

Review of Pupillage

Report of the Working Group

CONTENTS

INTRODUCTION	3
1 WHAT IS PUPILLAGE?	9
2 THE CURRENT REGIME	15
3 THE PUPILS	26
4 TRAINING ORGANISATIONS	44
5 SUPERVISORS	53
6 RECRUITMENT OF PUPILS	60
7 DURATION AND PLACE OF PUPILLAGE	74
8 FUNDING	81
9 THE THIRD SIX	97
10 STANDARDS AND ASSESSMENT OF PERFORMANCE	99
11 TRAINING IN THE WORKPLACE	103
12 THE ROLE OF THE INNS, CIRCUITS, ADVOCACY TRAINING COUNCIL AND SPECIALIST BAR ASSOCIATIONS	113
13 TRAINING OF SUPERVISORS	124
14 COMPLAINTS, GRIEVANCES AND ENFORCEMENT OF THE RULES OF THE PROFESSION	133
15 MONITORING OF PUPILLAGE BY THE BSB	141
16 FUTURE OF PUPILLAGE	147
17 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS	153
ANNEXES	
1 LIST OF MEMBERS	163
2 TERMS OF REFERENCE	165
3 LIST OF CONSULTEES	166
4 LIST OF EVIDENCE AND RESEARCH	169
5 STATISTICAL ANALYSIS	173
6 ANNUAL PUPILLAGE SURVEY	175
7 LIST AND ASSEMBLY OF TABLES USED IN THE REPORT	178

BAR STANDARDS BOARD

REVIEW OF PUPILLAGE

REPORT OF THE WORKING GROUP

INTRODUCTION

1. The regulation of the Bar of England and Wales was, until 1966, vested in the Inns of Court. Between 1966 and 1987 it was the shared responsibility of the Inns and the General Council of the Bar (the Bar Council). From 1987 onwards the Bar Council alone, but subject to appropriate consultation with the Inns through the Inns' Council (COIC), was the regulator. The Bar Council also exercised representative functions on behalf of the profession. With effect from 1st January 2006 those functions were split. The body responsible for the regulation of the Bar is now the Bar Standards Board (the BSB).

2. In purely formal terms the BSB is a committee of the Bar Council. Its terms of reference are currently set out in Part One of the Bar Council's Standing Orders.¹ But in fact and in practice it functions as an independent regulator. As from a day to be appointed it will succeed the Bar Council as the profession's statutory regulator under the Legal Services Act 2007.

3. Under its terms of reference the BSB is responsible for the qualifications and conditions of entry to the profession, including fitness to practise; all aspects of training (including the continuing education of those in practice (CPD)); the setting of standards for practitioners; professional discipline; and the investigation of complaints against barristers and students.

¹ In order to ensure the regulatory independence of the BSB, within those terms of reference, and to meet the requirements of the Internal Governance Rules issued by the Legal Services Board, the Governance Working Group of the BSB is working on a separate Constitution and Standing Orders for the BSB, at time of writing.

Training Regulations

4. The principal regulations which previously governed recruitment and admission to practice at the Bar were Consolidated Regulations jointly approved by the Bar Council and COIC. These Regulations were repealed by the BSB and replaced by new Bar Training Regulations which came into force on 1st September 2009.

5. The introduction of the new Training Regulations required, and any further amendment to them will require, the approval of the Secretary of State under section 29 of the Courts and Legal Services Act 1990. After a day to be appointed under the Legal Services Act 2007 the supervisory powers of the Secretary of State will be transferred to the Legal Services Board. Subject to that control, the other provisions of the 2007 Act, and appropriate consultation with the Inns and other interested parties, the BSB has the necessary powers, within the framework of the Training Regulations, to regulate entry to the profession, the education of barristers and their entitlement to practise.

BSB's reviews of education and training

6. In October 2007 the BSB established a Working Group to examine and report upon the course of post-academic training which prospective barristers undertake before they can be called to the Bar – the Bar Vocational Course (BVC). The Working Group's Report on the BVC (to be renamed the Bar Professional Training Course (BPTC)) was published in July 2008. We refer to this document as the BVC Report. The BSB is implementing its recommendations with a view to their coming into force in September 2010. The recommendations included an aptitude test as a condition of entry to the course, changes in the syllabus, and the raising of the pass standard. The changes required to the Training Regulations are currently being considered by the Secretary of State.

7. In October 2008 the BSB commissioned a new Working Group to review the regulations and practice affecting the next, linked stage in a barrister's training: the

period of twelve months' pupillage which barristers must undertake before they can receive a full practising certificate.

