



The Council
of the Inns
of Court

Speech

DEBATE ON THE FUTURE OF EDUCATION AND TRAINING FOR THE BAR

7 July 2016

1. The reforms I am proposing are advocated and supported by all 4 Inns of Court and the Bar Council. I have been asked to speak on behalf of all them.
2. In a nutshell our proposals are:
 - i. That the existing three-fold structure of training, namely the academic, vocational and professional stages – i.e. law degree or other degree + law conversion course, Bar Professional Training Course (BPTC), and pupillage – should be retained;
 - ii. That the syllabus for each of these stages should be retained; but
 - iii. That, to promote greater diversity and equality of opportunity among able students looking for careers at the Bar, and in the interests of all Bar students, the Bar Professional Training Course should be re-structured.
3. That has been the thrust of the Inns' and the Bar Council's Responses to the BSB's various Consultation Papers issued during 2015. We have paid close attention to the debate which has followed, and have not been persuaded to change our views.
4. In the rest of this short contribution I shall concentrate on the BPTC where, in the view of the Inns and the Bar Council, major reform is required to remedy a situation which is causing serious damage to the reputation of the Bar Standards Board and the profession.
5. Before I come to the detail I would like to say something about the bodies who have asked me to speak on their behalf. They are, between them, the public representatives of the practising profession. The interests of all practising barristers

are represented by the Bar Council. All barristers and virtually all judges are members of one of the Inns of Court.

6. Students wishing to be called to the Bar join an Inn of Court. From that moment on their training and their welfare is the concern of their Inn. While they are studying on the BPTC we teach them advocacy and the ethics of practice in the courts, and provide them with a network of mentors and advisers. The Inns of Court contribute, between them, some £4m a year towards the upkeep and expenses of their students. No other organisation provides such assistance. I shall return to this topic.
7. The Inns and the Circuits continue to train their members during pupillage and as new practitioners. The Inns, the Circuits, the Inns of Court College of Advocacy (previously the Advocacy Training Council), the Bar Council and the Specialist Bar Associations have extensive training programmes for established practitioners delivered by experts at nil or negligible expense.
8. The Bar Council's and the Inns' comments on the BSB's various options for reform are based on all this activity, and of course the knowledge and experience of actual practice at the Bar possessed by our members themselves, and the judicial members of the Inns.
9. For many years now the Inns and the Bar Council have been deeply concerned about the BPTC in its present format. Our concerns focus on three central points:
 - i. The high cost of the Course;
 - ii. The high failure rate; and
 - iii. The poor prospects of obtaining pupillage even for those who pass.
10. Our concerns are now supported by the irrefutable evidence provided by the Bar Standards Board in its comprehensive set of statistics published in May 2016.
11. The starting-point is the question of the fees. With rare exceptions all Bar students must have university degrees. Graduates, unless they are lucky in their family background, will have accumulated debts of about £40-50,000 when they take their degree. If they have a Qualifying Law Degree and wish to study for the Bar they must enrol with one of the providers of the BPTC for a 30-week course, for which the fees vary from just below £14,000 to £19,000. If their degree is not a QLD they must undertake a law conversion course first. Over and above the cost of these courses they have to meet the ordinary costs of living for the period of their study.

12. For the two academic years 2012-13 and 2013-14, 3,243 full-time and part-time students are recorded as having enrolled on the course. Taking an average course fee of £16,500 for those two years that represents a gross turnover of over £52m. For the year 2014-15 1307 full-time students are recorded as having enrolled. Taking the same conservative estimate of fees that produces a gross turnover of over £22m for that year.
13. What did these students get in return? For those same three years it is recorded that, as at January 2016, 648 students had failed the course. That means that they had thrown away over £10m in fees for nothing. Another 686 are recorded as not having completed, in some cases even after three years. Some of those will probably ultimately fail, adding to the number of failures.
14. Those who have passed are divided into three categories: Outstanding, Very Competent, and Competent. Very roughly one quarter of them 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 – chambers and other law offices – according to their perception of their needs, and the resources they have available to deliver training. The number of pupillages now stands at about 400 a year.
15. Another Table in the BSB's statistics 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 compiler of the statistics has identified 984 awards of pupillage. 325 went to candidates who were classed as Outstanding, and 628 who were classed as Very Competent. No more than 30 pupillages went to students classed as Competent.
16. This number of 30 may be contrasted with the number classed in the examinations as Competent for the last three of those four years: 840. You have to discount that figure by 25% for overseas students, but add back something for the missing first year. It indicates that the prospect of a domestic or EU students classed as Competent obtaining pupillage is less than one in 20. By my reckoning that is another £10.7m-worth of fees thrown away.
17. I do not have time to refer to the complaint often made to the Inns by our student members that progress on the course is frequently impeded by the presence of students who are clearly struggling with the materials; nor to the fact that an equally tiny minority of pupils have degrees below the level of First Class or Upper

