



The Council  
of the Inns  
of Court

## Response

# RESPONSE OF THE COUNCIL OF THE INNS OF COURT TO THE BAR STANDARDS BOARD'S CONSULTATION (OCTOBER 2016) ON THE FUTURE OF TRAINING FOR THE BAR: FUTURE ROUTES TO AUTHORISATION – AND - ADDENDUM DATED 1 DECEMBER 2016

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## I

### 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 addresses both the above Consultation Paper and the Addendum published by the Bar Standards Board (BSB) at the request of COIC and the Bar Council on 1 December 2016. The Consultation Paper and the Addendum are collectively referred to as 'the 2016 FBT Paper'.
2. To enable it to prepare an authoritative and properly-informed Response COIC has maintained its Training Review Working Group on which all the Inns are represented. This Response was circulated to the Inns by the Working Group in draft for consideration by the Inns' committees. The following committees of the Inns have considered and contributed to this Response:

**Lincoln's Inn:** Strategic Advisory Group, Post and Pre Call Education Committees, Bar Representation Committee

**Gray's Inn:** Management Committee

**Inner Temple:** Education and Training Committee

**Middle Temple:** Bar Training Reform Working Group, Education & Training Standing Committee

3. This Response now records the agreed views of the Inns to the various issues raised by the 2016 FBT Paper. In the Annex to this Response the Inns set out their answers to the BSB's specific 26 Questions.
4. In preparing this Response COIC has taken into account (1) the forerunner of the 2016 FBT Paper, namely the Consultation Paper on the Future of Training for the Bar published by the BSB in July 2015, now referred to as 'the 2015 FBT Paper'; (2) COIC'S Response to the 2015 FBT Paper; and (3) the 'Professional Statement for Barristers', incorporating 'the Threshold Standard and Competences' published by the BSB in September 2015. They are relevant to the 2016 FBT Paper and are referred to at various points in this Response.

## II

### THE ROLE OF THE INNS OF COURT AND THEIR MEMBERS

#### IN THE EDUCATION AND TRAINING OF BARRISTERS

5. COIC and the Inns are well-qualified to address the questions raised in the 2016 FBT Paper. The many members of the Inns who have contributed to this Response have direct and very diverse experience of practice at the Bar, and of sitting as judges. All contributors have necessarily undergone the experience of pupillage, and many have acted as pupil supervisors. A significant number also have experience in teaching law in the universities. They include practitioners at both the self-employed and employed Bar.
6. The Inns (together with the Circuits) play a central role in the pre- and post-qualification training of prospective and newly-called barristers. The BSB, under its Bar Training Rules, has entrusted key training functions to them: qualifying sessions in the Inns for Bar students, and the delivery of mandatory courses for pupils and new practitioners. As the BSB knows, this training is delivered voluntarily by a large body of experienced practitioners – senior barristers and sitting and retired judges, who must first be trained to deliver the training. The cost of the training is mainly absorbed by the Inns and Circuits. If it is charged to students, pupils or new practitioners at all, the cost is low and heavily subsidised.
7. All the Inns' committees have drawn upon this wide experience in their consideration of the 2016 FBT Paper. They have also taken into account the views expressed and representations made by their student members, with whom they have a close relationship. All four Inns of Court which, to the limit of their resources, provide direct financial support to Bar students through their scholarship schemes, are very familiar with the practical, educational and economic challenges which Bar students now face. They conduct outreach schemes, careers advice programmes and mentoring programmes for their young members and prospective members. No other organisation operates as closely with those important groups as the Inns.
8. COIC's knowledge and experience of professional legal education is further enhanced by the extensive programme of training, and research into training, carried on by its Inns of Court College of Advocacy (ICCA) and ICCA's predecessor the Advocacy Training Council. These two bodies have been called upon for many years to deliver advocacy training within many common law and civil law jurisdictions overseas. In addition ICCA has a full programme of

advanced advocacy training in hand for established practitioners in England and Wales. Current projects include the handling of vulnerable witnesses, the preparation and examination of expert witnesses, advocacy in the youth courts and professional ethics. ICCA accredits, on behalf of the BSB, the tutors who deliver advocacy training on the BPTC.

9. The views expressed in this Response are accordingly embedded in deep knowledge of practice at the Bar; in the actual delivery of professional training; and in the opinions of a diverse range of members of the Inns, from very experienced practitioners to newcomers.

### III

#### THE BSB'S REGULATORY OBJECTIVES

10. In its 2016 FBT Paper the BSB has set out, at various points in the Paper, a number of regulatory objectives which future arrangements for Bar training should achieve. The Inns have no hesitation in supporting these objectives.
11. It is noted that in its Executive Summary the BSB refers to 'Flexibility' 'Accessibility' 'Affordability' and 'Sustaining high standards' as 'fundamental principles' which have guided its decision-making.
12. Para.7 of the Paper sets out a number of uncontroversial objectives directed to serve the public interest. In para. 8 the BSB states three objectives in its Strategic Plan (regulating in the public interest; supporting barristers 'and those we regulate in the future'; and ensuring a strong and sustainable regulator).
13. The BSB also refers, in para. 12, to statutory guidance given by the Legal Services Board (LSB). The LSB's guidance is again couched in the most unexceptionable terms: for example that education should focus on what an individual must know, understand and be able to do at the point of authorisation ('Day 1'); and that that requirement is to be balanced against what needs to be and will be acquired later. The LSB also states that providers of legal education must have "the flexibility to determine how to deliver training, education and experience that meets the outcome required"; and that there must be no 'inappropriate' restrictions on numbers.
14. In paragraph 13 the BSB emphasises that the Future Bar Training programme must be focused on how training should be regulated to meet best the needs of professional practice; to ensure that regulatory requirements do not restrict access to the Bar; to ensure that educational and training requirements are 'targeted' and 'proportionate'; and to ensure that standards are maintained at Day 1. There are many other passages in the Paper to the same effect, equally supported by the Inns of Court.
15. It follows that discussion of both the present and any different arrangements for the education and training of barristers must focus on the extent to which, as a matter of fact and in point of detail, different models achieve or fail to achieve these stated, agreed objectives. The detailed proposals contained in the 2016 FBT Paper are assessed against these criteria in this Response.

## IV

### THE THREE STAGES OF TRAINING:

#### ACADEMIC, VOCATIONAL AND PROFESSIONAL

16. In the 2015 FBT Paper the BSB sought endorsement for the maintenance of the three current stages of qualification, leading to authorisation to practise: (1) the possession of a Qualifying Law Degree (QLD) or the possession of another degree plus a Graduate Diploma in Law; (2) passing the Bar Professional Training Course (BPTC); and (3) the successful completion of pupillage. The Inns strongly advocated the maintenance of this structure of training in their Response to that Paper.
17. In para. 37 of the 2016 FBT Paper the BSB records the strong support received for the three-part structure in the previous consultation, and confirms that the three components should be maintained. The Inns are firm in their belief that three elements of training are critical in achieving the LSB's principal objective, namely establishing what barristers must know, understand and be able to do on Day 1. They underpin the BSB's objective of sustaining high standards.
18. The 2016 FBT Paper also addresses additional requirements which are ancillary to the overall scheme but are equally important.
19. **Class of degree** In the 2015 FBT Paper the BSB canvassed the question whether admission to stage (2) (the BPTC) should be limited to holders of First Class and Upper Second Class (2.1) degrees, or whether it should continue as at present to be open to holders of 2.2s. Opinion within the Inns was sharply divided on this issue. COIC's Response to the 2015 FBT Paper set out the opposing arguments. The BSB has now indicated that holders of 2.2 degrees will not be excluded.
20. Notwithstanding this recommendation in the 2016 FBT Paper opinion within the Inns remains as divided as ever. One of the Inns' principal areas of concern is the very poor prospect which holders of 2.2s have of obtaining pupillage. The BSB's important 'Key Statistics' paper published in May 2016 indicates that a graduate with a 2.2 degree has no more than a 1 in 20 chance of progressing to the next step towards authorisation.

21. If the BSB presses ahead with its proposal the Inns are unanimously of the view that very clear and explicit warnings should be issued to holders of 2.2s that, save in exceptional circumstances, that their chances of being taken on as pupils are extremely poor.
22. **Membership of an Inn of Court** Account also has to be taken of the regulatory requirement that students must, as a condition of call to the Bar, attend 12 qualifying sessions within an Inn of Court. A student has to become a member of one of the Inns in order to satisfy this requirement. Life membership of an Inn costs £100, which may be thought easily to satisfy the 'affordability' test and in any case is sometimes waived. Attendance at a qualifying session is either free or very inexpensive.
23. Students normally undertake or complete this requirement during stage (2). Call to the Bar by his or her Inn (which is technically a degree) occurs when the student has passed the BPTC and attended these sessions, although authorisation to practise in England and Wales is deferred until the end of stage (3).
24. The importance which the Inns attach to membership can be inferred from Section II of this Response. They regard attendance at qualifying sessions as an integral element in preparation for practice. They are a unique forum for bringing together students and practitioners in the context of serious discussion and study. They assist students who are preparing for the BPTC, increase their knowledge of the professional landscape and professional ethics, and reinforce the regulators' objectives of ensuring high standards of knowledge and understanding on Day One.
25. The Inns welcome the BSB's proposal (para.35 of the 2016 FBT Paper) to review the content and value of qualifying sessions. COIC has independently started its own review and looks forward to collaboration with the BSB.
26. Membership of an Inn also gives students, and their newly qualified barrister members, the other educational, pastoral and financial benefits described in Section II. These are significant benefits which enrich the professionalism and ethical standards of the Bar. In many respects the Inns may be regarded as the legal equivalent of the medical Royal Colleges. They provide both support and significant research and training programmes for established and new practitioners. They are major contributors to continuing professional development in their respective fields.