Review of pupillage

8. The membership of the Group examining pupillage is set out in Annex 1. Our Terms of Reference are set out in Annex 2.

9. This Working Group has followed the method of working of the previous Group. We have met as a Group on 17 occasions. We held a two-day working weekend in June 2009 and another full working day in February 2010. To obtain the views of the many branches and representatives of the profession and of individual practitioners we established a programme of face-to-face meetings extending over the whole of the period of the review. We did not publish a consultation paper, preferring this more direct line of communication. In all we have had over 50 meetings with the many bodies and individuals listed in Annex 3.

Published and other material

10. We have taken full account of a number of concurrent and recent publications and papers relevant to our work, notably the Report of the Bar Council's Working Party on Entry to the Bar (the Neuberger Report, 2007), the Final Report of the Panel on Fair Access to the Professions (the Milburn Report, Cabinet Office, July 2009), the Report of the Bar Council's Working Group on Small Chambers (2008), and the Final Report commissioned by the BSB on its Chambers Monitoring Pilot Scheme (2009). Andrew Stafford QC and Sam Stein QC provided us with excellent background papers. Other publications are referred to in the body of this report.

Acknowledgements

11. We are extremely grateful to all of those who took the time and trouble to see us, many of whom followed up our meetings with valuable written material. It would have been impossible to carry out a comprehensive review of pupillage without their assistance, and we are much indebted to them. In addition we have received a body of

informative and helpful written material from the individuals and organisations listed in Annex 4 to whom we are also indebted.

12. John Hendy QC kindly agreed at our request to chair a group of representatives of the Inns of Court and Circuits (“the Hendy Committee”) to review and make recommendations on pupillage training organisations and the training of pupil supervisors. The membership of his group is set out in Annex 1. We wish to record our particular thanks to Mr. Hendy and his colleagues for producing a constructive and detailed report on a topic which has never, so far as we are aware, been systematically examined in the past. Their Final Report (“the Hendy Report”) was delivered on 29th November 2009. The work of Mr. Hendy’s group is reflected in Chapters 5 and 13 of this Report and in other places.

13. Our one disappointment was our attempt to canvass the views of current pupils by a dedicated ‘forum’ on the BSB website to which all pupils could contribute on conditions of anonymity. The poor response to this initiative may have been due, at least in part, to an understandable reticence on the part of recent recruits, who had just entered upon a critically sensitive stage of their career, to speak their minds. But it was in large part compensated by two full and open discussions with the Young Barristers’ Committee of the Bar Council.

14. We wish to acknowledge the customary high level of support which we have received from the officers of the BSB. We wish to thank Dr Valerie Shrimplin (Head of Education and Training) and Ms Andrea Clerk (Pupillage Officer) who have been ably supported by Ms. Claire Pace. Dr. Shrimplin and Ms. Clerk have closely advised us throughout this review, and Dr. Shrimplin has shouldered the heavy burden of drafting the proposed new Handbook on Pupillage which accompanies this Report.

15. Dr. Jennifer Sauboorah and Dr. Anna Zimdars have carried out important and groundbreaking research, discussed in Chapter 3 of this Report, into the statistics which have been central to our conclusions and recommendations.

Conclusions and recommendations

16. At the end of each Chapter in this Report we set out the conclusions and recommendations contained in that Chapter. The full list is set out in Chapter 17 at the end.

Derek Wood CBE QC
Chairman of the Working Group
5 May 2010

OVERRIDING PRINCIPLES

In preparing this report we have been guided by the following principles:

In the public interest, Pupillage should represent a commitment for training into practice by all parties and organisations involved. This requires:

- **that the training should be completed over a period of twelve months in a single set of chambers or organisation supervising and assuring the quality of both the non practising and the practising part of the training period**
- **that the chambers or training organisation has adequate facilities and depth of practice to allow for the pupil to gain the necessary experience**
- **a commitment to training the pupil-supervisors to the highest standard possible by the Inns of Court and Circuits in keeping with their long tradition of training barristers**
- **that the passing of the pupil into practice is overseen by the chambers or organisation to which the pupil is attached and not simply the individual pupil-supervisor**
- **that the pupil achieves a standard of work that can be independently checked and verified by the regulator**

CHAPTER 1

WHAT IS PUPILLAGE?

