of work they protect and promote the interests of consumers.
- Their activities in outreach and support for prospective and registered students from a wide variety of backgrounds, referred to below, promote an independent, strong, diverse and effective legal profession.

Each Inn pursues these fundamental objectives as a community of lawyers combining senior and junior barristers and members of the judiciary as well as the most junior recruits. They provide an integrated range of services and support for the profession which offers training in

advocacy, ethics and many other areas of legal practice and learning to all their members, from the status of student onwards, across the full spectrum of experience. The International recognition accorded to the Inns in relation to their delivery of educational, professional and ethical training cannot be ignored. The American Bar Association, for example, is a fervent admirer of the role of the Inns in the provision of such services and in numerous cities across the US Inns have been established.

The welcome and support which the Inns offer to their students, pupils and new practitioners is set against this wider background and is an integral part of it. They reinforce this policy by a substantial programme of outreach activities, encouraging students in universities and schools from all backgrounds, with an emphasis on those who are less familiar with the law, to interest themselves in the Bar as a career. In addition, the Inns of Court College of Advocacy (ICCA) co-operates each year with the Bar Council in running an advocacy programme aimed at widening participation in the profession. The Inns also provide substantial financial support to the Bar Council to enable them to run their outreach programmes.

The facilities and training provided to Bar students comes at no or very little expense to these young recruits. The entrance fee which students pay on becoming a member of an Inn is in the order of £100. Student membership gives them access to a wide range of special educational events arranged for them; including the all-important qualifying sessions, to their Inn's scholarship scheme; and to well-resourced law libraries, programmes to ensure wellbeing and guard against stress, common rooms and other social facilities. Students who are called to the Bar acquire life membership of their Inn at no further cost beyond their admission fee. The Inns also facilitate and enhance the students' and barristers' international legal education through visits to the ICC in The Hague or to Strasbourg, or through talks given by barristers from other jurisdictions. It is significant that the BSB relies upon the Inns to provide advocacy and other training to pupils and new practitioners after Call to the Bar, in addition to qualifying sessions prior to Call.

The Inns have noted the two research reports published by the BSB on 11 December 2017, and their emphasis on eliminating any unfairness in the training of aspiring barristers. They fully support the aim of facilitating access to the profession of able recruits from all backgrounds. The Inns will closely study the reports to see what lessons can be learned and the necessary reforms put in hand.

The Inns do not divide their different activities into discrete 'offers' which can be independently added or subtracted without affecting the integrity of their entire project. In his letter to the Director General of the BSB dated 16 June 2017 the President of COIC

enclosed a detailed account of what the Inns do, in answer to a very full list of questions. The Inns attach to this Response the letter and the annexes:

- A – Responses to your [the BSB’s] questions;
- A9 - New QS Framework/Draft – The Joint Education Rules of the Inns of Court;
- A10 – Qualifying Sessions mapped against the Professional Statement
- A11 – Example Qualifying Session Student Feedback Report;
- B – Qualifying Session Review – 10 Recommendations, February 2017;
- C – The Role of the Inns and the BSB Professional Statement, June 2017;
- D – The Role of the Inns of Court in the Provision of Education and Training for the Bar, 2013 (Section 8 updated 2017).

It is the Inns’ firm belief that, in defining and limiting the expression ‘barrister’ in s. 207(1) of the Legal Services Act 2007 to a person who has been called to the Bar by one of the Inns of Court, Parliament would have had in mind the educational, professional and ethical environment in which all barristers must be nurtured. That is to say, Call to the Bar is not simply an administrative act of registration after a person has passed some examinations. It implies a prior and continuing membership of a collegiate, professional body actively engaged in protecting the public interest, upholding the standards and reputation of the profession, and passing that experience on to the next generations.

The Inns’ answers to the Questions raised in this Part of the Paper are influenced by these overriding considerations.

1. QUESTION 1: Should the BSB have regulatory oversight of students? Please explain why or why not.

- 1.1. The question of who should exercise the regulatory oversight of students needs to be looked at in a little more detail before it can be sensibly answered.
- 1.2. Before the LSA 2007 was passed the Inns, as unincorporated associations, exercised their undoubted right to decide for themselves who should join as members; but they did so in a manner which protected the public interest. Bearing in mind their overriding responsibility not to call to the Bar a person who for any reason was unfit to practise, they developed the long-established ‘fit and proper’ test for the admission of students. They then continued to oversee their students during their period of study up to Call to the Bar. At each stage the student had to sign a formal Declaration covering possible criminal convictions and disciplinary, financial and

other matters. It is reasonable to assume that, in upholding, in the 2007 Act, the exclusive right of the Inns to call to the Bar, Parliament had this practice in mind.

