



Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training

Response of the Criminal Bar Association

Any questions in relation to this response should be referred to either:

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The Criminal Bar Association

1. This is the response of the Criminal Bar Association (the "CBA") to the Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training.
2. The CBA represents the views and interests of practicing members of the criminal Bar in England and Wales.
3. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.
4. The CBA is the largest specialist Bar association, with around 4,000 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery

of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

Overview

5. The CBA has seen and endorses the full and detailed Response submitted by the Bar Council and to which many criminal barristers (amongst others) have contributed. Nothing in this Response is intended to conflict with the contribution made by the Bar Council.
6. The CBA joins the Bar Council in observing that we cannot comment on the BSB's claim that it will review the three stages of training consistent with the Professional Statement when the Professional Statement itself has yet to be finalised, let alone the Threshold Standards associated with it.
7. The CBA draws attention to the short paper prepared by Elaine Freer that is annexed to this Response. Ms Freer's paper is a digest of the relevant parts of her PhD thesis that she has recently completed. It is as yet unpublished but we commend it to the BSB.

The Academic Stage

8. We agree with the general consensus is that the academic stage provides a solid basis for further professional training and do not invite substantive changes to the content at the academic stage.

The Professional Stage

9. The CBA considers that the current vocational stage is (1) far too expensive and (2) that it is an appalling situation that so many students are completing this course when the numbers of available pupillages are so small by comparison. The evidence we have gathered suggests that the huge numbers and very mixed range of ability of students on the course makes the task of teaching far more complex and damages the quality of the training delivered to the more able students. The cost of the course is an enormous barrier to a thriving and diverse profession: it deters students from poorer backgrounds who cannot afford the fees. If they borrow against future income, the hangover will last for years, especially in publicly funded work, which needs people from diverse backgrounds. Even the most ambitious and talented who persist and go on to practise in this area soon lose heart as their continued debts drive them out of the profession. The cost is injurious for the individuals and damages the public interest by choking off the supply of lawyers from all but moneyed backgrounds.
10. The CBA is not aware of any serious complaint about the core curriculum content as appears in the Handbook. Such problems as have been identified ought be capable of simple resolution by the BSB. The problems we have identified largely derive form complaints about cost, quality and delivery of teaching and numbers. There is also a serious body of opinion that many of the subjects can be far better taught, assimilated and learnt once the student begins to experience practice during pupillage. The course may not need to be changed but most seem to think the current content could and should be taught in a maximum of 3-4 months and serious consideration must be given to the stage at which certain elements are in fact taught at all.

11. Some students combine long hours with paid work – to meet their living costs, if not the fees – and report that they can still complete most of the course in this way, but over an extended period of two to three years. This reflects poorly on the teaching and marking of tests, and means that when they finish the course they will have forgotten much of what they learnt at the start. This is a poor way of preparing lawyers for their careers.
12. The structure of the current arrangements as currently described is not working. We have found no pupil or “early years” practitioner who thinks that the current arrangements are satisfactory and many consider them very poor indeed. Many correspondents use the word “fraud” to describe their opinion of the worth of the course and how it equips them for pupillage if they have been fortunate enough to obtain one, or for any other purpose if they have not.
13. We note and applaud the proposals by COIC for delivery of the present BPTC curriculum via a 2-part structure. This may alleviate some of the worst of the problems we describe.
14. But in addition to the COIC proposals there may be other ideas worth considering. It may, for example, be possible to consider different ways in which the second stage of skills training could be delivered by appropriately trained educators (whether practising barristers or not) in modules or chunks built in to pupillage or around other employment. These are the sort of tasks that suitably accredited barrister-led entities would be well placed to deliver around the country.

Pupillage

15. We favour approach 1 in the consultation paper. The regulation of pupillage needs tightening rather than relaxing and the Bar and the BSB must look to test and improve standards at every opportunity. The CBA can see no obvious merit in making arrangements more flexible.

Part 1: the Academic Stage

QA1: Does possession of a lower second class degree provide good evidence that an individual possesses the intellectual abilities that are consistent with those described in the draft Professional Statement (paragraph 63 above)?