27. For all these reasons the Inns agree with para. 34 of the 2016 FBT Paper that section 207(1) of the Legal Services Act 2007 should continue in force. Call to the Bar should remain dependent upon membership of one of the Inns, after successful completion of stages (1) and (2), including attendance at qualifying sessions.
28. **Admission to the BPTC: the Bar Course Aptitude Test (BCAT)** The Inns also agree that it should remain a condition of entry upon the BPTC that students must pass the BCAT.
29. The Inns have given careful consideration to the BSB's proposal, first published on 14 March 2016, and repeated in paras 44 and 45 of the 2016 FBT Paper, that the pass mark should be raised from 37/80 to 45/80. The Inns agree that the pass mark should be raised but disagree with the proposal to raise it no higher than 45/80. For reasons stated below the pass mark should match more closely the level of ability required to compete successfully for a pupillage.
30. The BCAT is discussed in more detail in Sections VI and VII of this Response.
31. **The QLD and the BPTC: further discussion** The BSB's more detailed proposals for possible changes to these established stages of qualification are discussed in Sections V and VIII to XI of this Response.

## THE ACADEMIC STAGE

32. The Inns of Court endorse the BSB's view of the importance of the possession of a QLD or (in the case of non-law graduates) a GDL, but fundamentally disagree with the BSB's proposals to change the syllabus of the QLD. They are concerned on a number of different fronts, including the need to comply with the LSB's statutory guidance; the unintended and detrimental impact this change will have on students from less traditional backgrounds who might be unaware of the knowledge base which is required for entry into pupillage; and the impact, not explained in the 2016 FBT Paper, which these changes will have on the syllabus of the GDL. The Inns regard this part of the 2016 FBT Paper as of profound importance, and for that reason set out their position in some detail below.
33. **The QLD** Since 1967, when the solicitors' profession as well as the Bar became (with limited exceptions) graduate- only professions, the syllabus of the QLD, regarded as the degree which many prospective lawyers would wish to take at university, has been agreed between the Law Society and the Bar Council, and more lately by the SRA and the BSB, in a Joint Statement (1999). The purpose of the QLD was and remains to exempt holders from further study of academic law after graduation, and enable them to proceed immediately to study of the practice of the law.
34. **The Joint Statement** The Joint Statement sets out a number of criteria for assuring the quality of a course presented as a QLD. In Schedule One it then sets out some broad statements of knowledge and transferable skills which students must be taught on the course. This is followed by Schedule Two, which requires teaching of "The Foundations of Legal Knowledge". These are described as "*the key elements and general principles of the following areas of legal study:*"
- i* Public Law, including Constitutional Law, Administrative Law and Human Rights;
  - ii* Law of the European Union;
  - iii* Criminal Law;
  - iv* Obligations including Contract, Restitution and Tort;
  - v* Property Law; and
  - vi* Equity and the Law of Trusts."

They form the basic building blocks for practice of the law in every field.

35. **The Law Conversion Course (GDL)** Entrants to the profession who do not possess a QLD have been required to undertake the one-year GDL. The syllabus of the GDL mirrors and repeats the mandatory core subjects listed above. Its manifest purpose is to enable candidates for the GDL to cover the same ground which has been studied by their peers who hold a QLD.
36. **Studying for the BPTC** It follows that, so far as the BPTC is concerned, the providers of the BPTC have been able to assume that students have acquired sufficient legal knowledge in these subjects at the academic stage to enable them to handle the vocational course, including exercises in legal drafting, opinion-writing, negotiating and oral advocacy.
37. **Preparation for pupillage** Equally pupil supervisors have been able to base their training on the secure assumption that their pupils were versed in these fundamental subjects. While some further substantive law may and probably will still have to be acquired during pupillage, depending on the work done by the supervisor or the chambers or law office in question, at the very least it can be assumed that the pupil is familiar with the basic structure of English and Welsh law. There is no time to teach them fundamental law at that stage.
38. **The proposals for change** Paragraph 1.2 of the BSB's Professional Statement (which existed in draft in at the time of the 2015 FBT Paper) requires barristers, on Day 1, to have 'an understanding of the general principles of law underpinning the legal system and rules of procedure and practice specified by the Bar Standards Board.'
39. In paras. 60-62 of the 2015 FBT Paper the BSB was dismissive of the necessity for knowledge of the core subjects, pointing out that they had been agreed 40 years ago. It questioned whether it should continue to prescribe the syllabus of the QLD, preferring a statement in the general terms set out above.
40. Nevertheless para. 81 of the 2015 FBT Paper appeared to take a different position, stating that "*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 principles of criminal, constitutional, administrative and human rights law, while the latter would normally include basic concepts and principles of contract, tort and property law.*" This might be regarded as a partial summary of the Joint Statement.
41. In its Response to the 2015 FBT Paper COIC argued for retention of the core subjects, pointing out that they had formed the permanent bedrock of the law of England and Wales for much longer than the 40 years referred to in the 2015 FBT Paper. In the Joint Statement

they are correctly described as 'the Foundations of Legal Knowledge'. Barristers would be expected by both clients and the public to be versed in these fundamental subjects. They would not, in the view of the Inns, be equipped to perform to the standard expected of them if they had not acquired this basic legal knowledge at the academic stage. The argument for withdrawing any of these subjects from a lawyer's academic training was unsupported by evidence and, in the opinion of the Inns, had not been made out.

42. **Distinguishing quality assurance from content of syllabus.** The current approach of the BSB is to be discovered from paras. 31 and 39-41 of the 2016 FBT Paper. Two distinct topics arise from the discussion and they should not be confused: (1) the quality assurance of a law or other degree course and (2) the content of a law course.
43. **Quality assurance.** With regard to quality assurance, i.e. academic and teaching standards, the BSB states in para. 31 of the 2016 FBT Paper that it does not propose to duplicate quality assurance arrangements which are already in place and managed by other agencies. This is a reference to the Quality Assurance Agency (QAA) for higher education, which has published a revised Subject Benchmark Statement for Law Degrees (July 2015).
44. On the point of quality assurance it may therefore be inferred that the BSB will recognise as a QLD a law degree which achieves the quality of teaching and the standard of assessment of the '*transferable generic and subject-specific knowledge, skills and attributes*' which are appropriate to the study of law, in compliance with the specification laid down by the QAA. The quality assurance provisions in the Joint Statement are accordingly regarded as redundant, because they simply replicate the same requirements laid down by the QAA. The Inns agree with this proposal.
45. **Law syllabus.** The QAA does not however prescribe the content of the syllabus of any law degree. It has no equivalent of Schedules One and Two to the Joint Statement. The QAA's reasons are clear and understandable. It is concerned with academic quality, and makes the point repeatedly that, from its point of view, a law degree is an academic qualification which does not necessarily lead to professional practice, much less practice at the Bar. So far as the QAA is concerned the content or syllabus of any individual law course is designed by the institution which offers it. Whether a degree can fairly be described as a 'law degree' is a therefore a matter of judgement and local decision. There are many graduate degrees (LL.Ms and the Oxford BCL or M.Jur. for example) which can be properly described as law degrees although they omit the core subjects. Knowledge of those subjects is either taken for granted, or not required.

46. On page 4 of its Subject Benchmark Statement the QAA lists some 22 specific areas of legal study, to which it adds 'Others in law' and 'Law not elsewhere classified' which will use the Subject Benchmark Statement as a point of reference in connection with quality assurance; but neither in this Part of the QAA's document nor in its more detailed discussion in Chapter B1 ('Programme Design, Development and Approval') does the QAA attempt to prescribe a law syllabus or describe any of its 22 subjects as mandatory.
47. **The proposed change to the syllabus** With regard to the question whether a degree can be accepted by the BSB as a QLD in terms of its content, as opposed to its quality, the BSB now proposes to make its own decision, unaided by outside agencies. The existing checklist of core subjects is abandoned. In its place para. 39 of the 2016 FBT Paper states: "*We are proposing, as part of any new pathway we authorise, to replace the current mandatory foundation law modules, currently prescribed in the Joint Statement, with a general requirement that a law degree encompasses*  
***“the knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context.”***
48. No evidence or argument is advanced in support of this proposal, which appears to be a significant retreat from the position stated in para. 81 of the 2015 FBT Paper. In the view of the Inns there is no convincing reason for making the change. Among the many members who have engaged in the Inns' discussions opposition is unanimous. So far as the Inns are aware the proposal has no professional support at all.
49. **The case for retaining the core subjects.** In the case of any profession there is a key body of specific knowledge which any professional worthy of the title must possess. That is as true of the Bar as it is of the medical profession. It is therefore the duty and responsibility of the regulator to define what it is, and to require entrants to the profession to be proficient in their understanding of it. An appeal to vague and undefined concepts does not discharge that responsibility. In its Response to the 2015 FBT Paper COIC argued that the core subjects were the best proxy for that body of essential knowledge and understanding and the optimal compromise between law schools and practitioners. They could see no good reason for giving up any of them. This fundamental point is not answered anywhere in the 2016 FBT Paper.
50. If, as is the case, the practising profession is able to identify the foundations of legal knowledge which, in its opinion, are required before a barrister can responsibly represent the interests of clients, a heavy burden of proof rests on the regulator to explain why, in the

regulator's opinion, the practising profession is wrong, and the regulator's view is to be preferred. A desire to introduce 'flexibility' is not a proper reason for getting rid of topics of legal knowledge which the profession says are important for the protection of clients, the public and the administration of justice.