- 1.3. The practice has continued since 2007. The students' Admission and Call Declarations are now in a form which is agreed between the BSB and the Inns. The BSB now determines students' necessary educational qualifications. There is no evidence that the Inns have ever knowingly admitted to membership persons who were not fit and proper to practise. They would have every reason to make sure that they did not. Under the present arrangements (in outline) applications are first sifted within the individual's Inn. Where the application raises a doubt over the applicant's fitness it is referred to a central body administered by all 4 Inns - the Inns' Conduct Committee (ICC). The ICC will then decide whether the applicant should be admitted, and will advise the relevant Inn accordingly. If an applicant is, on the advice of the ICC, excluded from membership he or she has a right of appeal to the BSB. As noted at para 117 of the Paper, over the past five years the BSB have reviewed 20 ICC decisions, only three of which the BSB has changed. In each case the applicant/student provided further (or different) information to the BSB. The system is linked to the arrangements for the oversight of students after admission, which is clearly set out in paras. 112-118 of the Paper and is discussed in answer to Question 6 below.
- 1.4. It follows that the BSB already has regulatory oversight, because, with regard to fitness to practise, it has prescribed the Admission and Call Declarations and can ultimately ensure that no-one is unfairly or improperly excluded from practice. The system represents a pragmatic compromise between the Inns' exercising their inherent right to decide who should be members and ensuring that no individual is wrongly prevented from pursuing a career at the Bar. It works smoothly and at low cost, as part and parcel of the ordinary administration of the Inns, the cost being borne out of their existing resources. The system is relatively unbureaucratic; it is dominated by considerations of the public interest and the protection of the public; and it rests at first and second instance in the hands of experienced officers in the Inn and practitioners who have the necessary qualifications and experience to exercise the judgement required to reach the right decision. There is no evidence or suggestion that the Inns have been guilty of any unfairness.
- 1.5. The sole question to be answered therefore is whether there is any justification for the BSB to become further involved in what appears to be a satisfactory process.

There is an issue of principle, namely whether further intervention would result in the BSB's dictating, in effect, to the Inns as to whom they should admit as members, and whether that would exceed its regulatory powers. Secondly, as the BSB points out in para. 57 of the Paper, there is the practical question as to whether it would be the most efficient use of its resources – or indeed whether it presently has the required resources. The consequence of further engagement in the process is most likely to lead to increased costs both to students, and to barristers through the practising certificate fee. It is not necessary or proportionate to require them to bear that extra cost.

- 1.6. The Inns accordingly conclude, first that the BSB already has a regulatory role in the oversight of students, at the level of agreeing the criteria for Admission and Call and ensuring that no-one is unjustly excluded from the profession; and secondly that, subject to that oversight, there is in place a system of checking applicants which works in practice and is consistent with the role, constitution and internal organisation of the Inns. The Inns will always be ready to share and discuss with the BSB any data or other information on admissions which the BSB might require and to improve their processes where improvements should be made.
- 1.7. Finally, the Inns note that, under the heading of Question 1, and in the context of discussing the possibility that candidates for the Bar should no longer be required to be members of an Inn the BSB suggests (paragraphs 65 and 75 of the Paper) that, if the Inns of Court College of Advocacy (ICCA) were to enter the market as one of the providers of the BPTC, that might raise a 'conflict of interest'. The possibility of conflict is said to arise if the Inns, to which all students must belong, were to present the ICCA as a "more favoured provider of training", thereby disrupting competition for students in an open market.
- 1.8. The more fundamental question whether membership of an Inn should be mandatory is discussed in detail in our answer to Question 3 below; but it is convenient to respond to the 'conflict of interest' question here, since it is raised under Question 1.
- 1.9. First, it is not clear whether this is really a conflict of interest problem at all. A conflict of interest arises when a party commits itself to acting for two or more whose individual interests are or might become in conflict. It is conceivable that, if the ICCA were authorised at some date in the future to provide the BPTC, the Inns would find

themselves in a conflict of interest if they decided in some way to favour those Bar students who had registered with the ICCA as against students who were registered with other providers. The BSB can be assured that that will definitely not happen. All the advantages and privileges available to Bar students, including especially access to scholarships, will continue, as at present, to be available 'provider blind'. There will be no discrimination between students at one Bar school as against another in the award of scholarships or in any other respect. In the eyes of the Inns the ICCA would be treated as a separate training entity ranking alongside all other bodies delivering the course.

1.10. However, the language of these paragraphs suggests that the BSB may be more concerned that the entry of the ICCA into the market would, because of its linkage to the Inns, constitute unfair competition against other providers. That is an entirely different issue. It raises questions of competition law on which the Inns have already taken legal advice. If the ICCA, as a separate entity, were to enter the market as one of many providers it would certainly seek to compete with other providers on quality and price, but any competitive advantage it might be able to demonstrate, in those respects, would not be derived in any way from the fact that its students were also required to be members of the Inns. These two facts would be entirely unconnected.

1.11. If and when the ICCA applies to the BSB for authorisation as a provider of the BPTC, it will be able at that stage to answer these questions in more detail, if it is asked to do so.

2. QUESTION 2: Do you think the BSB should continue to require student membership of an Inn as a mandatory part of Bar training? Please explain why or why not.

2.1. Yes. The reasons for this answer are set out in the answer to Question 3. The answer to these two questions is also connected to the BSB's Questions 8, 9 and 10 about qualifying sessions.

