



Representation, Education and Support for Employed Barristers

PRESIDENT: The Rt. Hon. LORD HOFFMANN, PC

CHAIRMAN: LUCINDA ORR

BACFI response to Future Bar Training Consultation:

The Professional Statement

Introduction

1. This is the response from the Bar Association of Commerce Finance and Industry ("**BACFI**") to the Bar Standards Board paper entitled: "*Future Bar Training Consultation: The Professional Statement*". The consultation paper is stated to be an essential component of the Future Bar Training (FBT) programme.
2. BACFI is a recognised specialised Bar Association with c.200 members. BACFI represents the interests of employed and non practising barristers providing legal services in commerce, finance and industry - the CFI Bar. It also welcomes student members and members of the Inns of Court who are interested in a career outside private practice in chambers. BACFI was founded in 1965 and merged in 2004 with the Employed and non practising Barristers' Association (ENPBA). BACFI provides representation, education and support to barristers working in a commercial environment and works to promote "One Bar", to ensure that the status and interests of our members are fully recognised and taken into account by the Bar Council, the Bar Standards Board (BSB) and the Legal Services Board (LSB).

General Comments

3. One of the stated aims is to remove unnecessary barriers to entry to the profession, but there is no indication as to how this will be achieved particularly in relation to pupillages in employment. It is also stated that the Professional Statement will provide a clear and objective point of reference for the regulation of training and the development of training pathways. This objective does not seem to have been met at all in the document. Likewise the baseline for establishing routes to authorisation does not emerge clearly in the document.
4. It appears that we will need to wait for the "Threshold Standards" to be published to have a complete picture, but then there is no indication as to when these "Threshold Standards" will be available.
5. Indeed, it would have seemed logical that the "Threshold Standards" should have been established *first* and then the Professional Statement built on top of these basic standards. Instead, it is stated

that *"The Professional Statement will therefore provide the framework within which Threshold Standards can be calibrated"*. It would have been more helpful to have had the Threshold Standard established and then the Professional Statement as the overlay. In any event, the Professional Standard is said to only relate to the knowledge, skills and attributes that a barrister should aim to have on entry to the profession. It should perhaps be noted that there are already specialist checklists for pupils practising in different fields which need to be completed before the end of pupillage. Chambers and organisations specialising in different fields will always be best placed to devise and update these lists and propose such updates to the BSB, who possess no such specialisation.

6. There appears to be some internal confusion within the document. The Professional Statement seems to encompass not only what a barrister needs to be able to do in order to get a practising certificate, but also what they should be aiming for throughout their career. It is not clear from the various elements what is the *minimum* standard they need to reach on qualification. For example, item 1.8, negotiate effectively, in the technical legal characteristics, is a skill which can only be acquired by experience.
7. Paragraph 20 states that it has not been possible to produce a common document for solicitors and barristers. This is regrettable and the statement that there is a "clear intention to create harmonious definitions" does not take us any further.
8. Paragraph 21 lists out the 4 areas of the Professional Statement. The "Management of practice" area is one for which we appreciated that it is difficult to create a common requirement for both self employed and employed barristers in practice. Within employed practice, the management of a barrister's work is not entirely within their own control.
9. Barristers in employment generally work as part of a team. This needs to be recognised and brought out more in the document. This is particularly so under the heading "Working with others" where company rules may well dictate slightly different requirements.
10. The heading "Management of Practice", and in particular para 3.1.2 displays a lack of understanding of how employed practice operates. The requirement to *"take responsibility for ensuring the administration of their practice is properly managed"* simply does not apply to employed barristers in the same fashion as it does to self-employed barristers.
11. Likewise para 3.2 where it states that the barrister will *"analyse their own need for such skills"*. In employed practice, particularly within a company, this would be done in conjunction with department requirements and the department manager or supervisor. Generally this section may cause a problem for a new barrister entering employed practice in that they may feel they are having to serve two sets of requirements, which may cause the new barrister some concern. It should be made clear juggling different regimes and obligations is one of the real strengths of the employed bar and this must be emphasised to the junior practitioner as being absolutely essential.
12. Indeed, a great strength of the new Code of Conduct is that it basically offers equal treatment to all barristers irrespective of employed or self employed status and greatly increases the ambit within which unregistered barristers are able to operate and supply legal services. The sections of the

Handbook which single employed barristers out for special treatment are contained in the Scope of Practise section rather than the Code itself which we believe to be significant. BACFI would hope that such careful callibration can be achieved in the Professional Statement also, so it is similarly a unifying document between employed and self-employed barristers.