16. No, unless there are exceptional circumstances.
17. It must be remembered that some extremely able students underperform in university exams for a variety of valid reasons and there is no good reason to *necessarily* exclude such students from consideration. Furthermore the standards across different institutions in marking degrees differs a great deal and the academic measure may be of very little value when determining how good an advocate the candidate may become. If the BSB agrees that there ought to be more rigorous selection prior to starting the course then it may be that high performance in such a selection test would outweigh the lack of evidence of talent that a 2:2 may provide.
18. The CBA thinks that the minimum requirement for the BPTC should remain as a 2:2. If the BSB decides otherwise and that a 2:1 is required then we would invite consideration be given to the possibility of making the course open to those who did not achieve a 2:1 but do pass a challenging aptitude test.

QA2a: If an individual does not hold a degree, or the degree that they hold was not passed at the required level, are there alternative means by which these abilities can be demonstrated?

QA2b: If so, how?

19. The absence of a degree does not mean an individual lacks the abilities to succeed. The CBA is not against the idea in principle that a person could gain access to the profession by other means, but we see no obvious route or method by which this could be achieved. Should the BSB have specific ideas on the subject we would be pleased to comment.

QA3: Are there any other issues in relation to intellectual abilities and degree classification, as set out above in paras 65 to 74, which we have failed to identify?

20. No.

QA4: Do you agree that “knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context” provides an essential foundation for the legal knowledge and understanding that our [draft] Professional Statement requires? Please tell us why or why not.

21. We think we know what the BSB means by this. But it must be possible for the BSB to find a formulation that does not require reference to a table and series of examples. We invite the BSB to rewrite the draft Professional Statement in language that is clear and accessible to all. This is not. As for the substance set out at paragraph 82 of the consultation, the answer is “of course these things matter” but most of what is described here comes from a simple understanding of how the principles of law fit with real life. The statement is so vague as to lack meaning. These sort of banal generalities are no substitute for knowledge of the core law subjects. If we have understood correctly, we consider that it ought to be possible to “teach” these elements very swiftly indeed. We observe for example that the whole category of “social” is an intrinsic part of the purpose of pupillage in any event.

QA5: Assuming you agree with the formulation in paragraph 83, which of the above ways (a to e) do you think we should use to make sure that those seeking to be barristers and completing the academic stage have sufficient legal knowledge and understanding to progress towards full qualification as a barrister? Please explain the reason why you have chosen these.

22. We do not agree with the premise advanced. The only sensible option is (a). We disagree that the academic stage curriculum requires significant change.
23. The list in paragraph 81 is a robust starting point for good reason, although we wonder why equity / trusts have been omitted. The list can and should be kept under review but there is a reason why these foundations have served the common law world so well for so long and why London is the litigation centre of the world.
24. Paragraph 60 of the paper is misconceived. No practitioner regrets a breadth of knowledge and none is a better lawyer for an overly narrow view of the world or the law. “Crime”, for example, intrudes increasingly into all other areas as states across the world legislate enthusiastically and courts in various jurisdictions seek to extend their range. Narrowing the academic stage would be a real strategic error, both for every individual who suffered from a less broad education and for the development of law in the England and Wales generally. Ironically such an approach appears inconsistent with the BSB’s aim

to make it possible for barristers to practice in newer “more flexible ways” through the evolution of its entity programme.

25. The CBA thinks that the assumptions built in to paragraph 61 are flawed and contrary to the experience of generations of lawyers. Poor teachers and second rate courses / exams cause these problems. But all good university law lecturers show their students how the knowledge that they are acquiring forms a coherent part of the body of law they are learning.
26. Paragraph 63 of the paper sets out elements that are a key part of the skills that barristers require. But taking each in turn: 1.1 belongs in the academic stage but it ought not to be possible to teach the core subjects without already achieving this. 1.5/6 - students are expected to acquire these skills as a matter of course, whatever they study, as is the ability to think critically, and to recognise the strengths and weaknesses in one’s own and others’ arguments. These are implicit and not separate subjects. 2.4 - this is critically important but best introduced in vocational training and then *learnt* during pupillage. It is not an academic subject. 4.1/7/8 – again equally important but also introduced in vocational training and then *learnt* during pupillage.