51. There appear to be some universities which do not wish to teach all the core subjects and would like to teach different types of law course, but nevertheless wish to continue to present their degree as a QLD. Some of the language used in the new definition strongly suggests that the BSB has bowed to pressure from this quarter. If that is right, the BSB is allowing itself to be influenced by considerations which are outside its remit. The BSB's mission is to uphold standards at the Bar. The proposal for change represents a lowering of the standards the BSB is committed to uphold. It will also have unintended consequences described below.
52. **Accreditation of law degrees.** First, as has been said, under its proposed new regime the BSB will have to decide for itself, on a case by case basis, whether a law degree offered by an institution can be accepted by the BSB as a QLD. The point is important for students. If a student does not hold what the BSB recognises as a QLD he or she will have to acquire the GDL. Such an approach is inconsistent with the BSB's apparent aim of simplifying the training regime and eliminating uncertainty. The check-list of core subjects, which has been approved by the profession for many years, gives both students and regulators a straightforward answer as to what is and is not a QLD.
53. The dilemma which the BSB is creating for itself can be exemplified in this way. If a law degree excludes, say, criminal law or land law, or the law of contract, will the BSB nevertheless accept it as a QLD? What would consumers, defendants in the Crown Court, or parties in civil proceedings, or the public, think if the answer is Yes? A laissez faire approach to academic qualifications creates more problems, not fewer, for the BSB, the public and the practising profession.
54. **Compliance with the LSB's statutory guidance** The new definition does not appear to comply with the LSB's statutory guidance relied upon by the BSB, in that it does not define "what an individual must know, understand and be able to do at the point of authorisation." What individuals must know when they are authorised to practise cannot be captured in a general knowledge and understanding of 'basic principles.' COIC is not aware of any other profession for which the knowledge required at the point of entry to practise or work is defined in such vague terms and set at such a low standard.

55. **Interpreting the new definition** The suggested definition gives rise to other difficulties. The Inns can foresee much debate over the meaning of the last eight words of the new definition. Will established law courses fashioned around the core subjects fall to be reviewed to ensure that those subjects are taught 'within an international, social, theoretical and transnational context'? What changes (if any) will they have to make to satisfy the Bar's regulator; and will they think it worth their while to do so for the benefit of a small segment of the practising profession in England and Wales? The very least that the academic and professional public can expect is some clear explanation of what those words mean in practical terms.
56. **Impact on the recruitment of pupils: degrees and degrees** Apart from setting a trap for itself, the BSB is also setting a trap for unsuspecting students. Another of the unintended consequences of a more lax and flexible definition of the QLD is that chambers and other organisations will scrutinise with greater care than they do at present the academic training which prospective pupils will have received. Recruiters will quickly get to know which law courses teach the core syllabus and which do not. If candidates present themselves with a QLD which lacks a core subject, especially if it is a subject which is important to the recruiter's area of practice, it is highly unlikely that they will be considered for pupillage, much less for a permanent position in practice.
57. The proposed change accordingly poses a real risk for students. They will have been led to believe that a law degree which omits one or more of the core subjects will nevertheless qualify them to practise at the Bar without obtaining a GDL. But they will find that, in the competition for pupillage, they have been handicapped without knowledge or prior warning. Strenuous efforts are being made to eliminate unfairness and inequality in access to the Bar. This would be a distinct step in the wrong direction.
58. **Impact on the GDL** Finally, and surprisingly, there is no discussion in the 2016 FBT Paper of the impact of these changes on the GDL. It is not mentioned anywhere in this Part of the Paper, despite the fact that it is one of the two permitted pathways to practice laid down by the BSB and is presented as a continuing mandatory requirement for holders of degrees which are not QLDs.
59. Whatever it does about the QLD, the BSB will continue to be responsible, as regulator, to specify the syllabus for the GDL. It will know that the GDL is the only opportunity offered to graduates who have degrees in other subjects to become acquainted with the basic, substantive law of England and Wales before they proceed to the BPTC. These graduates are

an important source of able recruits. The profession would be diminished without them. They have about 30 weeks to get up to speed in subjects relevant to practice at the Bar.

60. Applying the same 'general requirement' to the design and content of the GDL which the BSB proposes for the QLD itself is highly unlikely to be adequate, or sufficiently rigorous. It would be irresponsible simply to allow providers to decide for themselves what their GDL students should study. The BSB does not disclose its own intentions. Does it intend to retain the existing GDL syllabus, based on the core subjects? Or not? If there is to be no change, why change the QLD?
61. These points are not answered; but they are all the more significant when viewed against the possibility that the GDL may be abandoned by the SRA in favour of an entirely different system of education which it is proposing for solicitors. The SRA's proposals are discussed in Section XII below. If the GDL is discarded by the SRA and becomes a special qualification for the Bar, this will open up the opportunity for the BSB to re-design the GDL in a way which will reinforce the capacity of non-law graduates to meet the challenges of practice at the Bar. This issue is not addressed by the BSB at all.
62. **Conclusion on the QLD and the GDL** The Inns re-affirm their commitment to the current specifications for the QLD and the GDL. They very strongly oppose the changes proposed in the 2016 FBT Paper. A failure to require successful completion of study in the existing core subjects will undermine the core duties to protect consumers and maintain public confidence in the profession.



## VI

### THE BAR COURSE APTITUDE TEST (BCAT)

63. In March 2016 the BSB announced that it had carried out a thorough statistical review of the BCAT. The main finding was that a student's BCAT score, that is their actual score, not merely the fact that they had passed or failed, strongly predicted their performance on the BPTC. The test was also said to be "*a reliable indicator of a student's success on the BPTC over and above [sic] degree institution and degree classification alone*".
64. In the light of these findings the BSB stated that it had decided to issue to all students their actual BCAT score. This intention is stated again in paras. 44 and 45 of the 2016 FBT Paper. The purpose of sending them their actual score is to enable them to make an informed decision as to whether they should commit themselves to the BPTC itself. The BSB also said that it would increase the pass mark from 37/80 to 45/80 in order to 'exclude students who are not likely to succeed in the BPTC.' The profession was informed that the raising of the pass mark to 45 would be likely to reduce the BPTC failure rate by 16.8%.
65. In May 2016 the BSB published an important document entitled 'Key Statistics', which tracked the performance and career progression of Bar students who enrolled on the BPTC for the academic years 2012-2014. The statistics offer, among much else which is of interest, the actual failure rates of BPTC students over those years. They therefore give an insight into the probable effect, in practical terms, of the proposal to raise the BCAT score from 37 to 45.
66. On a rough and ready calculation, looking at both the failure rates and the actual failure numbers disclosed in those statistics, and assuming the higher pass mark, it can be estimated that:
- in 2012 the number of recorded BPTC failures would have been reduced from 252 to 226;
  - in 2013 the number of failures would have been reduced from 275 to 237; and
  - in 2014 (numbers for full-time students only) the number of failures would have been reduced from 121 to 98.
67. The Inns note the claim that there is apparently a good correlation between BCAT score and BPTC performance. Accordingly, they warmly welcome the decision to inform students of their

actual BCAT score, and to inform them of how they are likely to perform on the course in the light of that score.

68. However, the proposal must also be viewed in the context of student performance and career prospects as a whole. These topics are discussed in the next Section of this Response. Within this wider context, and for reasons which are more fully explained in the next Section, the Inns are concerned that the raising of the pass mark to no more than 45 will still expose a high number of students to failure on the course, with corresponding wasted expenditure of money and time; and this is unacceptable.
  
69. It will also be noted that, even if a student passes the course but scores no more than an assessment as 'Competent', it is extremely unlikely that the pupil will get an offer of pupillage. (The same point has already been made about 2.2 degrees).
  
70. **Conclusion on the BCAT** Accordingly, and for reasons more fully explained in the next Section, the Inns consider that the BCAT score should be raised to a level which more closely corresponds with a prediction at least of Very Competent or Outstanding. If that is not done, at the very least the information given to students should indicate not only (1) their likely grade on the BPTC, as the BSB intends but also (2) the statistical chance of getting an offer of pupillage in the light of that predicted grade, particularly if the grade is no higher than 'Competent'. The relevant statistics should be carefully set before them.

