

Sent by email only to futurebartraining@barstandardsboard.org.uk



15 January 2018

Dear Sir/Madam

Consultation on Future Bar Training: Shaping the education and training requirements for prospective barristers.

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the Bar Standards Board's (BSB) consultation on Future Bar Training (FBT).

The Panel agrees with the challenges and opportunities described by the BSB in its consultation document. We have tailored our response to mirror the structure of the BSB's consultation instead of responding to individual questions. The Panel has addressed most of the topics below. We hope our reflections aid in the finalisation of your decisions.

The Role of the Inns of Court in barrister training

Regulatory oversight of students

The Panel believes the BSB should have oversight of the two key elements prior to students being called to the Bar: eligibility to enrol on the vocational stage and ongoing monitoring.

The Panel agrees with the BSB's main argument for wanting to have oversight of students at the vocational training stage because the training will be delivered in 'real world' settings and regulatory oversight would reduce the risk to consumers. The Panel has also encouraged the BSB in a previous consultation response¹ to play a more active role at this stage of training.

Membership of an Inn

The Panel agrees that students going through the Bar Professional Training Course may enjoy benefits of being a member of an Inn. This membership may offer potential barristers, especially those without the social capital, the opportunity to meet practising professionals and get accustomed to the working environment of a barrister.

Prior to being called to the Bar, some students reported satisfaction with Inns' support when applying for pupillage, and the schemes aimed at those coming from lower-socio-

¹ Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training, Legal Services Consumer Panel, October 2015.

economic and BME backgrounds.² After being called to the Bar, students reported the Inns provided them with access to professional resources and a network that promotes good practice and ethical behaviours.³ We note the argument that these benefits could be achieved without requiring students to join an Inn, for example through voluntary membership. However, it is doubtful that students lacking access to informal networks and social capital will voluntarily join an Inn, as they may not be aware of the valuable benefits the membership can have on their training to become barristers. Therefore, the Panel supports option C, which proposes to retain the requirement of student membership of an Inn.

Educational qualifications and fit and proper person checks

In line with our first recommendation that the BSB should have regulatory oversight of students, we believe the BSB should take over the responsibility for the fit and proper person checks (option A). This way the BSB would have a clear and direct regulatory responsibility for the register of barristers. In our opinion, this is a regulatory function, and it is common for regulators to carry out such checks. We also note that the Solicitors Regulation Authority (SRA) carries out the 'character and suitability' assessment of persons applying to become solicitors.⁴

We acknowledge the risks with the present process as it relies mostly on students' honesty to make the relevant disclosure. In order to mitigate this, we agree that the BSB should introduce mandatory Disclosure and Barring Service (DBS) checks, as part of the fit and proper persons test. This function should be performed by the BSB or the training provider prior to the students being called to the Bar. Mandating DBS checks will bring the BSB in line with other legal services regulators e.g. the SRA⁵.

Student Conduct

At present, the Inns are responsible for the supervision of student conduct, from the point of admission into an Inn until they are called to the Bar. The Panel sees the merit in retaining this approach and so we support option B. In addition, we agree that the Inns be required to report decisions against students to the BSB.

Qualifying sessions

The Panel supports the proposal to keep the qualifying sessions as outlined in option C, but with slight improvements. This option adopts the methodology of the new Continuous Professional Development scheme for established practitioners. Under this option, students will plan their learning needs by setting objectives. They will also be responsible for identifying the types of 'qualifying sessions' that would help them achieve their objectives. However, students may have difficulties in identifying the suitable 'qualifying sessions' at the vocational training stage. We, therefore, suggest that the Inns develop a set number of core 'qualifying sessions' that students could take. The remaining number of sessions could build in the flexibility and choice aimed for, but again with some guidance for those who may require it.

² Barriers to training for the Bar: a qualitative study, Nat Cen, December 2017.

³ Ibid.