QA6: Would your answer be different if a student had taken a non-law degree plus a GDL?

27. No. A non-law degree plus a GDL has always been and continues to be a perfectly good route into successful practice. We have explained above why we think it is unnecessary and wrong to meddle with the academic stage. In addition we would not want an extension of “necessary” subjects that would make this route practically impossible.

QA7: Are there any other ways of doing this that we have not identified?

28. Not that we are aware of.

QA8: Are there any other issues associated with the academic stage of training that we have not identified and to which, given our role as a regulator of barristers, we should be turning our minds?

29. No. There is nothing wrong with the academic stage. If the draft Professional Statement conflicts with this, then the draft Professional Statement needs to be changed if it is to have the confidence of the profession. The academic stage teaches (or ought to teach) the law in national and international context. The vocational training is (or ought to be) for far smaller numbers who wish to pursue a career as a barrister.

Part 2: the Vocational Stage

QV1: Do you agree that some form of vocational training is needed to bridge the gap between an academic stage and a professional stage?

30. Yes.

QV2: Do you think the features of the changing legal services market which we have identified are the ones which have the main impact on vocational training for barristers?

31. Yes, to the extent to which we are able to comment.

QV3: Are there any other features of the legal services market now and in the future which you think will have an impact on vocational training for barristers?

32. No.

QV4: Are the above issues in connection with BCAT and admissions to the BPTC correctly identified?

33. BCAT as it currently exists is described by many as an insult. It costs (yet more money) but is so trivial a test that it achieves nothing. If it is a true reflection of having sufficient aptitude to pass the BPTC then it just illustrates how little the BPTC is worth.
34. BCAT must be re-designed to fairly filter out applicants who have no prospect of obtaining pupillage or practising as a barrister. If this cannot be done then it should be abandoned as a waste of time and resources.

QV5: Are there any other issues connected to the BCAT and admission to vocational training that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

35. We have addressed this topic in several previous answers. We repeat what appears in paragraph 8 above. The BSB has a responsibility to fashion a system that makes sure that those who engage in this process have a reasonable chance of success and that those who do not are filtered out early, before they incur a further £30,000+ of debt. Unless we can make the whole process far more reasonable the flow of talented advocates into publicly funded work is going to dry up and even those who enter will not stay long before they leave. The current arrangements are a positive barrier to diversity.
36. If the BCAT were a meaningful test this might help. The other obvious solution would be to adopt the COIC solution of dividing the BPTC into two parts. As we understand the proposal it is described thus: (1) an online and inexpensive course in evidence, procedure and ethics, with a high pass mark; and (2) a classroom-based course in advocacy, drafting and (again) ethics in practice. An inexpensive first part, with high standards, would filter out the inept and be open to the widest possible pool of talent from all parts of society. Those selected would be far better placed to take on with confidence the rigours of further skills training and with more confidence that their prospects will be better. The skills training will be all the better for being fully populated by candidates of real merit.

QV6: Are the above issues in connection with content, structure and delivery of the BPTC correctly identified?

37. We agree with the views expressed in the Bar Council Response.

QV7: Are there any other issues connected to content, structure and delivery of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

38. We have nothing to add to what we have said above.

QV8: Are the above issues in connection with quality assurance and assessment of the BPTC correctly identified?

39. We agree with the views expressed in the Bar Council Response.
40. Where relevant this response is based on a selection of representative views expressed by recent correspondents, which we consider articulate real concerns about the merit of the course and its delivery. The CBA does not presume to tell the BSB how to audit the BPTC, although we support any steps the BSB may choose to take to raise standards at BPTC.

41. Perhaps the BSB might consider is to conduct an “exit poll” of all those who leave the course and go in to pupillage as to how useful they have found what they learnt. This could be tested in month 4 and 10, for example, to better establish the truth as views develop during pupillage. There would be an additional benefit of building confidence in young practitioners that the BSB is relevant, justifies its cost and actually cares what they think.

QV9: Are there any other issues connected to quality assurance and assessment of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

42. We have nothing to add to what we have said above.

QV10: Are the above issues in connection with the cost and affordability of the BPTC correctly identified?