## VII

### THE BPTC: THE FUNDAMENTAL PROBLEM OF AFFORDABILITY AND ACCESSIBILITY

71. The Inns' fundamental concern with the present system has been widely publicised, not least in the debate on Future Bar Training convened by the BSB on 7 July 2016. It is nevertheless repeated here.
72. In a nutshell, the Inns object that far too many students are recruited on to the course; that there is an unacceptably high failure rate; that the prospects of obtaining pupillage among many of those who pass is remote; and that the cost of the course is unacceptably high. The effect of these various factors is that, for many students who decide to register on the course, valuable time and money has been thrown away, and that for many prospective students the risk of wasted time and costs grossly outweighs the chance of entering practice. Their reaction is to look for a career elsewhere.
73. The system in this way actively deters able recruits from economically stressed backgrounds. It is creating a profession, and ultimately promotion to the judiciary, which is accessible only to those who have the resources available to finance those risks. The Bar is in danger of becoming a profession for the 'haves' which excludes the 'have-nots'. This is directly contrary to many of the general aims and objectives which the BSB seeks to promote and clearly contravenes the guidelines laid down by the LSB.
74. After COIC had submitted the Inns' Response to the 2015 FBT Paper, recording these deep concerns, the BSB 'Key Statistics' document, published in May 2016, powerfully reinforced the Inns' case. They have been referred to in Section VI above and are now referred to in more detail below.
75. The starting point is the question of fees. With rare exceptions all Bar students must have university degrees. Graduates, unless they are lucky in their background, will have accumulated debts of about £40-50,000 on graduation. If they have a QLD and wish to study for the Bar, they will be faced, on registering with a BPTC provider, with a fee between just below £14,000 and £19,000 for the 30-week course. If their degree is not a QLD they must

undertake the GDL first, at additional expense. Over and above the cost of these courses they have to meet the ordinary costs of living for the period of their study.

76. The BSB's statistics show that, for the two academic years 2012-2013 and 2013-2014, 3234 full-time and part-time students are recorded as having enrolled on the course. If the average fee is £16,500 for those two years, that represents a gross turnover for those two years in excess of £53m. For the year 2014-2015 1307 full-time students are recorded as having enrolled. Taking the same average fee that represents a gross turnover of over £22m for that year.
77. What did the students get in return? For those same years it is recorded that, as at January 2016, 648 students had failed the course. That represents £10m in wasted fees. Another 686 are recorded as not having completed, in some cases after three years. Some of those will probably ultimately fail the course, adding to the number of failures.
78. Those who have passed are divided into three categories: Outstanding, Very Competent and Competent. Very roughly just over one third of these candidates will be students from abroad, intending to return to practise in their home jurisdiction after call to the Bar. The overwhelming majority of the remaining cohort will wish to progress to pupillage. The number of pupillages is determined by the Approved Training Organisations (ATOs), i.e. chambers and law offices in the public and private sector, according to their perception of their needs, and the resources they have available to deliver training. The number of pupillages now stands at just over 400 a year.
79. Another Table in the BSB's statistics (Appendix III Table A.4.3) shows how these nominally successful students have fared in the search for pupillage. Over the period of four years beginning in 2011 and ending in 2015 the BSB has been able to identify 985 awards of pupillage. 325 went to candidates classed as Outstanding and 628 classed as Very Competent. No more than 30, in that period of four years, were awarded to students classed as Competent.
80. This last number of 30 may be contrasted with the number classed in the examinations as Competent for the last three of those four years: 840. If that figure is discounted by the BSB's latest figure for overseas students (37%) (see para. 37 of the 2016 FBT Paper) but a notional figure is then added back for the missing first year, these statistics indicate that the prospect of pupillage for a domestic or EU student classed as no more than Competent is less than 1 in 20. That may represent another £10.7 m-worth of fees thrown away.

81. The disappointing results, in terms of pupillage, for students classed as Competent are mirrored by the results for students holding 2.2 degrees. In Table 4.A.5 of Appendix III 983 awards of pupillage are analysed over the same four-year period with reference to class of degree. 408 were awarded to holders of First Class degrees and 497 to holders of 2.1s. Only 24 could be identified as awarded to holders of 2.2s, the missing numbers being described as 'Other' or 'Not provided'.
82. These disturbing figures leave a lasting impression that too many students are undertaking the BPTC without having received any or any sufficient warning that, if they cannot rise above the level of 'Competent' in their examinations, or possess no more than a 2.2 degree, they are very unlikely to find themselves selected for the next stage of qualification - pupillage.
83. Finally, the Inns frequently hear complaints from their students that progress on the course can be impeded by the presence of students who are clearly struggling with the materials.
84. In the Inns' view the fundamental problems described above, although recognised in the 2016 FBT Paper, do not receive sufficient emphasis. If they are ignored or not overcome the BSB will face severe criticism for its failure, and a valuable opportunity to put things right will have been lost.
85. **Tackling the problem** As indicated in the previous Section of this Response, raising the pass mark of the BCAT to a more realistic level, corresponding more closely to a predicted grade of at least Very Competent if not Outstanding, would partially – but only partially – solve the problem.
86. The Inns understand that one of the reasons why the BSB is unwilling to take this course is that their statistics also show that students with protected characteristics, principally students from BAME backgrounds, perform disproportionately badly on the BCAT compared with other groups. While the Inns do not doubt the sincerity of this concern they are unable to understand the logic. If a poor performance on the BCAT is a sound predictor of poor performance on the BPTC, there is no virtue in exposing less able students, from whatever background, to the cost and risk of disappointment further down the line.
87. The problem identified by the BSB may in the long run be much deeper than these statistics suggest. To get to the bottom of it there is a need for a much more detailed survey of the members of the many different groups who undertake the test before any safe conclusions

can be reached about the test or the required pass mark. A study on these lines is outside the terms of reference of this present consultation.

88. **Reforming the BPTC: options for change** In the next Sections of this Response the Inns make their comments on the various Options for change set out in the 2016 FBT Paper, measuring them against the regulatory objectives and criteria adopted by the BSB and the LSB.

## VIII

### OPTION A

89. In para. 71 of the 2016 FBT Paper Option A is labelled the “Evolutionary” approach. In para.103 it is called the “continuity option”. In outline it is based on the present sequential three-stage regime. Option A comprises the existing single unitary 30-week BPTC, falling between the academic stage and pupillage, but with certain amendments. Under this Option it would remain, after amendments, the only permitted pathway to qualification. The course would presumably be offered by the same providers who support the BPTC in its present form, or by similar providers. The diagram of the present scheme at para. 69 (Figure 1) is the same as the diagram of Option A at para.72 (Figure 2).
90. The BSB identifies three strengths of the present system which would be carried forward into Option A. First, it is delivered in a wide range of locations including London, Birmingham, Manchester, Leeds, Newcastle, Bristol, Cardiff and Nottingham. This is seen as an aid to accessibility (para.78). Secondly, it is attractive to international students, calculated to amount to 37% of the cohort (para.95). Thirdly, it aligns closely with a Postgraduate Diploma recognised by the QAA for Higher Education (120 credits) and can be converted to a LL.M with the gain of a further 60 credits (paras. 101-102).
91. The regulatory, evolutionary changes which the BSB has in mind to improve the present format of Option A are summarised in para. 89 of the Paper:
- (1) strengthening centralised assessments, already planned but not specified in the Paper itself;
  - (2) removing some elements of prescription, for example in class sizes;
  - (3) strengthening the oversight of local assessment, i.e. in the area of assessment of skills rather than knowledge, again already under review, but again not specified in the Paper; and
  - (4) removing elective modules in selected specialist subjects. The effect of this change will be to reduce the length of the course from three to two terms.
92. The BSB providers have for long complained that the restrictions on class size have added to the cost of the course, but have never provided figures demonstrating how much of the cost could be saved if class sizes were larger. The elective modules (the only black letter law studied on the BPTC) are widely regarded as redundant. The Inns support the removal of the elective modules.

93. The Paper also contains some discussion on the teaching of ethics on this course (paras.82-86) and raises a specific Question 7 on the teaching and assessment of ethics on the BPTC. The teaching of ethics is the subject of research commissioned by the Inns of Court College of Advocacy and currently under active consideration by it. It is discussed separately in Section XIII of this Response.
94. **The BSB's comments on Option A** The weaknesses which the BSB detects in Option A are that it is too inflexible and costly, thereby restricting access to the profession (para 77) and that the evolutionary changes proposed are unlikely to have any impact on fees. In para. 108 it concludes that Option A has limited scope to address certain other problems: the wish of potentially mature recruits to change their career; the lower proportion of women offered pupillage; and the lower rate of success on the course among BAME students. For these reasons it does not support the maintenance of the Option A as the only permitted route to qualification.
95. **The Inns' criticisms of Option A** As indicated in Sections VI and VII above, the Inns' criticisms of Option A go further and deeper. The Inns are strongly opposed to the maintenance of Option A, with the suggested amendments, as the only permitted route to qualification. They agree with the BSB on this point.



