



FUTURE BAR TRAINING

Response to the BSB consultation on the Future of
Training for the Bar: Future Routes to Authorisation
(October 2016)

A response from the Bar Association for Commerce Finance and
Industry

INTRODUCTION

Founded in 1965, the Bar Association for Commerce, Finance and Industry (“BACFI”) represents the interests of employed barristers working in commerce, finance and industry. BACFI’s members include barristers employed in commercial organisations and law firms, employed by the government legal services, and those working through their own consultancy practices.

BACFI is keen to play its part as a representative organisation in helping shape the development of the Bar of England and Wales, by bringing forward the views of its members. BACFI actively supports the objective of an independent and high-quality bar, accessible to all.

This response follows BACFI’s earlier responses to the Legal Education and Training Review and to the previous Bar Standards Board consultations on Future Bar Training. BACFI’s main focus in responding to Future Bar Training consultations is to promote more flexibility in the final stage of training for the bar – the pupillage stage – for example by simplifying and standardising the process through which commercial organisations are able to apply to become authorised pupillage providers, so that:

- commercial organisations are enabled to play a greater role in training barristers;
- prospective barristers are able to gain greater insight into work at the employed bar during their training; and
- the availability of employed pupillages is increased.

GENERAL PRINCIPLES

Question 1: Do you agree with the BSB’s proposal not to seek changes to s. 207(1) of the Legal Services Act 2007?

BACFI agrees with the BSB’s proposal not to seek changes to s. 207(1) of the Legal Services Act 2007.

Question 2: Do you agree with the BSB’s proposal to maintain the principle the Bar remain a graduate profession? If not, please state why not.

BACFI agrees with the BSB’s proposal to maintain the principle that the Bar remain a graduate profession. BACFI believes that this is consistent with the expectation of the public and the needs of commercial organisations. BACFI believes that when recruiting for most in-house legal roles, most commercial organisations require that applicants are educated to degree level or higher.

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.

BACFI agrees with the BSB’s proposal to maintain the normal expectation of a minimum degree classification of 2:2. BACFI understands that, when recruiting for most in-house legal roles, most commercial organisations require applicants to have a minimum degree classification of 2:2 or higher.

OPTIONS APPRAISAL

OPTION A

Question 4: Do you agree with our analysis of this option's capability to meet the requirements of the Professional Statement? If no, please state why not.

BACFI agrees that Option A is likely to enable training providers to develop training that ensure participants are able to meet the requirements of the Professional Statement. However, it is not clear from the consultation how it is proposed Option A will allow training providers to interpret the training syllabus any more creatively than they can under the existing system. The BSB's consultation paper provides examples of innovative courses that are already offered under the existing system.

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.

BACFI does not agree with the BSB's analysis. In particular, BACFI does not agree that Option A will provide any improvement to the final stage of training for the bar. It is unclear how Option A will introduce any greater flexibility to the pupillage stage of training or improve the opportunities for trainee barristers to spend at least some of their training within a commercial organisation.

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

BACFI does not agree with the BSB's analysis. BACFI believes that Option A does not do enough to improve the flexibility to determine how to deliver training and experience at the pupillage stage of training. Greater flexibility should be introduced so as to improve the availability of employed pupillage and enable trainee barristers to gain experience within a commercial organisation during training.

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

BACFI believes that ethics training should be integrated into every stage of training and continue as part of a barrister's CPD requirements. BACFI asks the BSB to consider that working in-house (whether in a law firm or a commercial organisation) presents a set of ethical challenges different from those that might be experienced by a self-employed barrister practising from chambers. BACFI believes that commercial organisations and law firms themselves are in the best position to provide training and experience in relation to these matters and any approach to training should therefore be flexible enough to enable barristers to spend at least part of their training in-house. Option A does not provide any increased flexibility in the final stage of training.

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

It would be useful if further information could be provided about areas against which the additional costs of centralised assessments will be offset. No analysis on this point is presented in the consultation.

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

BACFI is sceptical that employers outside the legal profession place any significant value on the BPTC as a postgraduate diploma. BACFI agrees that Option A is likely to have relatively little impact on the legal education and training market if it is adopted.

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.

BACFI agrees with the BSB's analysis in relation to the equality and diversity implications of Option A.

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.

BACFI is concerned that there appears to be a lack of clarity in the consultation on what "Managed Pathways" might entail and how each of them might meet the requirements of the Professional Statement. BACFI is also concerned that students who took a mixed academic and vocational programme might not acquire the necessary skills and knowledge to be able to perform well in vocational exercises. This might mean such students are unable to gain adequate skills from the vocational stage to be able to perform well at the pupillage stage and meet the requirements of the Professional Statement. Whilst the existing structure appears rigid, it does provide a progressive development of a student's skills and knowledge so as to equip them for the next stage in the sequence and, ultimately, meet the requirements of the Professional Statement.

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.