Brief history

17. The qualification or (more accurately) “degree” of barrister has historically been and is now conferred by the Inn of Court of which the barrister is a member. Originally, from as far back as records extend, the Inns appear to have required participation in learning exercises for an appropriate period, and argument at a moot, as a condition of call to the Bar of the Inn. Call to the Bar by one of the Inns of Court was recognised by the judges as conferring a right of audience in court. No other qualification was necessary, or acceptable. In 1863 the four Inns made Consolidated Regulations which regulated the admission of students, the keeping of terms, the conditions of call to the Bar, and the granting of practising certificates. The passing of formal written examinations in law (Bar Finals) became a requirement of call to the Bar. The BVC/BPTC is the modern equivalent of Bar Finals.

18. The system of pupillage grew in parallel with these developments. In the 19th century it was customary (but not mandatory) for young barristers to spend some time under the tutelage of a more senior practitioner. In 1847 students were urged to spend a year of pupillage with a conveyancer or equity draftsman, then six months each with a special pleader or common law barrister and a solicitor, and finally another half-year with a barrister. The premium for pupillage was set at 200 guineas (probably reflecting a two year period). It remained at this level until the accepted period of training stabilised at one year and the standard fee became 100 guineas.

19. In 1959 the completion of a period of twelve months’ pupillage, with a qualified pupil supervisor, was for the first time imposed as a second compulsory requirement for practice. In 1971, following the recommendations of the Ormrod Committee on Legal Education (which favoured transfer of legal education and vocational training to the universities), entry to the Bar was restricted to university graduates. The practice of

paying for pupillage continued for a very long time. Many barristers in practice can recall having paid for the privilege of their pupillage or having the fee waived by their supervisor. In 1975 it was resolved that no pupillage fee should be charged. Individual sets of chambers then began to offer bursaries to their pupils.

20. In 2002 the Bar Council published regulations requiring that all pupillages commencing after 1st January 2003 should be advertised in accordance with the Equality and Diversity Code for the Bar and should be funded by at least the minimum prescribed amount. That amount was set and currently remains at the yearly rate of £10,000, payable in monthly instalments of £833. Many pupils receive payment in excess of that amount.

Pupillage at the Bar today

21. At the date of publication of this Report there are some 15,000 barristers in practice. Most of them (just over 12,000) practise in chambers in London or the regions as self-employed barristers, receiving instructions from solicitors, other authorised professionals and, under defined conditions, members of the public. Others (just over 3,000) practise as salaried employed barristers, either in the public field such as the Government Legal Service, the Crown Prosecution Service or local government, or in the private business sector. Employed barristers offer to their employer (and a limited number of others) the same legal services, including representation in court, as those which self-employed barristers offer to their clients. Both self-employed and employed barristers may be authorised to take pupils. They are all subject to the BSB's regulatory and disciplinary regime.

22. In its essentials the modern system of pupillage is straightforward. A person, having the required academic qualifications, who wishes to practise as a barrister, either at the self-employed or employed Bar, must pass the BVC/BPTC, and attend a number of qualifying educational sessions at the Inn of Court of which he or she is a member. The successful student may then be called to the Bar by his or her Inn. But he or she still cannot practise unsupervised until completion of twelve months' training as a pupil. Pupillage is described on the BSB website in the following terms:

“Pupillage is the final stage of the route to qualification at the Bar, in which the pupil gains practical training under the supervision of an experienced barrister. Pupillage is divided into two parts: the non-practising six months during which pupils shadow, and work with their approved pupil supervisor and the second practising six months when pupils, with their approved pupil supervisor’s permission, can undertake to supply legal services and exercise rights of audience.”

23. Pupillage may be undertaken with a qualified supervisor who is a self-employed or employed barrister. The place of work must also be an approved pupil training organisation. The Collyear Committee² suggested that the purpose of pupillage was to enable pupils to achieve the following:

- *An understanding and an appreciation of the operation in practice of the rules of conduct and etiquette at the Bar.*
- *Experience in undertaking legal research to solve real problems, of drafting and opinion writing.*
- *Sufficient exposure to the work undertaken by his/her pupil-supervisor to gain an understanding and some experience of working in that type of practice.*
- *Experience of how to prepare, factually, legally and procedurally a case for hearing.*
- *Experience through observation or otherwise of negotiation and conference skills.*
- *Experience through observation or otherwise of trials and appeal proceedings in the higher courts.*
- *Practical experience of advocacy.*

² The Collyear Committee was set up in July 1998 to review the qualification and training requirements for those wishing to practise as barristers.