3. QUESTION 3: If you answered ‘yes’ to question 2, do you think the BSB should continue to require “student membership” of an Inn or set the requirement at the point (or just before) being called to the Bar? Please explain why or why not.

- 3.1. The Inns quite definitely believe that participation in their activities at an early stage, including qualifying sessions, is a necessary part of preparation for practice, alongside formal study on the BPTC. They refer to the Overview which prefaces this Part of their Response. Membership introduces students to areas of professional life which are not represented or fully represented on the BPTC. It enables them to interact with the practising community of barristers of which they will in due course become part. It links them to the Inns’ scholarship, sponsorship, mentoring and pastoral schemes, and entitles them to attend lectures, moots, debates, training weekends and to shadow judges through the marshalling system. All of these activities enhance their advocacy skills and advance their understanding of the practice and ethics of advocacy.
- 3.2. Students are free to join an Inn when they are studying for a QLD or GDL or have completed or been exempted from the academic stage of training. Many take the first opportunity to do so. There is however a reasonable discussion to be had as to whether a student should be required to join an Inn immediately upon starting the BPTC or whether that can be delayed for a time. If for example the BSB were to authorise the delivery of a split course it might not be right to require individuals studying Part 1 on-line to join at that point, but allow them to take Part1 as a ‘taster’. But it is equally clear that a student must have been a member of an Inn for a sufficiently long period before Call to have completed the qualifying sessions and to have had the benefit of access to the other key parts of their Inn’s programme – mentoring, mooting, careers advice and immersion in the professional community. These activities should, at the very latest, be undertaken in parallel with study on the skills-based parts of the course (i.e. Part 2) because they will enhance and complement that stage of training.
- 3.3. The BSB will also bear in mind that the Inns’ members, including the most senior, both in London and on Circuit, give a considerable amount of their time voluntarily in delivering advocacy training and supporting these sessions in many other ways both at the Inn and across England and Wales. The Inns in effect provide an intermediate level of supervision, guidance and support between the more formal regimes of a

teaching institution and a regulator. It is not at all likely that they would provide this kind of training and support for those who have decided for any reason not to join an Inn. Understandably the Inns would need to focus their finite voluntary resources on their own students.

- 3.4. We make two further points. First, if membership of an Inn were made voluntary there is a real risk that a two-tier system would be created. The advantages of membership of an Inn, described in the Overview and above, might not be immediately obvious to those who do not have contacts with the profession, or access to good careers advice. Students who decided not to join an Inn would be disadvantaging themselves by cutting themselves off from an essential network of learning, advice and support, as well as the Inns' scholarship schemes, at a time when they needed it most. The disadvantages of not being a member of an Inn are described in para. 76 of the Paper; and there is a real fear that those who opted out of membership would be those who would most need its benefits.
- 3.5. Secondly, the anomaly which would be created by not requiring a student (or indeed a barrister) to be a member of an Inn is set out in paras. 74 and 75 of the Paper. It is difficult to see how a person could genuinely and in any real sense be said to be called to the Bar by an Inn if all that they had to do was to produce a transcript proving that they had passed the BPTC and then ask – or compel - one of the Inns, of which by definition they were not a member, to “Call” them. The transaction would be a meaningless paper transaction of doubtful validity. It would be contrary to what the Inns firmly believe Parliament had in mind in affirming in the statutory framework the link between Call to the Bar and the Inns of Court.

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

- 4.1. The question is based on the premise that the responsibility for checking a student's credentials (other than educational credentials) has been delegated by the BSB to the Inns. We refer to the Inns' answer to question 1. The Inns have an inherent right to decide on their own membership but have always exercised that right in a responsible manner in the public interest. The driving force behind their criteria for admission has always been the protection of the public and the maintenance of high professional standards and the rule of law. The BSB has justifiably and

understandably incorporated that practice into its own rules, and the Inns are more than content with the way in which the bodies work together.

4.2. The oversight which the Inns exercise does not stop at admission to student membership, which in most cases is conducted on paper. It is reinforced by their personal contact with their students during their period of study and beyond. The Inns have contact with many individual members, at all levels, throughout the year. They play a substantial and sustained overall role in the careers of their members, and have the necessary resources to ensure that those admitted to the profession have the appropriate education, skills and character.

4.3. As already set out in the Inns' response to Question 1, there is no evidence of the Inns ever knowingly admitting persons who are unfit to practise as barristers, and there is a remedy for anyone who claims to be unjustly excluded. The present arrangement represents a fruitful and sensible collaboration between the Inns and the BSB which satisfies both parties and respects their legal rights and responsibilities. There is no reason to change a system which runs smoothly and at low cost. Subject to what is said above the Inns therefore favour Option B (para. 99). The issue of the standard of oversight is further addressed in answer to Question 6 below.

5. QUESTION 5: Do you think the BSB should require DBS checks as part of the fit and proper person checks? Who do you think should perform this function? Please explain why or why not.