BACFI is encouraged by the BSB's comments that it hopes to create a distinct opportunity for more organisations to offer work-based learning in innovative ways. As stated above, and in BACFI's previous consultation responses, BACFI would like to see a more flexible approach to work-based learning that makes it easier for commercial organisations to apply for and offer pupillage. Nevertheless, BACFI is concerned about

the risk that Option B creates a two-tier system, as the BSB points out in Para. 158 of its consultation. The result might be that students who have taken a more traditional route to their education and training are likely to be placed at an advantage to other students such that the intended outcome of achieving greater access to the profession is not realised. Permitting a more flexible approach to work-based training is important to BACFI but BACFI would not wish to see students disadvantaged as a result of any reforms.

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.

Please see BACFI's comments above in answer to Question 12. The same points also apply here.

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.

BACFI agrees with the BSB's view of how professional ethics is taught and assessed. However, BACFI draws the BSB's attention to the comments made in answer to Question 7, above, which also apply here.

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

It is difficult to assess the likely cost implications of Option B when there remains a lack of clarity on precisely what each of the Managed Pathways might entail.

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

Again, it is difficult to assess the likely impact on higher education without greater clarity on precisely how each of the Managed Pathways might work. However, BACFI urges the BSB to consider the high regard with which a law degree is currently held outside the legal profession. Moreover, the skills attained through study for a law degree are transferable to a number of other disciplines and useful in non-law employment. BACFI would be concerned if reforms to qualification meant that a law degree or other legal qualification was devalued in the eyes of the public or if it became too focused such that it ceased to equip the graduate with useful transferable skills.

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

BACFI agrees that making the work-based learning rules more flexible might enable new training providers and partnerships to emerge. However, BACFI shares the concern raised in Paragraph 159 of the BSB's consultation

that putting more responsibility on the training providers might lead to a reduction in work-based learning opportunities. BACFI would like to see more information about how flexibility might be introduced into the requirements for pupillage and authorised training providers.

BACFI also shares the concern raised in Paragraph 158 of the BSB's consultation that there might emerge a two-tiered system. As stated above, in answer to Question 12, this might mean some students are put at a disadvantage to others such that the aim of increasing access to the profession is not realised.

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.

BACFI agrees, in principle, that greater flexibility is likely to increase access to the profession. BACFI certainly agrees that greater flexibility at the pupillage stage of training, and making it easier for commercial organisations to apply for and provide pupillage, would be likely to increase access to the profession. However, as stated in answer to Questions 12 and 17, BACFI is concerned that too much flexibility, particularly at the academic and vocational stages, might lead to some students being put at an advantage and some at a disadvantage with the result that access to the profession is actually reduced.

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.

It is difficult to understand from the consultation how the introduction of a Bar entrance examination and a shorter period of vocational training, as proposed in Option C, would meet the requirements of the Professional Statement. BACFI is concerned that the more limited vocational training element would mean students would be ill-equipped to embark on the pupillage stage and ultimately unable to satisfy the requirements of the Professional Statement.

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.

BACFI disagrees with the BSB's analysis of this option's capability to meet the BSB's regulatory objectives. BACFI is concerned that a shorter period of vocational training will mean students are ill-equipped for the pupillage stage and that the quality of newly qualified barristers will be reduced overall. Notwithstanding that any newly qualified barrister would have had to meet the requirements of the Professional Statement, BACFI is concerned that newly qualified barristers might miss out on certain aspects of training to the detriment of consumers and the newly qualified barristers themselves.

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.

BACFI does not agree with the BSB's analysis. It is unclear how Option C would lead to greater access to the profession. As stated in answer to Question 24 below BACFI is concerned that Option C could lead to a fall in the number of institutions providing training for the Bar and, consequently, to reduced access to the profession. BACFI is concerned that, whilst a shorter course might lead to an increase in the number of providers, this might have a negative impact on quality of training to the detriment of students and the profession. The proliferation of providers that do not have the depth of knowledge and experience to offer comprehensive training might mean students are unable to gain adequate skills and knowledge for the next stage of their training.

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

BACFI disagrees with the BSB's understanding of how Option C promotes the professional principles, ethical behaviour and integrity. As stated in answer to Question 7, BACFI believes that training in ethics should be incorporated into every stage of training and continuing professional development. Option C appears to offer a reduced focus on professional principles, ethical behaviour and integrity.

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

BACFI agrees, in principle, that replacing a one-year vocational training course with a three-month skills course is likely to lead to a reduction in costs for training providers. However, as stated in answer to Question 21, BACFI is concerned about what this might mean for the quality of training provision.

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.

As stated in answer to Question 21, BACFI is concerned that Option C might lead to a proliferation of training providers and a fall in the quality of training provided.

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.

BACFI is concerned that whilst Option C might lead to an increase in the number of training providers, which might increase the opportunities for access to training, there is a risk that many providers might lack the strength in depth of more established training providers. This might lead to a fall in the quality of training overall and mean that, overall, there is no improvement on access to the profession and no positive impact on equality and diversity overall.