## IX

### OPTION B

96. Under Option B, labelled the “Managed Pathways” approach, the BSB opens up at least four different ways in which the academic stage, (vocational stage BPTC) and pupillage (called “work-based learning”) can be completed, either sequentially or concurrently. The BSB argues that, by opening up different pathways to call to the Bar, it will be advancing the causes of accessibility and affordability and creating greater opportunities for training.
97. **BCAT, call to the Bar and authorisation to practise** It appears that entry on to any of these options will still be dependent on a satisfactory performance in the BCAT. Call to the Bar will occur, as at present, when the pupil or student has passed the BPTC. As at present, full authorisation to practise will not be achieved until the successful completion of pupillage. The provisional authorisation of pupils at the end of their ‘first six’ is not mentioned, and it is not clear whether or not it can be accommodated within some of these models. Setting aside that difficulty the Inns affirm their agreement with the continuance of this overall structure.
98. **Flexibility** In principle the Inns also support a flexible system which offers options that will improve the prospects of people from different backgrounds of gaining access to all sections of the Bar. But if any option is unlikely to achieve the desired result, it should not be offered. The specific proposals made by the BSB should be critically examined in that light.
99. **Key questions for the BSB** Key questions are (1) do the models proposed by the BSB, in principle, meet the regulatory criteria which the BSB wishes to satisfy; and (2) are they in practice likely to work in a manner which will bring about the changes which all parties are aiming at? The Inns are sceptical that the options proposed under Option B will make any impact at all on the present system, for the following reasons.
100. **Option B (i): traditional BPTC** Option B(i) is the same as Option A. The significant difference is that it now appears as an option, and is no longer the only available route to qualification. It replicates the present system, with some ‘evolutionary’ improvements which, according to the BSB’s own assessment, are unlikely to reduce its cost. It still does not address the Inns’ additional concerns about high failure rate or the adverse risk-cost ratio of not obtaining pupillage. It remains exposed to the criticisms made in Sections VI and VII above.

101. **Option B (ii): OLD and BPTC as a continuous degree course** This Option embodies the training offered by the University of Northumbria. It can be seen as a variant of Option B (i) and does not represent a change to the present system, under which it is already permitted. The Northumbria course combines both the academic stage and the BPTC in a four-year degree course, leading to call to the Bar on graduation. (It provides a parallel course for students taking the LPC in order to qualify as solicitors). It has the merit, as the BSB points out, of giving the students the shelter of a student loan during the BPTC (or LPC) and a Master's degree at the end. It does not however combine pupillage with the BPTC. That still occurs sequentially at the end of the course, as at present. Graduates still have to obtain pupillage. One of the worrying features of the Northumbria model is that the BSB's published statistics show a very poor success rate among its graduates in the award of pupillage.
102. There is nothing within the existing arrangements to prevent other universities from developing Option B (ii) if they wish to do so. No other university has been tempted to apply to the BSB for authorisation so far. The changes proposed by the SRA in the route towards qualification as a solicitor, discussed in Section XII of this Response, might encourage some universities to adopt a Northumbria-type model to comply with the SRA's scheme for the much larger number of students who want to qualify as solicitors. It remains to be seen whether more universities would also be willing to deliver the BPTC, the numbers being so much smaller. No rule change is required for other institutions to adopt Option B (ii).
103. **Options B(iii) and (iv):changing the sequence of training** Options B(iii) and (iv) are innovatory in a number of respects, including changes in the strict sequence of learning – academic, vocational, professional. Subject only to the way in which teaching and learning is arranged under the Northumbria model B(ii), the Inns consider that the sequence of learning which is currently prescribed is based on common sense, reinforced by experience, and should not be changed.
104. In the discussion of the academic stage in Section V above it was pointed out that effective training on the BPTC is dependent upon the students' first having acquired a sound knowledge of the law of England and Wales. The BPTC is then able to move students along from an academic knowledge to learning how the law is applied in practice. The final stage – pupillage – then builds on this level of knowledge and understanding to a more detailed training in the conduct of real-life cases. Training in pupillage is close-up and client-oriented. There is no time for supervisors to cover ground which is better taught in an institutional setting, even if they were equipped to do so.

105. It follows that, on that ground alone, the Inns are far from convinced that Options B (iii) and (iv) represent a sound method of training.
106. **Do Options B (iii) and (iv) offer viable choices, compliant with the BSB's regulatory objectives?** Setting aside the question of sequence of learning, the success of Options B(iii) and (iv) competing with or operating in parallel with Option B(i), which has been the tried and tested route to call to the Bar so far, depends entirely on how viable they are, and how strongly they appeal to the profession. No evidence is offered in support of them. If the BSB has carried out some market research into these Options, it is not referred to in the 2016 FBT Paper. In the view of the Inns market research is essential before their strength can be gauged, and they remain very sceptical about the viability or appeal of either.
107. **Option B(iii): BPTC and pupillage combined** Under Option B(iii) , the two stages of BPTC and pupillage will be taken together, after the academic stage, over a two-year period. This proposal emanates from the Chancery Bar Association. It attempts to address what its members see as the lack of preparation for pupillage among graduates of the BPTC. Pupils would learn through a mixture of teaching modules and 'hands-on' learning, being examined on the BPTC after 9 and 18 months. Advocacy skills and client-handling skills would be learnt by observation as well as formal teaching. Exactly how the pupils' time is divided is not specified. It is not clear whether it is envisaged that chambers would be accredited as BPTC providers, and teach the formal BPTC subjects as well as provide the training required for pupillage. Provisionally the Inns assume that the BPTC part of the package would be taught by accredited external providers.
108. **Recruitment of pupils** The logic of this Option is that, since pupillage and the BPTC are combined, pupillage will be awarded at an early stage in the student's career: either during their academic studies, or after they have taken their degree, when or before they register for the BPTC. Since entry on to pupillage and the BPTC will be more or less simultaneous, the prospective training organisation as well as the BPTC provider will presumably have access to the pupil's BCAT score.
109. This leads to the question as to who is most likely to benefit from the scheme. Recruiting a pupil who has not started on the BPTC will be regarded as a high risk, given that the final BPTC examination is 18 months away. In the view of the inns, the sets of chambers and others who might be attracted to this scheme would be likely to adopt a conservative policy towards recruitment, confining their search to candidates showing exceptional promise at the academic stage - in other words university students seen within the conventional recruiting grounds as

high flyers. This Option is unlikely to facilitate the entry into pupillage of students whose full potential has not yet emerged.

110. Funding The combined course lasts for two years. The BSB does not say whether the funding requirements for pupils will apply to these pupillages for the whole of the period of study, or for a 12-month equivalent, being apportioned to that part of the programme which is spent in chambers as a pupil. Two years' funding, if that is what the BSB has in mind, would obviously be very beneficial to prospective pupils.
111. This is however a critical question because, if chambers are required to fund the pupil for the whole of the two years, that will have an impact on chambers' budgets and would inevitably result in a reduction in the number of pupillages. It might also cause chambers to adopt an even more cautious approach towards recruitment.
112. Impact on equality and diversity For the reasons stated above this Option will have an adverse effect on the promotion of equality and diversity.
113. Availability of BPTC modules. The Option also assumes that, unless chambers are also delivering the BPTC, there will be BPTC providers able and willing to arrange the teaching of the course in modules to fit with a mixed programme of pupillage and study for the BPTC examinations. It is not clear what inquiries the BSB or the Chancery Bar Association has carried out into the availability of modular courses which will work with this Option. Presumably the BPTC sessions will have to be set for fixed times in the year, in an orderly sequence. By whatever means the pupils may have acquired their knowledge and skills, they will still have to be examined at some stage.
114. Willing training organisations Quite apart from funding, there is a question as to whether training organisations, especially chambers at the self-employed Bar, would accept the new relationship between the pupils and themselves inherent in this new model. The BSB should appreciate that pupillage is more than salaried work experience. Pupils work with their supervisors on a daily basis and follow their cases closely. This is especially true when the supervisor is engaged in a long trial. In that situation the pupil will not only learn the craft of advocacy from close observation of the performances of the barristers engaged in it, but will also be required to play an important supportive role in the preparation and conduct of the trial itself.