Importance of pupillage

24. None of the many individuals and organisations we have consulted has suggested that pupillage should be dispensed with as a condition of practice. The insistence on the importance of pupillage is in our view firmly rooted in the public interest. There does not seem to us to be any effective method by which newly-called barristers can learn how to work with clients, colleagues and the courts, or acquire the technical and practical skills which are necessary for the provision of a professional legal service, except by working closely with an established practitioner. This report is based on a universal acceptance of the need for this vital stage in a barrister's training.

Legal status of pupils

25. The legal relationship between pupils on the one side and their supervisors and training organisations on the other, at the self-employed Bar, was analysed by the Court of Appeal in *Edmonds v Lawson* [2000] QB 501. The pupillage in that case was unpaid. It was held that the relationship was nevertheless based on a contract, although it was neither a contract of employment nor a contract of apprenticeship. At the employed Bar it is more likely to be a contract of employment.

Pupillage and tenancy

26. In the past the formal division of pupillage into its two six-month parts led to many pupils at the self-employed Bar in London undertaking each part of their training in different chambers. This practice was rarely followed in chambers in the regions, where pupils have always been selected with a view to tenancy, i.e. on the basis that (barring a catastrophe) they would progress to full membership of chambers.

27. The system of split pupillages had some advantages. It gave pupils an opportunity to experience different fields of practice under different supervisors; and chambers were sometimes willing to offer a first or second six months when they could not accommodate a pupil for twelve.

28. Following the requirement that all pupillages should be advertised and funded, the practice of serving different parts of pupillage in different chambers has become far less common. (The advertising requirements, discussed in Chapter 6, make this difficult to achieve, unless the requirements are waived by the BSB in any particular case.) Chambers now regard pupils as an investment in their future. They devote both time and money to the training given. At the self-employed Bar the decision to take one or more pupils, and the selection, funding and supervision of pupils is now seen as a collective chambers' responsibility. Pupils are commonly selected with regard to their potential as members of chambers in due course. London is increasingly following the practice long-established in the regions. Pupillage is often described as a twelve months' interview.

29. Twelve months in the same chambers does not however mean twelve months with the same supervisor. It is the common if not universal practice for the period to be split between two, three or four supervisors. Pupils thus get to see different practices and different styles of working, and their work can be assessed in detail by more than one practitioner. This works for the benefit of the pupils and helps chambers make a properly-informed final decision about recruitment later on.

30. Splitting pupillage between different chambers might still be the right pattern in some cases. Mistakes can be made on both sides in offering and accepting training. Some pupillages do not work well for a variety of possible reasons. The system must retain flexibility to allow for exceptional cases. But in our judgment the model of pupillage continuously served in a single set of chambers under the supervision of two or more supervisors is best suited to the conditions of the Bar today. It provides consistency of training and affords to pupils an opportunity to have their progress and the quality of their work fairly and fully assessed. It should be the norm, and the BSB may wish to consider whether (subject only to waivers in particular cases) it should be enforced by regulation.

Regulation of pupillage

31. The broadly comprehensible scheme which we have outlined above is underpinned by a large volume of regulation and guidance, much of which was inherited by the BSB from the Bar Council. We discuss this material in the next Chapter.

Conclusions and recommendations

[1] Pupillage - a period of practical training under the supervision of one or more established practitioners – should continue to be an indispensable condition for practice at the Bar.

[2] Training should be undertaken for the full period in the same chambers or organisation under the supervision of two or more supervisors.

CHAPTER 2

THE CURRENT REGIME

Pupils

32. *The Training Regulations*: The primary rules for pupils are now set out in the new Bar Training Regulations. They reproduce much of the material in the previous Consolidated Regulations, but in a new sequence and with some significant amendments.

33. Pupillage is described as “the Professional Stage” of training. Before commencing the Professional Stage a person must have completed (or been exempted from) the Vocational Stage (the BVC/ BPTC). Reg. 27 states that a person commences the Professional Stage of training on commencing pupillage, and completes it by “satisfactorily completing” twelve months of pupillage and “such further training” as may be required by the BSB. On completion the pupil is issued with a Full Qualification Certificate. Except with the permission of the BSB the Professional Stage cannot be commenced more than 5 years after completing the Vocational Stage: see regs. 28 and 29.

34. Under reg. 30, pupillage is divided into its two parts – the non-practising and the practising six months. Except with the written permission of the BSB the non-practising period of pupillage must be undertaken in England and Wales and for a continuous period of six months. The practising period must start within twelve months after completion of the non-practising period, be undertaken in a Member State of the EU and be completed within an overall period of nine months: regs. 31 and 32.

35. Reg. 33 provides that:

“Any period of pupillage must provide training which is adequate and which complies with such criteria as may be published by the Board [i. e, the BSB].”