43. The CBA does not accept the premise in the second sentence of paragraph 152. We would wish to see clear *evidence* of this before any remedial changes were taken. We think the BSB should be examining critically how much money is being taken out by the owners and whether the staff are correctly rewarded/ incentivised. If we are wrong about the sentence in paragraph 152 and the BSB is right on this point then the current course content cannot survive and the Regulators and profession must think again about how it proposes to deliver vocational education. We refer you back to paragraph 13 above.
44. Chapter 5 of the Rivlin Report on ‘Criminal Justice Advocacy and the Bar’ accurately reflects the views of the criminal Bar as to the key problems we face and we urge the BSB to re-read this Report and accept the points made before making any final decisions.

QV11: Are there any other issues connected to the cost and affordability of the BPTC that you think the BSB as a regulator should be seeking to address when thinking about the future of vocational training for barristers?

45. We have nothing to add to what we have said above. We agree with the views expressed in the Bar Council Response.

QV12: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

46. We agree with the views expressed in the Bar Council Response.

QV13: Are there any other advantages or disadvantages of this approach that you can discern?

47. None we have identified.

QV14: Are there any equality impacts of this approach that you are aware of?

48. See paragraph 34 and 35 above. The same points apply.

QV15: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

49. We agree with the views expressed in the Bar Council Response.
50. We add one gloss. It seems to us that it may be possible to conduct some of the advocacy (oral and written) training *within* pupillage if, and only if, it is delivered by appropriate trainers on a consistent basis. We are not proposing that such training be left to

individual supervisors or even chambers. But, for example, it might be possible for suitable training to be run on each circuit (perhaps city by city) by suitably trained practising barristers in short modules during pupillage. The content and structure of such an option would of course have to open to detailed scrutiny by the BSB. This would have the advantage that development and training continues during a period when pupils have the best opportunity to learn from colleagues in chambers and are able to practise what they have been observing. The CBA thinks there might be a way of offering high class training at considerable saving to the students.

QV16: Are there any other advantages or disadvantages of this approach that you can discern?

51. No.

QV17: Are there any equality impacts of this approach that you are aware of?

52. Any system that lowers cost and raises standards will be fairer and more open to all. The “equality impacts” can only be good.

QV18: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

53. We agree with the views expressed in the Bar Council Response.

QV19: Are there any other advantages or disadvantages of this approach that you can discern?

54. No.

QV20: Are there any equality impacts of this approach that you are aware of?

55. Our evidence suggests that the major impediment to diversity is cost. We do not share the consultation paper’s anxiety about the effect of this approach on diversity.

QV21: From the three approaches outlined above, do you have a preference and if so, why?

56. Our overwhelming preference is for the third approach, for the reasons given in our answers to questions 15 to 18 above.

QV22: have you identified any other approach we might reasonably adopt in respect of vocational training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

57. No.

Part 3: the Pupillage Stage

QP1: Have we correctly identified the issues relating to recruitment and selection and access to pupillages?

58. We agree with the views expressed in the Bar Council Response.

QP2: Are there other issues which the regulator should take into account when thinking about recruitment and selection and access to pupillage?

59. We agree with the views expressed in the Bar Council Response.

60. We have seen that the number of pupillages being offered by many criminal sets has fallen in recent years. We think the problem is magnified in smaller sets, whether in London or across the rest of the country. Whatever changes may be contemplated by the BSB it would be disastrous if these made the system too bureaucratic and a further disincentive to offering pupillage.

QP3: Have we correctly identified the issues relating to the structure of pupillage and the quality of experience for the pupil?

61. We agree with the views expressed in the Bar Council Response. We add that if there is any or sufficient *evidence* (rather than speculative anxiety) of a problem as expressed in paragraph 265 there are “light touch” solutions that might assist. For example chambers could be encouraged to rotate pupils every three months.

QP4: Are there other issues which the regulator should take into account when thinking about the structure of pupillage and the quality of experience for the pupil?

62. We agree with the views expressed in the Bar Council Response.

QP5: Have we correctly identified the issues relating to meeting the required standards in pupillage?

63. We agree with the views expressed in the Bar Council Response.

QP6: Are there other issues which the regulator should take into account when thinking about meeting the required standards in pupillage?