115. Pupillage has been described as a ‘twelve month job interview’. That is certainly true at the self-employed Bar. The notion that a pupil might be released from time to time for BPTC training would be unacceptable to most supervisors and disadvantageous to pupils. In the view of the Inns it is unlikely that many, or indeed any, chambers will be willing to participate in this model. The BSB does not offer any evidence in support of it. If (at best) the number of pupils following this route would be very small, that is likely to exacerbate the problem of finding a co-operative BPTC provider to deliver the modular training on which this model depends.
116. **Option B(iv):academic study, BPTC and pupillage combined.** This Option is more complex than Option B (iii), and is “*anticipated to be attractive to the employed Bar and Government departments taking on trainees*”: 2016 FBT Paper para. 121. It is also described as attractive to students who have completed some aspects of training, or want to fit their training around other commitments: *ibid.*
117. This Option envisages a period of training segmented into the three distinct stages, now called ‘modules’, stretching over a number of years. The relevant assessment will take place at the end of each module, but the combination of horizontal and vertical arrows in the illustrative diagram Figure 4 [5?] on page 32, which appear to indicate different flows of teaching and learning activities between the various stages of training, make it almost impossible to understand how this scheme will be navigated by students, teachers or supervisors in practice.
118. Within this Option the pupils or trainees would be able to complete their academic degree + their BPTC qualification + pupillage in any order they think fit. The horizontal flow lines in Figure [5] suggest that candidates might start with the ‘work-based module’ (pupillage) or the ‘academic module’ or the ‘vocational module’ (BPTC) and complete their later modules accordingly. The vertical flow lines suggest that the different stages can be blended together in some way.
119. If the BSB is to be true to its commitment that the Bar is to be a graduate-only profession, the academic module (however completed) will aggregate to three years. To this must be added a period of training allocated to the BPTC and 12 months’ pupillage. Evidently each module can be taken as a part-time or full-time commitment; but they appear to amount in aggregate to the same full-time five-years of training undertaken by most other recruits to the Bar.
120. The logic of this Option is extremely difficult to follow. Superficially it looks as if it is intended that the trainee will be supported by a single training organisation throughout the whole five-year period. This impression is created by the stated opportunity to start off with pupillage

(first version of this Option) and the reference to employment in the public sector. However on a closer analysis that first impression may be wrong. If for example the trainee opts to start with the academic module, followed by the academic assessment (the second version of this Option), they will not need to join a training organisation at that stage, and in any case they might not find one to take them on. The same applies to the other modules. An organisation need not keep the pupil on its books while he or she is taking their degree, or the BPTC, whether that comes before or after pupillage (see the other versions of this Option).

121. On analysis therefore it seems to the Inns that this Option may amount to little more than the opportunity to take the traditional stages (1) (2) and (3) in any random order, blended as well as separate.
122. On any basis, if it is intended that Option B(iv) should or might function as a continuous period of training under the aegis of a single organisation, with appropriate periods of release to other trainers during that period, the BSB has not provided any evidence of organisations willing to support such a scheme.
123. The BSB acknowledges that it will be of no interest to the self-employed Bar, which represents 80 % of the practising profession. The Inns are extremely sceptical as to whether Government departments, the CPS or any other public body would wish to or would have the resources to support trainees over the whole five-year period, given the ease with which they can recruit ready-made graduates. The Inns cannot envisage many bodies in the private sector wishing to commit themselves in this way, whether they are ABS's, regular law firms or others. Moreover the academic institutions which will be expected to provide the academic stage within this package may well find that it is unworkable. The Inns would be interested to see any evidence which the BSB can produce in supporting this option.
124. Option B (iv) also poses severe challenges to the BSB in terms of quality assurance, given its fragmented nature, particularly if the pupil starts out with pupillage, with no prior academic or vocational training (first version of the Option).
125. On the most optimistic view, the Inns consider that Option B (iv) will make a very small contribution, if any, to the overall availability of training for recruits who for any reason, financial or otherwise, cannot find a place in the present system.
126. **Conclusions on Option B** The BSB presents these models as offering the advantage of 'flexibility'. They certainly suggest a flexible regime; but in the opinion of the Inns they fail to

offer a flexibility of genuine, realistic choice, either to providers of training or to prospective recruits.

127. The changes to the existing regime implicit in Option B (i) are not sufficient to remedy the real defects within that Option. Option B (ii) has not been taken up within the academic community at large and is unlikely to appeal to institutions beyond the single institution which at present offers it. Option B(iii) has many unresolved problems of accessibility, fairness, openness, funding and practical implementation. Option B(iv) is acknowledged to have no relevance to the self-employed Bar, and is not likely to appeal to many employers.
  
128. Having looked at Option B as a package, the Inns have concluded that it offers no realistic prospect of change. If the BSB cannot promote a viable alternative to Option B (i), its targets of improved accessibility, affordability, diversity and equality of opportunity will be no more attainable than they are at present. Option B (i) will remain as the only available Option for the majority of Bar students, with its attendant, well-documented, existing problems.

## X

### OPTION C

129. Option C is labelled ‘the Bar Specialist Option’ for reasons which are not explained. In terms of its content, as opposed to its delivery, it is no more specialised, and in one respect less specialised, than the other Options. The BSB does not identify the author of Option C. It is not however favoured by the BSB, even as a permitted Option within the Option B package.
130. The option starts with a qualifying examination called ‘the Bar Entrance Examination’ (‘BEE’), designed to test “*knowledge and understanding of legal procedure in the context of sound legal knowledge.*” (para. 168 of the 2016 FBT Paper). In para. 169 it is stated that “*the key difference in this Option is that candidates may prepare for the examination in any way they choose including but not restricted to a law degree or [GDL] combined with another degree*” [emphasis added].
131. The Inns assume that candidates for this Option (if it were ever permitted) would have to pass the BCAT; but the specification quoted above appears to breach the requirement that candidates for the Bar must have a university degree of at least 2.2 standard. Why the Option C candidates should be dispensed from possessing either a QLD or a non-law degree with a GDL is not explained; and it is this bizarre feature of Option C which causes the BSB to reject it. It is reasonable therefore to ask why the BSB (or some other author) came up with it in the first place.
132. This fundamental flaw is clearly exposed in para. 173 of the Paper. The BSB says that it has had difficulty in formulating the BEE. In para.175 it states that this would require a ‘*step change*’ to segregate the knowledge and skills components in the current programme. That is not surprising. The BEE, as the Inns understand it, is an attempt to combine in a newly-invented examination, to be taken by candidates who have not, or might not, have studied law for a QLD or GDL, sufficient legal knowledge to satisfy (as a minimum) the LSB guidelines; and they will also be required, “*in the context of [that] sound legal knowledge*” to have a knowledge and understanding of legal procedure.
133. After this nearly-impossible start candidates would be required to undertake a three-month skills-based course “in place of the current BPTC” focusing on the foundation skills for advocacy and pupillage (para. 170 of the Paper). The BSB does not explain why those same elements of



the current BPTC will not work; but the need to create a new syllabus for the rest of the course, after the BEE, appears as another reason for rejecting Option C.

134. The BSB has other concerns about Option C. It acknowledges that the objectives of affordability and accessibility would be served by Option C, but fears that its presence in the market might cause the number of BPTC providers to shrink to a London-centric base. It also has other unexplained concerns: that an alternative market might emerge from this Option, unsupervised by the BSB; and that BAME candidates tend not to perform well in centralised exams.
135. The Inns do not however wish to comment on the other reasons advanced by the BSB for rejecting Option C, which is self-evidently unsatisfactory and unworkable.

## XI

### THE COIC/BAR COUNCIL OPTION ADDENDUM TO THE 2016 FBT PAPER

136. The COIC/BC Option is accurately summarised in the Addendum to the 2016 FBT Paper. The BSB was first given formal notice of this Option in COIC'S Response to the 2015 FBT Paper and at the public debate it organised on 7 July 2016. In this Response its contents will be taken as read and it will be sufficient to list its merits.

137. It proceeds from the approved base of possession of a QLD or a non-law degree plus the GDL.

- (1) The degree must be of a class approved by the BSB.
- (2) It may be undertaken only by candidates who have passed the BCAT.
- (3) The Option adopts the existing syllabus of the BPTC and does not require the devising or setting of any other examination.
- (4) It also adopts the division of the BPTC between centrally assessed and locally assessed examinations. It does not require the BSB to increase the number of central assessments, although the BSB may have other reasons for wishing to do so.
- (5) The knowledge-based centrally- assessed examinations are assigned to Part 1. Candidates may prepare for them by any means or with the assistance of any course provider they think fit, or by private study, on-line or otherwise. Preparation for Part 1 is not in any way London-centric, or even UK-centric. It is interesting to note that the BSB does not refer to on-line or blended learning at any point in its paper, but this method of study, of increasing popularity among students, is one obvious mode of preparation for Part 1.
- (6) After passing Part 1 students progress to Part 2, which consists of the balance of the existing BPTC syllabus. This will be a skills-based course of training, as at present.
- (7) After passing both Parts (and attending their Inn's qualifying sessions) students are called to the Bar.
- (8) Pupillage remains as the last stage before authorisation to practise.

138. The COIC/BC Option makes no change to the existing content of training but dramatically opens up opportunities to train. The Option promotes flexibility, makes the course more affordable and accessible, and gives students who find that they struggle with Part 1 the opportunity to withdraw before making further financial commitments to training. It also

offers students a period for research and further inquiry into the possibility of obtaining pupillage and reflection on their choice of career.