⁴ Looking to the future: phase two of our Handbook reforms, Solicitors Regulated Authority, 2017.

⁵ <https://www.sra.org.uk/trainees/admission/dbs-check.page>

Future arrangements for the work-based component of training

The length of pupillage

We acknowledge the risks of enabling training organisations to develop training plans to meet the needs of pupils. For example, some training organisations may reduce the length of the pupillage before pupils are fully competent so they can start earning fees earlier. This would lower the quality of their training and consequently the services they are able to offer as barristers. On the other hand, there is the risk that pupillages may be unnecessarily extended to enable chambers to utilise pupils for extended periods without offering them tenancy. On balance, the Panel is of the view that there should be a set length of time for pupillages, with the flexibility to extend once e.g. for another six months. We do not believe that Chambers should have the flexibility to reduce the pupillage below a twelve-month period, as the risks to consumers outweigh any benefits in our view.

Provisional Practising Certificate

Closely linked to the length of pupillage is the point at which pupils are able to apply for the provisional practising certificates (PPC) to undertake reserved legal activities. The Panel would like to reiterate its previous call⁶ for the BSB to create a culture where pupils take ownership of their own development, and focus on improving their performance. We believe that this responsibility needs to start at the pupillage stage.

Therefore, we believe the PPC should be applied for at the time agreed by the training organisation, the pupil, and the supervisor (option B). The final decision about when to apply for a PPC should be made by the pupil and the supervisor (based on the pupil's competence) instead of the training organisation alone. As the training organisation would review their pupils' progress at set times - for example, at three, six and nine months, etc. - students could assess, guided by their supervisor, when they are competent to apply for the PPC.

Pupillage funding

The Panel strongly supports the arguments that a £12,000 minimum award for trainee barristers is too low and should be reconsidered. 35% of pupillages offered £12,000 in 2016/2017.⁷ We believe that the low minimum award acts as a barrier to entering the profession, especially to those from lower-socio-economic backgrounds who may not have any other financial support.

The Panel supports the Living Wage Foundation (LWF) suggested rates. The LWF rates differentiate between London and national rates, reflecting the higher cost of living in London instead of a one-size fits all approach. The LWF's approach would also bring trainee barristers in line with other legal services providers. For example, the Law Society currently recommends that trainee solicitors be paid at least £20,913 in London and £18,547 outside London (these figures are based on the LWF suggested wages).⁸

At present, qualified lawyers transferring to become barristers are often exempt from the funding requirements that apply to other pupils. We agree that this exemption

⁶ Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training, Legal Services Consumer Panel, October 2015.

⁷ This dataset is from the Pupillage Gateway and was provided by the Bar Council in conjunction with JobsGoPublic. It includes all 450 pupillages advertised on the Pupillage Gateway between 1 October 2016 and 30 September 2017.

⁸ <http://www.lawsociety.org.uk/support-services/advice/articles/recommended-minimum-salary-for-trainee-solicitors/>

should be removed. This would promote consistency and help tackle concerns about unfairness in the system.

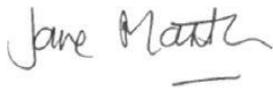
Rules relating to the relationship between pupil supervisor and pupil

We welcome the aim to reduce the administrative burden for pupils and their supervisors. We agree that the obligation to notify every time a supervisor changes is excessive. We agree that a requirement to ensure that all pupils are properly supervised will be sufficient.

We support the BSB's proposal to allow supervisors to have more than one pupil at the same time. To maintain quality, we would suggest that the BSB caps the number of pupils a supervisor can have at any given time. In addition, we support the BSB's proposal to specify the necessary outcomes training must deliver and then monitor these outcomes.

We would be very happy to meet and discuss any aspect of this response in further detail. Please contact Lau Ciocan for further queries at lau.ciocan@legalservicesconsumerpanel.org.uk.

Yours sincerely

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style and is positioned above a short horizontal line.

Dr Jane Martin
Chair