64. No.

QP7: Have we correctly identified the issues relating to the regulator’s role in pupillage?

65. No. We agree with the views expressed in the Bar Council Response.

QP8: Are there other issues which the regulator should take into account when thinking about the regulator’s role in pupillage?

66. No.

QP9: Are there any other issues not raised in the categories above which we have failed to identify in relation to current arrangements for pupillage?

67. No.

QP10: Do you agree with this fundamental position regarding work-based training as a pre-requisite for authorisation?

68. Without question. Currently the balance is wrong. All the suggestions we have made are designed to redress this balance. These all have advantages in promoting diversity, reducing cost and improving standards. The CBA would be delighted if the BSB were to move swiftly to the COIC model or something close to it. If the BSB considers that the future training needs might be met by allowing slots during pupillage (three days a month for example during the first six months) then these suitably accredited courses could be run at reasonable cost by appropriately trained barristers in practise.

QP11: Do you agree that pupillage should be more flexible in its content, with the BSB taking a more generally permissive approach to the sorts of activities that might

constitute appropriate content, as long as the requirements of the Professional Statement could be demonstrated as being met?

69. We agree with the views expressed in the Bar Council Response.

QP12: What are the risks, if any, associated with this?

70. We agree with the views expressed in the Bar Council Response. The current situation could hardly be worse for students and the public interest.

QP13: We have consulted separately on the Professional Statement and you may or may not have responded to that consultation. If you have not, do you agree that the Professional Statement should be used to define the knowledge, skills and attributes to be demonstrated at the end of pupillage?

(If you have responded to the Professional Statement consultation, please feel free to re-state or vary your position on this question here.)

71. The CBA did not respond separately to the Bar Council. But we endorse the concerns expressed in that paper about the draft statement. Our views on the adequacy of the current draft are set out above.

QP14: Do you agree with the principle of the rebalancing of responsibility for pupillage as between the "entity" (chambers or otherwise) and the individual pupil supervisor? Why/Why not?

72. No. We agree with the views expressed in the Bar Council Response.

QP15: Do you think there should be more systematic initial validation of PTOs and supervisors?

73. Yes. We agree with the views expressed in the Bar Council Response.

QP16: Do you think there should be periodic re-validation of PTOs and supervisors?

74. No. We agree with the views expressed in the Bar Council Response.

QP17: Do you think there are benefits in a published list of approved PTOs and supervisors?

75. Yes. We agree with the views expressed in the Bar Council Response.

QP18: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

76. Yes. We agree with the views expressed in the Bar Council Response.

QP19: Are there any other advantages or disadvantages to this approach?

77. No.

QP20: Are there any equality impact of this approach that you are aware of?

78. We agree with the views expressed in the Bar Council Response. If the BSB makes every decision about the area informed by the desire to lower cost and raise standards, it will strike a blow for diversity that will be welcomed loudly at the criminal Bar and more widely.

QP21: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

79. The disadvantages are well identified. This proposed approach has no advantages. It is more costly and unnecessarily complex. Our preferences are set out above.

QP22: Are there any other advantages or disadvantages to this approach?

80. See QP20 above.

QP23: Are there any equality impact of this approach that you are aware of?

81. See QP20 above.

QP24: Do you agree with this analysis of the advantages and disadvantages of this approach? Are there any specific points you disagree with?

82. We agree with the views expressed in the Bar Council Response. We do not see any advantages to this approach and we think it is inconsistent with the BSB's responsibilities to seek to raise standards wherever possible and thereby protect and serve the public interest.

QP25: Are there any other advantages or disadvantages to this approach?

83. No.

QP26: Are there any equality impact of this approach that you are aware of?

84. See QP20 above.

QP27: From the three approaches outlined above, do you have a preference and if so, why?

85. The first of the three approaches is most closely aligned with what we would propose however this must be read in the context of the remainder of our response to this section of the consultation.

QP28: have you identified any other approach we might reasonably adopt in respect of professional, work-based training for barristers and which would satisfy our aims and regulatory and statutory obligations as set out earlier in the consultation? If so, please briefly outline that approach.

86. No.

30th October 2015