139. In the unanimous opinion of the Inns the COIC/BC Option should stand as the ideal route to qualification, as explained in paragraphs 148 and 150 below. It is, with all due respect to the authors of Options B(iii) and(iv) and C, much more coherent and more carefully thought out.
140. The late admission of the COIC/BC Option to the consultation process has meant that the Inns do not have the benefit of considering any comments which the BSB might wish to make on it, or the opportunity to answer questions or criticisms which it might wish to raise. They would request the BSB to give them that opportunity.
141. **Pedagogic objections** The Inns are however aware of one ground of criticism, emanating principally from the BPTC providers.
142. The point is made that the teaching which students receive on a full-time integrated course blends the fact-based learning of the centrally - assessed subjects - Civil Litigation and Remedies, and Criminal Procedure, Evidence and Sentencing- with skills-based exercises in the same fields; and that this is a more effective way of preparing for the centrally-assessed examinations than by private study. Therefore, it appears to be argued, the BSB should deny students, in their own interests, the opportunity to prepare for any part of the BPTC by private study.
143. The Inns strongly challenge this criticism on a number of grounds. In essence, while they accept that the 'blended' method is one method of teaching and learning, they do not accept that it is the only method, or that it is the optimal method for all students. The subjects which would be included in Part 1 are fact-based black-letter law subjects. Students will previously have acquired their knowledge of other black-letter law subjects, via the QLD or the GDL, by traditional methods of study. Indeed the very subjects proposed for Part 1 appear on some university law courses. It has not been argued that that previous learning was ineffective because it was not reinforced by concurrent practical exercises.
144. On the contrary, the blended method itself has its drawbacks. When it is strictly followed the subject is developed piece-meal, taking one heading of the subject at a time, applying that through a practical exercise, and then moving on to the next heading. By progressing in this way students do not have the opportunity to look at the landscape of the subject as a whole before applying it in practice. By contrast, there is much to be said for acquiring an overall

knowledge of, for example, Civil Procedure as a whole (which would happen in Part 1) and then going back to the subject in Part 2, reinforcing the acquired knowledge in practical exercises, in conference, in writing an opinion, in negotiating, and of course in advocacy exercises.

145. Moreover, the Inns are not convinced that the method of learning advocated by the BPTC providers is strictly followed in practice. One of the Inns, with the assistance of its Bar students, has been able to look at the timetabling of teaching, learning and summative assessment between different providers. The variations are such that it is difficult to see a consistent, rational application of the method.
146. The Inns also take note of the very high failure rate on the BPTC. That alone would appear to cast some doubt on the effectiveness of current teaching methods. The report of one of the BSB's annual monitoring visits in 2016 makes it clear that one provider had re-designed its course, separating the teaching of knowledge and skills. The results achieved in the central assessments at that institution improved dramatically.
147. The students in question here are all postgraduates, familiar with the full range of different on-line resources and techniques of collaborative and independent study now available. They are able to gauge for themselves what is the method of learning which best suits them and is appropriate for their personal circumstances. The COIC/BC Option gives them complete freedom to choose their own route towards qualification.
148. **How the COIC/BC Option works** Paragraph 21 of the Addendum to the 2016 FBT Paper sets out alternative ways in which the COIC/BC option might be implemented.
149. To meet fully the criticisms of the existing scheme represented by Options A and B(i), and to give all students the benefits and protection of the COIC/BC Option, the BSB should ideally require all BPTC students, however they were studying, to take and pass Part 1 before they progressed to Part 2. Thus, if a student had opted to register with one of the existing BPTC providers, or a future competitor, the study for Part 1 would be front-loaded on to its taught course, and the dates for the centrally-assessed examinations would be set so that there would be a pause for formal assessment and personal decision before the student moved on to Part 2. A student preparing for Part 1 by private study, or with assistance from another source, would be treated in exactly the same way, according to the same timetable. In this way all students would have a flexible choice as to how they prepared for the common goal of the Part 1 examinations, and would not move on to Part 2 until they had safely cleared that first hurdle.

150. The alternative approach would be to have the two schemes running in parallel with each other. Here, providers would be permitted to deliver their ‘integrated’ course as at present, timetabling and blending the different modules of the course as they thought fit, subject only to compliance with the dates for the external assessments. Alongside that other students would be working on the Part 1 modules separately, and would move on to Part 2 if, but only if, they had passed Part 1 first. Under this alternative model the Inns are satisfied that providers of the Part 2 skills-based course would present themselves in the market, attracted by the prospect of teaching a more concentrated course to students who had already proved themselves by passing Part 1. It would of course defeat the whole purpose of this alternative scheme if students were permitted to register for Part 2 before they had passed Part 1; and it is unlikely in practice that a provider of a Part 2 course would accept them.
151. **Impact of the COIC/BC Option on international students** At the public debate held on 7 July 2016 a further objection was raised by a representative of one of the BPTC providers, namely that international students from outside the EU would be unable to undertake the proposed split course because of the rules relating to student visas. It was stated they necessarily have to attend the 30-week course as it is structured at present in order to be entitled to attend qualifying sessions in their Inn in London and study on the BPTC course. It was implied that, because international students must attend a full 30-week course, all students must be required to do so, whether they require a study visa or not. It would follow that a shorter taught course (Part 2 alone) should not be permitted. This objection is misplaced for a number of reasons.
152. First, it cannot be right that the study period to be undertaken by domestic and EU students should be dictated by rules which do not apply to their own circumstances. Secondly, the objection appears to be based on the premise that international students cannot obtain study visas for short periods. The Inns have been legally advised that that assumption is incorrect. Students from outside the EU who wish to undertake a full-time undergraduate or postgraduate course are normally required to obtain a Tier 4 (General) Visa; and it is likely that this is the type of visa which is held by students attending the 30-week integrated course. Students wishing to study for a shorter period – up to six months – can obtain a Short Term Visa. Such a visa would cover international students who had prepared for and passed Part 1 in their home country and then progressed to attending qualifying sessions and preparing for Part 2 in the United Kingdom.
153. Thirdly, the COIC/BC Option does not prevent international students from studying in the United Kingdom for both Parts of the BPTC, under a full Tier 4 (General) visa, if they wish to do

so; and they might well be attracted to extending their stay so that they can convert the qualification into a Master's degree, as many already do. The Inns are confident that the current providers of the BPTC will always be keen to meet the demand from international students to study for and be called to the Bar, and can be relied upon to keep arrangements in place which will meet that demand.

154. If the BSB accepts the COIC/BC Option the Inns will set to work to ensure that it is brought to fruition.

## XII

### ALIGNMENT WITH THE SRA'S PROPOSED SCHEME FOR THE EDUCATION AND TRAINING OF SOLICITORS

155. In paragraphs 50 and 51 of the 2016 FBT Paper the BSB states that it has kept in close touch with the SRA, seeking to ensure 'alignments' in critical areas allowing training providers to offer common routes to qualification. In paragraph 173 of the Paper it suggests that Option C is the option most closely aligned to the approach that the SRA is now consulting on. This may be what has inspired the BEE; but since the BSB has separately considered Option C on its merits and rejected it, the alleged association with the SRA's proposals does not seem to carry any weight.
156. In reality, the SRA's current proposals<sup>1</sup> for reform of the education and training of solicitors cannot offer any guidance in framing a new system for the Bar, for a number of substantial reasons.
157. First, the SRA is developing a system for the education and training for a profession which is ten times the size of the Bar. The diversity of solicitors' practices, the diversity of their working environments and the range of their business activities greatly exceed anything to be found at the Bar. Necessarily the SRA's criteria will be different to those applicable to a small, specialist profession whose main activities are advocacy and specialist legal advice and whose practitioners are overwhelmingly self-employed.
158. Secondly, the SRA's proposals have generated fierce opposition within the solicitors' profession and among commentators.<sup>2</sup> The Inns see no merit in aligning with a system which is itself highly contested.
159. Thirdly and most importantly the SRA's proposals do not, on analysis, bear any obvious resemblance to what is proposed in the 2016 FBT Paper.
160. **Summary of the SRA scheme** Briefly, the SRA divides the path towards authorisation to practise into two parts. At the end of each Part there is an examination. The examinations are

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<sup>1</sup> Published by the SRA October 2016.

<sup>2</sup> See for example the devastating criticism in Politeia 2016 "Dumbing Down the Law" by Professor Anthony Bradney.

designated SQE Stage 1 and SQE Stage 2. There are multiple paths to SQE1. The profession is no longer to be a graduate-only profession. Preparation may take place as part of a law degree, after a law degree, after a non-law degree, or by school-leavers or other non-graduates during an apprenticeship in a law firm. The present government provides financial support for such apprenticeships.

161. **The SQE Stage 1** examines candidates on ‘Principles of Professional Conduct Public and Administrative Law and the Legal Systems of England and Wales’; ‘Dispute Resolution in Contract and Tort’; ‘Property Law and Practice’; ‘Commercial and Corporate Law and Practice’; ‘Wills and the Administration of Estates and Trusts’; ‘Criminal Law and Practice’; and ‘Legal Research and Writing’. It is not clear whether, in preparing for SQE Stage 1 candidates who do not have a law degree are expected to undergo some education similar to the GDL. The current GDL would certainly not prepare candidates for SQE Stage 1, because the GDL is founded on quite different subject-matter – the core subjects discussed above.
162. The configuration of SQE Stage 1 has raised considerable concern within established law schools. They now fear that they may have to alter or adapt their academic syllabus to meet the demands of students who wish to become solicitors and want to progress straight after graduation to SQE Stage 1. They have also pressed the SRA on the exact content and form of the SQE Stage 1 examination.
163. Following SQE Stage 1 trainees proceed to or (if they are serving an apprenticeship) continue with a training contract in a law firm or other authorised training organisation. At the end of two years of training they proceed to SQE Stage 2.
164. **SQE Stage 2** examines candidates on ‘Client interviewing’; ‘Advocacy/Persuasive Oral Communication’; ‘Case and Matter Analysis’; ‘Legal Research and Written Advice’; and ‘Legal Drafting’. Each of these assessments is conducted in the context of practice subjects selected by the candidates from SQE1. After completion of the requisite training periods and SQE Stage 2 trainees are admitted to the Roll of Solicitors.
165. **Comparison between SRA proposals and CP2**
  - (1) The solicitors’ profession ceases to be a graduate-only profession.
  - (2) The syllabus for SQE Stage 1 does not appear to comply with the BSB’s own specification for the QLD (or GDL). Much less does it contain the core subjects regarded by COIC as a pre-condition for progressing to the BPTC.