5.1. The Inns acknowledge that the carrying-out of DBS checks is now widely recognised as best practice in many fields of activity, and further acknowledge the strength of the argument that, in principle, it should be adopted for the Bar. But, before the Inns can give a final answer to the question, as it is framed, it is strongly felt that the topic merits more detailed discussion between the Inns and the BSB. Questions which have been identified include these: when should the tests be carried out; whether it should be a condition of admission to an Inn that the candidate has passed the DBS check; whether in the alternative or in addition a check should be carried out prior to Call; how long these tests take to carry out; who should bear the cost; and whether an equivalent test should be undertaken by international students? In relation to international students it is likely that different countries will have different protocols for these tests or their equivalent. The answers to these questions will help in deciding

whether the checks should be carried out (if at all) by the Inns or the BSB, and whether the cost should be borne by the students or either of those bodies.

6. QUESTION 6: Do you agree with our proposals to improve the current checks as described? Please explain why or why not.

6.1. Yes. The Inns agree that any admissions process can be damaged by the fraudulent or innocent misrepresentation of a person's credentials, albeit that this is only likely to occur in a small minority of cases. The electronic media however have made some of these abuses easier to perpetrate. Paragraphs 105-110 of the Paper give a broad indication of the measures which the BSB proposes to put in place, but much more work is needed on detailed implementation. The Inns are willing to collaborate with the BSB on the working out of the detail. It is probable that external specialist advice will be required.

6.2. It is noted that, in para. 110, the BSB is considering omitting from the Call Declaration an express reference to serious mental incapacity or alcohol or drug addiction, leaving it to the applicant to pick this up under "other matters". Sadly, many of those who suffer from the problems identified are the first to conceal or deny them. The current Declaration, which is of course open to abuse itself, should not be changed.

7. QUESTION 7: Do you think that the Inns or the BSB should oversee student conduct? Please explain why.

7.1. This Question is linked to Question 1 (admission of students) and the Inns answer it in the same sense. Paragraphs 112-122 of the Paper give a clear account of current practice and the arguments in favour of retaining or changing it. The Inns favour Option B, and refer the BSB to the separate response submitted by the Inns' Conduct Committee (ICC). In carrying out this supervisory function the Inns carefully follow the requirements of the BSB Handbook. The BSB does not suggest that there is any evidence that the Inns have been too lenient in their oversight of student conduct. Given the high standards of integrity that the Bar demands, the inference can safely be drawn that the Inns are being appropriately rigorous in their oversight of students. The fact that the Independent Review Panel / Qualifications Committee has changed the original decision of the ICC on only 3 occasions in the last 5 years is a strong pointer that the Inns are getting it right. The Inns are willing to collaborate in any necessary desirable work as envisaged in para. 128.

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

- 8.1. Yes. The answer to this Question is already set out in the Overview and in the Inns' answers to Questions 2 and 3 above. Our answer is also to be found in the materials submitted to the BSB in June and annexed to this Response. We also refer to the Report recently published by NatCen "Barriers to training for the Bar: a qualitative study."
- 8.2. The benefits of attendance at qualifying sessions are repeated by the BSB in paras. 135-139, of the Paper, which the Inns endorse. Qualifying sessions provide a welcoming and supportive atmosphere for students from all backgrounds. The value of these sessions is warmly endorsed in Section 3.4 of the NatCen Report.
- 8.3. Paragraph 140 of the Paper nevertheless refers to the possibility that some students from BAME or lower socio-economic backgrounds might find the atmosphere of qualifying sessions intimidating. These sentiments are reflected in Section 3.5 of the NatCen Report, which the Inns carefully note. The Inns are already conscious of this risk. This is precisely why continuing efforts are made to ensure that all their students are welcomed and treated on equal and friendly terms by established members. The Inns bear in mind that all Bar students – from all backgrounds - aim one day to appear in court as barristers, where the responsibility of appearing for a client and conducting their case with skill and confidence will be challenging. The welcoming and supportive atmosphere of qualifying sessions acts as an important bridge in the development of their self-confidence. It is intended to stand them in good stead for a future career as a court advocate. Moreover, the presence of students from a wide range of backgrounds enriches the mix of the students and trainers. Through continuing contacts with students at Universities and on the BPTC both the members of the Inns and their education staff aim to ensure that all students will feel as comfortable as possible in attending qualifying sessions and will use the opportunities they provide to increase their level of confidence and skill.
- 8.4. Paragraph 142 of the Paper is also noted. As the BSB knows, the Inns are acutely aware of the present cost to students of qualifying for the Bar. It is one of their major concerns. This concern too is recorded in Section 3.5 of the NatCen Report. By far the

largest expense is the fee for attending the BPTC. The cost (if any) of attending a qualifying session is trivial by comparison. They nevertheless remain alert to every possibility of keeping the cost of any element of the course to a bare minimum, and do their best to help students bear this cost where they can. The present level of support is recorded in para. 139 of the Paper.

8.5. The suggestion in Question 8 that there are elements of the qualifying sessions which are particularly useful before practice implies that some elements might be undertaken later. This is not understood. The qualifying sessions are devised distinctly as a programme of activities which add value to the students' work on the BPTC and assist them in planning their next career steps. Once they have entered practice they reach the next stages of training – the pupillage courses and new practitioners' programmes, which again are designed for barristers who have reached that step in their career.