Ability to meet the requirements of the Professional Statement

BACFI believes that the proposal put forward by the Bar Council and COIC would meet the requirements of the Professional Statement. The proposal would permit training providers at each level of training to develop training that developed the skills and knowledge of trainees such that the requirements of the Professional Statement were satisfied. Dividing the vocational stage into two parts would allow students to focus on each part and gain important skills and knowledge before progressing to the next stage. This would maximise the benefit students obtained from the next stage of training. However, BACFI would like to see greater flexibility at the pupillage stage of training and changes to enable more commercial organisations to offer work-based training.

Capability to meet the BSB's regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular

BACFI believes that the proposal put forward by the Bar Council and COIC would meet the BSB's regulatory objectives in that it would ensure a high standard of training for barristers at every stage of their development. This would lead to highly skilled and knowledgeable barristers who can represent the best interest of consumers and commercial organisations. As stated below, dividing the vocational stage of training into two parts would improve access to the profession because it would introduce greater flexibility to the vocational stage of training and enable students to work alongside their study.

Capability to meet the LSB's statutory guidance

BACFI believes that the proposal put forward by the Bar Council and COIC would meet the LSB's statutory guidance in that it would provide greater flexibility and access to the profession. The proposal suggests the vocational stage of training should be divided into two parts with students able to prepare for the first part—a central exam on the knowledge-based parts of the course, namely Civil and Criminal Procedure and Evidence—by any method they think fit or can afford, including private study. Training providers would be able to offer online training programmes and students would be able to study for the exam in the evenings and at weekends whilst gaining work experience and earning money at the same time. Consequently, this more flexible approach would lead to greater access to the profession.

BACFI believes that the proposal could be improved if more flexibility was also introduced into the pupillage stage of training. Such flexibility could be introduced by simplifying and standardising the process through which commercial organisations are able to apply to become authorised pupillage providers, thus enabling more commercial organisations to offer work-based training. This would further improve access to the profession and ensure the LSB's statutory guidance was met.

Ethics

As stated above, in answer to Question 7, BACFI believes ethics training should be incorporated into every stage of training. Ethics training and training on professional principles and integrity should be a feature of all taught and practical parts of the proposal suggested by the Bar Council and COIC. BACFI asks the BSB to consider the particular ethical challenges that an in-house barrister might face. BACFI believes that

commercial organisations are best placed to deliver training on such issues and that increasing the opportunities for trainee barristers to undertake pupillage (or part of pupillage) with a commercial organisation would ensure barristers were equipped to deal with such issues.

Cost implications of the Bar Council and COIC proposal

BACFI agrees with the analysis set out in the addendum to the BSB's consultation at Paragraphs 10 to 14. As stated above, BACFI believes, the proposal to split the vocational stage of training as proposed would enable students to work full-time and study in the evening and at weekends. This would mean students could earn money to fund their study. Moreover, as stated in the addendum to the consultation, students would not be committed to the cost of the full BPTC course if they were unsuccessful in the first part.

If, in addition, greater flexibility was introduced to the pupillage stage of training, so that it was easier for commercial organisations to offer pupillage, trainees would be able to earn a salary during training that would be benchmarked against other professional trainees across the organisation and therefore likely to be in excess of the minimum remuneration requirements for pupil barristers.

Higher education implications

The higher education implications for the Bar Council and COIC proposal would be similar to those described in the BSB's consultation in relation to the BSB's Option A.

Equality and diversity

Because of the increased flexibility at the vocational stage of training, the proposal put forward by the Bar Council and COIC would be likely to be more attractive to those from disadvantaged backgrounds (who would be able to earn alongside their study) as well as full or part time carers and others with limitations on their time.

Introducing greater flexibility at the pupillage stage so that more pupillages were available in commercial organisations would further improve the opportunities for those seeking a change of career, for those from disadvantaged backgrounds and for students from black and minority ethnic backgrounds.

FINAL CONSIDERATIONS

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.

BACFI would favour the proposal put forward by the Bar Council and COIC because this proposal meets the BSB's regulatory objectives, meets the statutory guidance of the LSB and introduces a level of flexibility that would lead to greater access to the profession without putting at risk the high regard in which a law degree and qualification as a barrister is held by the public. The Bar Council and COIC proposal also offers an

opportunity to reduce the cost of training for the Bar and takes away the risk that failing students are committed to a costly vocational programme.

However, BACFI would like to see greater flexibility at the pupillage stage of training. Such flexibility could be introduced by simplifying and standardising the process through which commercial organisations are able to apply to become authorised pupillage providers, so that:

- commercial organisations are enabled to play a greater role in training barristers;
- prospective barristers are able to gain greater insight into work at the employed bar during their training; and
- the availability of employed pupillages is increased.

BACFI believes that by enabling commercial organisations to offer all or part of a trainee barrister's work-based training, the standard of training and the breadth of knowledge and understanding of the commercial environment would be improved. BACFI also believes such increased flexibility would lead to greater access to the profession.

ENGAGEMENT

BACFI would welcome an opportunity to discuss with the BSB its views of Future Bar Training. In particular, BACFI would be interested to engage with the BSB on improving the flexibility of pupillage and the availability of work-based training in commercial organisations.