(3) Neither the syllabus nor the required standard of performance are likely to comply with the BSB's Professional Statement or the Threshold Standard, or the LSB guidelines as to what barristers must know on Day 1. The subjects designated in SQE Stage 1 for trainee-solicitors are heavily weighted toward the practice of a solicitor.

(4) It is a condition of taking SQE Stage 2 that candidates should first have completed two years' workplace training in a law firm or other legal workplace. By contrast it is not a condition of undertaking the BPTC or of call to the Bar that candidates must have completed or even been awarded a pupillage.

(5) The syllabus for SQE Stage 2 again bears no relation to what is required for practice at the Bar. It is unlikely to comply with the Professional Statement and Threshold Standard or the LSB guidelines, so far as they are applicable to the Bar

166. The Inns cannot find within the SRA's latest, and highly contested, proposals any useful guidance for the future of Bar training, and it cannot detect in the 2016 FBT Paper anything which has been derived from it.
167. On the contrary, if the SRA abandons the GDL the BSB will have the opportunity to give fresh consideration to it. The point is not mentioned in the 2016 FBT Paper. If the SRA no longer requires non-law graduates to obtain the GDL that should, in the view of the Inns, provide the BSB with a positive opportunity to consolidate the GDL's effectiveness for the Bar. The number of non-law graduates who are taking it as a step towards a career at the Bar will be sufficient to maintain its viability for a number of providers, even if the number of providers goes down slightly.

## XIII

### THE TEACHING OF ETHICS

168. In paras. 82-85 of the 2016 FBT Paper the BSB draws attention to the teaching of ethics and raises the general question (Question 7, page 26) as to whether respondents agree with how ethics is taught and assessed under the present system.
169. The Inns are aware that ethics is at present taught and assessed as a separate subject on the BPTC, and that teaching of the subject and the assessment of examination candidates have given rise to debate. The Inns and Circuits ensure that it is taught again (without express requirement) on their pupils' courses. It is then taught for a third time, as a mandatory subject, as part of the Inns' and Circuits' New Practitioners' Programmes.
170. The BSB will be aware that the Advocacy Training Council and its successor the ICCA have been actively researching the teaching of professional ethics and commissioned a survey (completed December 2015) from UCL on the effectiveness of current teaching methods. In response to the survey the ICCA has established a Professional Ethics Committee under the chairmanship of Paul Stanley QC to carry this work forward.
171. The topic is a complex one. The ICCA is likely to develop further training materials on this and is willing to share its research and future plans with the BSB. The study of the teaching of professional ethics can proceed in parallel with the other topics covered in the 2016 FBT Paper and this Response.

## **ANNEX TO THE RESPONSE:**

### **ANSWERS TO THE BSB'S QUESTIONS**

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

**The Inns agree.**

**Question 2:** Do you agree with the BSB's proposal to maintain the principle the bar remain a graduate profession? If no, please state why not.

**The Inns agree.**

**Question 3:** Do you agree with the BSB's proposal to maintain the normal expectation of a minimum degree classification of 2:2? If not, please state why not.

**The Inns note the proposal, which is controversial and divides opinion. If holders of 2.2 degrees are to continue to be entitled to study for the Bar they should be given a clear warning that their prospects of obtaining pupillage are very poor, and the relevant statistics should be shown to them.**

#### **Option A**

**Question 4:** Do you agree with our analysis of this option's capability to meet the requirements of the Professional Statement? If not, please state why not.

**The Inns' own analysis of this Option is set out in Section VIII of the Response. They accept that it offers flexibility of study location, is attractive to international students, and enables students to progress to a LL.M. The Inns' criticisms of the Option are much more fundamental than those set out in the BSB's analysis.**

**Question 5:** Do you agree with our analysis of this option's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.

**See the answer to Question 4. The Option actively defeats the objectives of access to the profession, and (by inference) the maintenance of the rule of law, and it narrows consumers' choice of professional representation.**

**Question 6:** Do you agree with our analysis of the option's capability to meet the LSB's statutory guidance? If not, please state why not.

**Option A defeats the LSB's objective of flexibility in the acquisition of professional qualifications.**

**Question 7:** Do you agree with how ethics is taught and accessed under Option A? If not, please state why not.

**The teaching of ethics is a large and complex topic on which the Inns of Court College of Advocacy is actively engaged: see Section XIII of the Response. It cannot be addressed in a short answer to this Question**

**Question 8:** Do you agree with the cost analysis we have set out above for Option A? If not, please state why not.

**Yes**

**Question 9:** Do you agree with the higher education implications we have set out above for Option A? If not, please state why not.

**Yes, but this is not of central importance.**

**Question 10:** Do you agree with the equality and diversity implications we have set out above for Option A? If not, please state why not

**Option A actively defeats the cause of equality and diversity.**

**Option B**

**Question 11:** Do you agree with our analysis of Option B's ability to meet the requirements of the Professional Statement? If not, please state why not

**The Inns' answers to this question vary according to the different B Option which is being discussed. Their comments on Options B(i)-(iv) are set out in Section IX of the Response. There is no single answer.**

**Question 12:** Do you agree with our analysis of Option B's ability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.

**The Inns' criticism of the different pathways contemplated in Option B is that they will not in practice meet the stated objectives. None of the Options B(ii)-(iv) offers a viable, realistic alternative to Option B(i). As to Option B(i), see the Inns' criticisms of Option A and B(i), which are identical models.**

**Question 13:** Do you agree with our analysis of Option B's ability to meet the LSB's statutory guidance? If not, please state why not.

**See the Inns' answer to Question 12.**

Question 14: Do you agree with our view of how professional ethics is taught and assessed, and how ethical behaviour and professional integrity are fostered, under Option B? If not, please state why not.

**See the Inns' answer to Question 7**

**Question 15:** Do you agree with the cost implications we have set out above for Option B? If not, please state why not

**The Inns cannot answer this question because the cost implications of Option B are not worked out or adequately stated.**

**Question 16:** Do you agree with the higher education implications we have set out above for Option B? If not, please state why not.

**Yes, but this is not of central importance.**

**Question 17:** Do you agree with the market risk analysis we have set out above for Option B? If not, please state why not.

**The market risk analysis (paras. 155-162) is too tentative and speculative to enable the Inns to form a concluded view.**

**Question 18:** Do you agree with the equality and diversity implications we have set out above for Option B? If not, please state why not.

**No. Options B(ii)-(iv) are not capable of providing a viable competitive alternative to Option B(i) in the real world. See the answer to Question 12 above. it follows that they do not address the equality and diversity problems inherent in Options A or B(i).**

### **Option C**

**Question 19:** Do you agree with our analysis of this option's ability to meet the requirements of the Professional Statement? If not, please state why not.

**The BSB's stated reservations about Option C, which the Inns support, do not however fully record the serious defects of this Option. The Inns' rejection of this Option is explained in Section X of the Response.**

**Question 20:** Do you agree with our analysis of this option's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not

**See the answer to Question 19 above.**

**Question 21:** Do you agree with our analysis of Option C's ability to meet the LSB's statutory guidance? If not please state why not

**See the answer to Question 19 above..**

**Question 22:** Do you agree or disagree with our understanding of how Option C promotes the professional principles, ethical behavior and integrity? If not, please state why not.

**See the answer to Question 19 above. The Inns have no confidence that the suggested BEE and shortened skills course will serve any of these objectives, but will compromise them.**

**Question 23:** Do you agree with the cost implications we have set out above for Option C? If not, please state why not.

**Yes, so far as they are relevant.**

**Question 24:** Do you agree with our analysis of Option C's impact on the higher education training market for the Bar? If not, please state why not.

**Yes. Option C has no prospect of surviving market competition.**

**Question 25:** Do you agree with the equality and diversity implications we have set out above for Option C? If not, please state why not.

The discussion in paras. 194-196 on this topic is inconclusive. The Inns can foresee that, if Option C were implemented, graduates of this course would have very limited prospects of further advancement for the reasons suggested by the BSB.

**Question 26:** After having given consideration to the three options above, please tell us which option is most appropriate and why you think this is the case.

This question is fully discussed in the Response. The Inns agree in principle that there should be more than one method of preparing for qualification after the mandatory QLD/GDL and BCAT. Options B(i) and (ii) should not be ruled out in principle, despite the drawbacks set out in Section IX of the Response. Option B(iii) is an inappropriate Option, likely to appeal (if at all) to a small minority of training organisations. Option B(iv) is of no interest to the self-employed Bar and is unlikely to appeal to employers of barristers at the employed Bar. None of them addresses the real problems discussed in the Response. For these reasons the Inns continue to support the COIC/BC Option outlined in the Addendum to the Paper and fully discussed in Section XI of the Response.