8.6. We make further comments in our answers to Questions 9 and 10 below

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

9.1. Good practice in education and training is continually evolving. The letter from the President of COIC to the Director General dated 16 June 2017 enclosed Annexes A9, A10 and A11 (attached). These three Annexes contained up-to-date data on the existing qualifying sessions which (among other things) demonstrated how they relate to the BSB's Professional Statement. They also record the level of student satisfaction. This valuable information was gathered as part of the Inns' continuing internal reviews of qualifying sessions. It will enable the Inns to consider what improvements can be made and, where necessary, re-focus them. Annex B sets out the current recommendations for development of these sessions. Readers of this Response are referred to these important Annexes which will give them a fuller and enriched understanding of current practice and the Inns' vision of the way ahead.

9.2. It will be noted that the Inns have maintained the practice of students' dining in Hall, in association with certain qualifying sessions. They firmly refute the suggestion sometimes made that the Inns' dinners are irrelevant or trivial events, or that it is possible to satisfy this component of Bar training simply by dining. These events – semi-social in character but invariably arranged as an accompaniment to more

formal educational activities - are viewed as a valuable part of the process of enabling students to become more engaged with practising members of the profession and the judges; to receive advice; to be introduced to a wider vision of practice at the Bar; and to be introduced to areas of legal work with which they may be unfamiliar. The Inns' members who attend these events are drawn from many different areas of practice and from the Circuits as well as London. Collectively they present a much wider picture of legal practice than students could, unaided, discover. Moreover, the students themselves convey a strong impression that they enjoy these events. This collegiate approach also helps all, of whatever social background, to appreciate that the Bar is an open profession in which they can succeed. The Inns have no plans to abandon them although the Inns would wish to work closely with the BSB on making any changes to the present system which are thought to be desirable.

- 9.3. Subject to the foregoing, none of the Options A, B or C is attractive to the Inns. They are not at all persuaded that students should be left to plan their own course and decide for themselves how many and which sessions "they feel" would be useful to them. The analogy of CPD (which is controversial in itself) is hardly apt. Established barristers know what they need to know. Most students do not. Within the framework, of the core subjects, and subject to that constraint, each Inn already offers a reasonably flexible menu of sessions from which students can choose. The current context in which qualifying sessions take place adds an additional benefit of social inclusivity. It is often those from adverse social circumstances who need guidance as to the best means of preparation for practice. The Inns want to encourage social inclusivity not just for the benefit of those seeking to join the profession but because the wider public interest requires a socially diverse Bar (in turn helping to achieve a socially diverse judiciary).
- 9.4. The number of qualifying sessions relates to the BSB's Professional Statement and meets with student satisfaction (see 'Inns' Qualifying Annual Monitoring Reports to the BSB for 2010-2011' which can be found at Appendix 2 of Annex D (page 39) 'The Role of the Inns of Court in the Provision of Education and Training for the Bar, 2013.'
- 9.5. The overall size of the annual programme of qualifying sessions which each Inn arranges is proportionate to the number of its Bar students in that year, ensuring that within its scope, there will be 12 sessions for all. The required 12, in the view of the

Inns, is the correct number. It provides a framework for a thoughtfully constructed syllabus which is relevant to practice and up to date. It develops the analytical skills of the student as well as initiation into practice at the Bar. Research carried out by the Junior Members' Association of Lincoln's Inn, for example, presents a positive assessment of the quality of current qualifying sessions.

9.6. The other points made in the Natcen Report are noted and are already under consideration.

9.7. Finally, as mentioned in the Inns' recent internal review of qualifying sessions (see Annex B), there is a strong case for requiring all students to attend some advocacy training sessions.

10. QUESTION 10: If you answered 'yes' in question 8, do you think that other training providers could provide qualifying sessions? Please explain why or why not, including what elements would need to be delivered by or in association with the Inns themselves to ensure their benefits are to be retained.

10.1. The special quality of the Inns' qualifying sessions is that they are delivered by experienced practising barristers and judges. They enhance the collegiate professional environment in which students are training. The Inns do not fear competition; and it is tempting to say that if other providers can deliver qualifying sessions which are of the same standard and possess the same value, in terms of intellectual content and career development, as those of the Inns the BSB should authorise them. But before it did so it would have asked the following questions: what would be the quality of the training delivered; would the quality and standing of the presenters or trainers match those of the Inns, who routinely enjoy the voluntary services of leaders in the profession; how much would any alternative session cost the student; what would be the level of personal engagement between the students and senior members of the profession; and how many of the other collateral benefits listed in paras. 46, 66-69 and 135-139 of the Paper would be available? For these reasons the Inns are sceptical that other providers could be found to replicate the quality of the Inns' qualifying sessions. If they were able to do so, the cost to students would be likely to be considerable.

10.2. We also repeat our concerns about the creation of a two-tier system, which the Inns are anxious to avoid. If the BSB were to authorise others to provide qualifying sessions, there is a concern that they would be attended by students who were not sufficiently well-informed about the benefits of undertaking them in their Inn. The

BSB would also have to consider whether students could attend all their qualifying sessions outside their Inn, or only some of them; and if some, how many? If this problem could be solved it would nevertheless add another unnecessary bureaucratic layer to the training programme.