Answers to Consultation Questions

(1) Does the Professional Statement provide an acceptable outline description that can be developed into a Threshold Standard of what you would expect a barrister to be able to do at the point of being issued a full practising certificate?

The description is acceptable apart from the specific comments above. However, as stated above also, there is some confusion internally in the document as it only lays out the basic requirements on entry and says nothing of excellence, innovation, or gathered experience. It should be made clear that a barristers' skills will continue to develop past pupillage and the first day of practice.

(2) Are there any additional elements that should be included? If so, what are they?

There should be more emphasis on ethics - particularly in employed practice where there are often ethical issues to be tackled in everyday business dealings.

(3) Are there any elements that should not be included? If so, what are they?

There is insufficient distinction between employed and self employed practice. In addition, some elements are acquired by experience and it is not clear what needs to be achieved at the point of qualification and what is to be acquired by experience.

(4) Does the Professional Statement reflect what you would expect all barristers to be able to do throughout their career and not just at the point of being issued a full practising certificate? Why is this?

It is not at all clear, as indicated above. Also what skills a barrister need to acquire as their practice develops will depend on their specialisation, level of authority etc. etc. As barristers progress through their careers, many specialise and particularly so at the employed bar, rendering some of the Professional Statement redundant.

(5) Are there any additional areas of knowledge, skills, attributes or behaviour which should be included, but which are not necessarily essential at point of being issued a full practising certificate? If so, what are they?

In BACFI submission's to the Education and Training Review, we included the general attributes from the Neuberger report:

Temperament

- Honesty – essential
- Courage
- Commitment
- Common sense
- Perseverance

Character

- Robust
- Proactive
- Common sense
- Problem solver/creative solution finder
- Decisive
- Pragmatic

Talents

- Analytical skills
- Intellect
- Persuasiveness
- Organisational skills
- Good judgment
- Fluency

Acquired skills

- Business understanding/commercial nous
- Eye for legal risk and nose for solution
- Able to understand complex factual scenarios and identify key issues
- Ability to think strategically / to see the big picture and not get bogged down in detail
- Excellent written and oral communication and presentation skills
- Financial understanding
- Ability to execute decisions
- Acute understanding of professional obligations and ethical boundaries
- Accepts imperfections of a commercial environment
- Works well in a team environment within diversity of ability and background
- IT skills

Every specialism of the Bar will have its own list.

BACFI has also considered the skills and attributes that appear to be missing from (or are given reduced prominence in) today's legal professional training. These are:

- ***Understanding of comparative law and languages*** - Businesses operate in a global commercial world and we live in a diverse and racially mixed society. An understanding of comparative law and comparative legal families and, crucially, languages are now rarely taught even in law degrees and the conversion course.
- ***Commercial awareness*** - by which we mean "how businesses operate"
- ***Ethical training and guidance*** - ethics as a discrete subject has been gradually removed from both law degrees and legal training and replaced by a notion that professional ethics centres on observance of our own rule books and codes of conduct. Some institutions have realised this and are teaching the wider

notions of legal and commercial ethics. BACFI believes that ethics in these forms are a crucial element of legal training and must be revived as a core subject. Resignations of in-house lawyers on ethical grounds demonstrate the independence of thought and professional standards which should be shared by all legal professionals. Legal trainees need to be taught to recognise professional conflicts of interest and to understand the governance principles applicable in the commercial world.

(6) Have we struck the right balance in the Professional Statement between the broad qualification which our research tells us is encompassed by the title barrister, and the degree of focus which comes in time with practice in a particular area? Why is this?

As indicated above, the distinction is not clear and the requirements that can only come with experience have been mixed in with the Professional Statement that purports to be the requirements for the newly qualified barrister on their first day of practice.

(7) Will the Professional Statement be a useful tool to help barristers comply with their Core Duties, as detailed in the BSB Handbook, and ensure they maintain their practising standards? Why is this?

In planning CPD, the Professional Statement may be useful to barristers as they progress throughout their career, however, it generally drafted at such a high level of generality as to be of little use.

(8) Have we articulated sufficiently clearly the distinction between (a) this Professional Statement (and its use for education and training and in developing thresholds at the point of authorisation) and (b) the role of the BSB Handbook and Code of Conduct (in defining how a barrister must conduct themselves throughout their career)? Why is this?

There is some overlap but not sufficient to cause a problem.

(9) Are you aware of any impacts on equality and diversity, either positive or negative, which might result from using the Professional Statement as a tool to assist our regulatory activities? If yes, what are these?

We are not aware of any impact on equality and diversity.

BACFI

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