Second; nor to address the question whether performance in the BPTC does in fact and anyway influence the award of pupillage in the generality of cases. The main lesson we learn from this evidence is that most of the students who enrol on the Bar Course are doomed in one way or another to disappointment at great expense to themselves or their families.

18. The Bar Standards Board has to decide whether this state of affairs is acceptable. In the view of the Inns and the Bar Council it is quite definitely not. Indeed some of our members think it is little short of scandalous.

19. To meet this problem we propose that the BPTC should be split into two Parts.

- i. Part 1 should consist of the knowledge-based part of the course, principally the rules and practice of civil litigation, criminal proceedings and sentencing. Students should be free to prepare for this Part by private study or by using any other source of tuition they think fit, and can afford. It will be centrally set and examined by the Bar Standards Board at times during the year and at places determined by the Board.
- ii. Part 2 should consist of the skills-based part of the course, for which attendance at an approved provider would still be required.
- iii. Students should not be permitted to progress to Part 2 until they had passed Part 1.

20. This model, again to speak as concisely as I can, is intended to serve a number of purposes.

- i. First, it will enable students who do not have the funds immediately to commit themselves to an expensive 30-week course to embark on the course at little or at least very much less expense. They can do it from anywhere in the world, and if they fail they will not be throwing away thousands of pounds.
- ii. Moreover, even students who pass will have the opportunity to review their choice of career before committing themselves further. They may decide, on further reflection, and with better information about prospects of pupillage, that a career at the Bar is not for them, especially if they feel destined to achieve no more than a “Competent” grade.
- iii. The requirement to pass Part 1 will replace or at any rate overlay the present Bar Course Aptitude Test. It will be recalled that this test was introduced for the very purpose of restricting entry to those likely to pass the course; but

regulators calibrated the pass mark at such a low level that it failed to achieve its intended purpose. Much of the present problem results from that decision.

- iv. The change should also reduce the number of weaker students holding back the rest of the group undergoing instruction on Part 2
- v. Fifthly, the change will enable the Inns to review their scholarship schemes, perhaps to focus on funding Part 2 students only, and thereby possibly to allocate their funds more widely.

21. We believe that this change will go some of the way to solving the problems which the Inns and the Bar Council have identified even if it cannot solve all of them. It should bring down the unacceptably high failure rate, which in the experience of some is among the highest in post-graduate courses anywhere. It will split the course between a less expensive start and a more expensive second stage, giving students time to think again before going further. It will limit candidates in Part 2 to those more likely to succeed.

22. It will not increase the number of pupillages. It will have to be reinforced by giving much wider publicity to the small number of pupillages available and the kinds of abilities and qualifications which are looked-for by supervisors. Both the BSB and the professional bodies carry a large burden of responsibility in this respect.

23. I anticipate that it will be argued, on pedagogic grounds, that teaching and learning the subjects that we would place in Part 1 are more effective if they are blended with the teaching of practical skills. I do not myself accept the argument; but even if it were true it is my view that any improvement is marginal, and bought at an extravagant price.

24. Finally, I reject the argument that the apparent openness and accessibility of the present system promote equality of opportunity to all. In my opinion they have the very reverse effect. The present combination of high risk and high cost shuts the door to many potential able recruits from less favoured backgrounds. You only have to talk to them to find that out.

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