11. QUESTION 11: Do you have any alternative suggestions for how qualifying sessions might help students meet the requirements of the Professional Statement.

11.1. No.

II FUTURE ARRANGEMENTS FOR THE WORK-BASED COMPONENT (PUPILLAGE)

Overview. The importance of pupillage was affirmed by the BSB in its Policy Statement of March 2017. Pupillage lies at the heart of the training of every barrister. It has been examined and reviewed in many reports including that of the Collyer Committee commissioned by the General Council of the Bar (July 1998) and the BSB's own Working Group on Pupillage (May 2010) ("the 2010 Report"). The 2010 Report contained some 95 Conclusions and Recommendations which in broad terms emphasised the merits of the existing structure of pupillage and contained many proposals for improvement.

The 2010 Report was accompanied by a Report of a group chaired by John Hendy QC which specifically and in detail looked at the training and qualifications of pupil supervisors. Its recommendations were incorporated into the 2010 Report. The BSB has already implemented a large number of the recommendations in the 2010 Report.

The present arrangements have withstood the test of rigorous examination. They are structured in a way which maintains a careful balance between a number of different considerations: the BSB's overriding responsibility to ensure that practice at the Bar is conducted to a high standard by properly trained barristers; and the need to maintain sufficient numbers of pupillages, offered on terms which guarantee fair access to the profession and match the requirements of the marketplace. Connected with keeping up a sufficient supply of pupillages is the importance of encouraging – and not discouraging - the required number of Authorised Training Organisations (ATOs) and pupil supervisors to perform their respective roles. Regulations must be cast in a way which will do justice to all of these demands.

The Inns answer the Questions on pupillage with these points in mind.

12. QUESTION 12: Do you think we should allow pupillages to vary in length?

Please explain why or why not.

- 12.1. No. There must be a general mandatory minimum period of pupillage. Under the present system the BSB can grant waivers in exceptional cases where the pupil has already acquired relevant training or experience, perhaps in another common law jurisdiction. Subject to those rare exceptions a fixed period of 12 months must be the norm. Consideration should be given to providing some flexibility over the precise length of time the mandatory period of pupillage can be served.

12.2. A minimum period of training protects the public from a barrister with inadequate experience and practical knowledge. It also protects the pupils as it gives them a proper opportunity to learn and to demonstrate aptitude. An ATO should not be given a discretion unilaterally to shorten the period of a pupil's training, which it might be tempted to do for reasons unconnected with the level of performance which the pupil has achieved. Moreover, if such a discretion existed it is difficult to see how the BSB could satisfy itself that the discretion was being exercised responsibly without inquiring into the merits of every case, and having in place a mechanism for resolving disputes.

12.3. Experience dictates that 12 months is an appropriate period of time. This is acknowledged in para. 177 of the Paper.

12.4. The so-called 'third six' is a different matter. It is sometimes undertaken by an existing pupil, or an ex-pupil from other chambers, who is being assessed as a potential tenant and who may need further training in the ATO's area of practice. Sometimes an ex-pupil is allowed to stay on for a 'third six' as a 'squatter' while looking for another placement. It is an informal arrangement. It does not always equate to the number 'six'.

12.5. There is no reason for interfering with any of these practices. To extend the 12-month period generally would impose too heavy a burden on the Bar, particularly those ATOs who do publicly-funded work. To allow pupillages of varying length would be likely to lead to pupillages being valued differently by prospective employers and by sets of Chambers.

13. QUESTION 13: If you answered 'yes' to question 12, please tell us whether you think there should be a minimum and/or maximum length associated with this change and what those minimum or maximum lengths should be. Please explain why.

13.1. This Question is answered under Question 12 above.

14. QUESTION 14: Which option, if any, for reforming the award of Provisional Practising Certificate do you support? Please explain why.

14.1. The Inns support Option D (no change). The current system has been chosen because it strikes the right balance between protecting the public and ensuring that pupils have the opportunity to conduct their own cases under supervision during the second six months. It is difficult to see how a period of less than six months will ever be adequate, save in the rare instance when a waiver is granted.

14.2. The Paper correctly identifies the risks associated with reducing the period of pupillage prior to the grant of a PPC. Having a variable period also puts the pupil in jeopardy of a complaint from a member of the public who is dissatisfied with the level of the pupil's performance and points to the premature grant of a PPC.

15. QUESTION 15: Do you think the minimum pupillage award should be raised? Please explain why or why not.

15.1. Yes. It is hard to justify an amount that is less than the minimum wage. However, the BSB will know that the willingness of publicly-funded ATOs to offer pupillages may be affected if the minimum award is increased to an unacceptable level. The 2010 Report recommended (Recommendation [50]) that the then minimum of £10,000 should be raised to its present level of £12,000 after careful discussion with the publicly-funded Bar. The real value of that sum has been eroded by inflation.

15.2. The COIC pupillage matched-funding scheme, which supports 10% of all pupillages, now recommends that the chambers it supports offer at least £14,000, which is a reasonable present-day value of £12,000 in 2010. The scheme currently costs the Inns £280,000. In addition, individual Inns have their own financial schemes for supporting pupillages and individual pupils. The four Inns give in excess of £240,000 in scholarships and awards annually to those in pupillage. That is in addition to the £5,000,000 awarded to GDL and BPTC students.

15.3. In the view of the Inns the BSB should not fix an alternative minimum amount without prior consultation with the ATOs likely to be most affected. See the answer to Question 16 below.

16. QUESTION 16: If you answered ‘yes’ to question 15, should we use the National Living Wage or the Living Wage Foundation benchmark for the minimum award? Please explain why.

16.1. The question of the amount of the minimum award cannot be properly answered without consultation with those ATOs which are likely to be most affected. It is imperative that the BSB should carry out an impact assessment before coming to a conclusion. This was the course adopted in 2010. In principle regulations should follow the LWF benchmark; but the views of those who will be called upon to increase their awards must be canvassed first and it would not be surprising if the outcome of such canvassing were that the NLW should be the benchmark for the minimum award. There is a concern that pupillage funding that is too burdensome upon Chambers doing publicly funded work could result in fewer pupillages. As well as restricting current opportunities this has a potential long-term effect upon the quality and diversity of the publicly funded Bar that is contrary to the public interest.

17. QUESTION 17: Do you think the current exemption from the funding rules for transferring lawyers should be removed? Please explain why or why not.

17.1. The current exemption allows ATOs to take transferring lawyers as additional pupils because they do not have to fund them. This exemption enables them to concentrate their funding on newly qualified lawyers. If it became mandatory to pay transferring lawyers ATOs might be tempted to favour them, on the grounds of their prior experience, against new recruits, but there is no reliable evidence on this point, as far as the Inns are aware. In the absence of evidence, the current exemption should continue because it potentially increases the number of available pupillages.

18. QUESTION 18: Do you agree that we should introduce re-authorisation of Approved Training Organisations (ATOs)? Please explain why or why not.

18.1. Yes. It is important that any training organisation should be required to demonstrate that it continues to have in place all the necessary facilities and means for effective training, and its general competence.

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

19.1. 5 years would achieve an acceptable balance between the protection of pupils and the public without placing too heavy a burden on ATOs. If ATOs know that there is to

be regular re-authorisation they would not become complacent. If it adopted this measure, the BSB would have to decide how it could be effectively administered. In most cases it might wish to carry out re-authorisation on-line. Such a system would not, the Inns assume, derogate from the power of the BSB to intervene at any time if it received evidence that an individual ATO was failing in its performance.

20. QUESTION 20: Do you think the BSB should allow pupil supervisors to supervise more than one pupil? Please explain why or why not.

20.1. No. The one-to-one relationship between pupil and supervisor is what assures the quality of the work-based training, and allows the period to be as short as 12 months, compared with the period of training for solicitors. The 'one-to-one' rule was introduced to protect pupils against an earlier practice found in some chambers, where pupils were supervised in pairs or more, sometimes working in a separate 'pupils' room' in chambers, remaining in chambers when their supervisor was in court, doing little more than devilling paperwork handed out to them, and not receiving the individual attention which is the hallmark of the training. The practice also gave rise to challenges or resentment over the allocation of work between pupils. It is not possible for busy practitioners to offer high-level training, and devote the time and energy required, to more than one pupil. The Inns would oppose a reversion to the old system. It is in the public interest to ensure that only those who have been properly trained should be acting as barristers. 'One-to-one' supervision is more likely to ensure appropriate training but it need not be the same supervisor for the whole period of the pupillage.

21. QUESTION 21: Should the BSB prescribe pupil supervisor training outcomes? Please explain why or why not.

21.1. Yes. In principle there should be a consistency in the standard and content of pupil supervisor training between the Inns and Circuits. The Inns use the Pupillage Handbook as an essential tool in this work. The BSB is the appropriate agency for achieving and enforcing this. The BSB should consult with the Inns and the Circuits on the outcomes in question. The discussion should also deal with the way in which outcomes are measured and by whom. Training must not be made so onerous that potential supervisors will be discouraged from registering, and must be overseen by practitioners who have extensive practical experience in training pupils.

22. QUESTION 22: How should the BSB seek assurance that outcomes in pupil supervisor training are being delivered?

22.1. The answer to this Question is contained in the answer to Question 21 above.

23. QUESTION 23: Should organisations be required to provide this assurance during the authorisation process? Please explain why or why not.

23.1. This Question is not entirely clear. It is assumed the reference to “organisations” is a reference to the organisations delivering pupil-supervisor training, i.e. the Inns and Circuits (not ATOs); and that the reference to “this assurance” is a reference to the assurance these organisations must give that their trainee pupil supervisors will meet the BSB’s standards.

23.2. It would be reasonable to expect organisations training pupil supervisors to certify that trainees have worked through the individual constituents of the course.

24. QUESTION 24: Should the provision of pupil supervisor training be opened up to other providers (other than the Inns)?

24.1. In principle it is conceivable that effective pupil supervisor training could be delivered outside the confines of the Inns, but it is imperative that anyone seeking to train pupil supervisors should be a barrister with personal experience of having supervised pupils for an adequate amount of time. The supervision of pupils involves a range of training activities, from actual casework to showing how a practice is organised and run, guiding the pupil through the ATO’s internal mode of operation, and teaching how to interact with professional and lay clients, the courts, witnesses, members of the public and other members of the profession. It is implausible that anyone outside the Bar would be adequately equipped to deliver training to pupil supervisors. Moreover, the cost involved in the use of an outside provider would deter most ATOs from using one.

24.2. All providers, whatever decision the BSB reaches on this issue, must be quality-assured by the BSB. However, the Inns are not sure that the BSB would be willing to take on this additional responsibility. We refer also to our answer to question 27 below.

24.3. Finally, the Inns wish to refer, in this context, to the issue of pupillages at the employed Bar. Some 20 % of practising barristers practise at the employed Bar, yet few of their employers themselves offer pupillage. In reviewing the arrangements for

the work-based options the Inns would urge the BSB to encourage more employers to become ATOs and to engage with the Inns in publicising and developing appropriate supervisor-training courses. Anecdotal evidence suggests that some employers (rightly or wrongly) regard the process of authorisation as unduly burdensome. We invite the BSB to address this problem.

25. QUESTION 25: Should regular refresher training be mandatory for all pupil supervisors? Please explain why or why not.

25.1. This Question was fully covered in the Report of the working group chaired by John Hendy QC, delivered as part of the 2010 Report. In summary it recommended (Recommendation [80]) that every 5 years registered supervisors should attend a refresher course, to be devised by the BSB in collaboration with the Inns and Circuits, to keep their names on the BSB's register. Those who have neither attended a refresher course nor supervised a pupil for 5 years should be removed from the register. As keeper of the register the BSB would be the body to implement the scheme.

25.2. The Inns agree with this recommendation.

26. QUESTION 26: If you answered 'yes' to question 25, how often should it be undertaken (e.g. every 2, 3 or 5 years)?

26.1. See the answer to Question 25.

27. QUESTION 27: Should delivery of mandatory courses for pupils be opened up to other training providers? Please explain why or why not, specifically considering the risks and benefits.

27.1. No. The consistent feedback from pupils is that the Inns and Circuits provide, after Call, and at very low cost, advocacy and other practical training of a standard that far outstrips that which they had experienced, before Call, on the BPTC. This is not surprising, because the mandatory pupillage course is an advanced course for those who have already reached the basic standard of competence. The quality of the training materials is more challenging and training is delivered by successful practitioners with first-hand experience of the profession who have been trained as advocacy trainers and are accredited to deliver high quality Hampel-style training, including a demonstration of forensic technique.

27.2. The delivery of pupillage training courses by these trainers, through the medium of the Inns and Circuits, gives ATOs the confidence that their pupils are being professionally handled.

27.3. In addition, such training enables pupils to continue to mix and interact with established barristers and judges, and delivers after Call the benefits discussed in Part I of this Response in relation to Inn membership and qualifying sessions for students.

27.4. The opening up of these courses to other providers, if it were to happen, is likely to be accompanied by the charging of substantial fees, given the level of training which these courses demand. It would also set the BSB the challenge of supervision and quality assurance, and would (again) run the risk of establishing a two-tier system.

III DEVELOPMENT OF AN AUTHORISATION FRAMEWORK

Overview It is noted that the work discussed in this Part is work in progress. It is accepted that some of the proposals, and the definitions of the key criteria of flexibility, accessibility, affordability and the high standards, are in the process of further development. It is also acknowledged that these concepts, however carefully they are formulated, will still be open to some width of interpretation when they fall to be applied in practice.

To assist the BSB at this stage COIC has, in addition to its consultation with the Inns, also referred this Part of the Paper to its Steering Group which is looking at the BSB's proposed changes in the BPTC in detail. COIC has invited the Group to give the Inns its own response to the draft Framework in its present form. The advice received is that the draft provides a satisfactory basis for further work and discussion, and that there are no potential areas of controversy which need to be picked up.

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

28.1. In broad terms, yes, subject to further development of the Framework, which the Inns would like to be completed as soon as possible. An explanation is needed of 'clinical legal education'.

28.2. The Inns have now seen a draft Assessment Framework setting out new assessments for candidates completing the BPTC. Care must be taken not to frustrate the four key criteria referred to above when designing and scheduling the assessments.

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

29.1. Yes: see the answer to Question 28 above.

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

30.1. Yes: see the answer to Question 28 above.

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

31.1. Yes. The Inns lay stress on the need to ensure that transferring lawyers have been or become adequately trained in the practice and ethics of advocacy before exercising a right of audience as a barrister in this jurisdiction: see para. 276 of the Paper. Experience shows that this is an area in which they are frequently weak.

32. QUESTION 32: Do you think there is anything which we have omitted and that we should take into account when considering transitional arrangements?

32.1. Care must be taken to protect the interests of trainees who are undergoing their training part-time, to ensure that there is continuity in their preparations. Otherwise the Inns have no comment.