This regulation accordingly gives the BSB the express power, within the framework of the Regulations, to set further requirements for qualification to practise.

36. Training must be undertaken in an Approved Training Organisation (ATO) with a barrister who is a registered pupil supervisor: reg. 34. But time spent in specified work places during the second practising six months otherwise than with a pupil supervisor (“external training”) may also count as training if the BSB has given its prior approval to this arrangement: reg. 42. Pupils at the employed Bar, especially in the public service, are often seconded by their supervisor to self-employed chambers for a period of their training under this provision. Pupils in commercial and other chambers may be seconded likewise to solicitors’ firms or other organisations.

37. The duties of pupils are set out in reg. 36. The pupil must be diligent in receiving the instructions given and observe all legal and professional obligations regarding the confidentiality of clients’ affairs. A requirement in reg. 53 of the Consolidated Regulations that pupils must also apply themselves full-time to pupillage has been dropped, but it still appears in the Bar’s Code of Conduct. This provision is fully discussed in Chapter 7 below.

38. Regs. 49 and 50 pick up the non-practising and practising six months’ periods. After the end of each six months the pupil must obtain from his or her pupil supervisor a certificate that he or she has “satisfactorily” completed this period of training, and submit it to the BSB. If the pupil has also “satisfactorily completed such further training” as is required under reg. 27(a), and has been called to the Bar, then at the end of the first six months a pupil is issued with a Provisional Qualification Certificate. After the end of the second six months the pupil, if duly certified, is given the Full Qualification Certificate. He or she will then receive a Practising Certificate.

39. The reference in regs. 49 and 50 to the “further training” which might be required under reg. 27(a) is a reference to the “further training” which might be required by the BSB. Under the previous Consolidated Regulations the BSB was expected to lay

down other rules or guidelines for pupillage in consultation with COIC. The express requirement that the BSB should consult with COIC is not reproduced in the new Training Regulations, but we do not doubt that the practice will continue.

40. Regulations 51 and 52 state what is “satisfactory” for these purposes.

51. *For the purpose of these Regulations, a pupil is to be treated as having satisfactorily completed a period of pupillage if the pupil:*

- (a) *has been diligent in receiving the instructions given; and*
- (b) *has achieved the minimum level of competence required of a pupil at the end of the relevant period.*

52. *The Board may accept as evidence that a pupil has satisfactorily completed any period of pupillage a certificate to this effect from the pupil supervisor (or person responsible for external training) with whom the pupil has completed that period.”*

The phrase “minimum level of competence required” is not defined in these Regulations or elsewhere. Unravelling its meaning is one of the major themes of this Report.

41. *BSB’s Pupillage File.* Each year BSB provides every pupil with a ring-binder of information called the *Pupillage File*. It is a compendium of mandatory requirements, guidance and advice intended to map out the year’s training. It was originally promulgated under the old Consolidated Regulations.

42. Some flesh is here put on the bones of the concept of “training”.

- “(a) *An understanding of the rules of conduct and etiquette of the Bar*
- (b) *sufficient practical experience of advocacy to be able to prepare and present a case competently*
- (c) *sufficient practical experience of conferences and negotiation to be able to undertake the same competently*
- (d) *sufficient practical experience in the undertaking of legal research and preparation of drafts and opinions to be able to understand the same competently.”*

These four competencies are then explained in more detail.

43. The “further training” envisaged by reg. 27(a) of the new Regulations is set out in para. 2.3.5: the compulsory pupillage advocacy course (to be completed in the first six) and the Practice Management Course which may be taken in the first or second six, with the recommendation that it is also taken in the first six. Each course must be “satisfactorily completed”. These courses are currently devised and delivered by each of the Inns and Circuits. Para. 2.3.5 also refers to the Forensic Accounting Course, to be completed during pupillage or by the end of the first three years of practice. The requirements of continuing professional development after pupillage (CPD) are also explained.

44. Section 2.4 addresses the monitoring of pupils’ work. Pupils are advised to seek feedback on their work if no formal system is in place for them. Paras. 2.4.2 and .3 introduce checklists. Appendix 5 contains a “common core checklist”. Parts 1-4 of the list itemise in some detail the knowledge and skill to be acquired under the four main heads of training referred to above. Section 5 is headed “Specialist Areas of Legal Work”. It is intended to be developed either by the set of chambers or organisation where the pupil is working or the relevant Specialist Bar Association (SBA) to reflect the particular type of work undertaken by the pupil’s supervisor. The evidence we have received indicates that section 5 is not widely or systematically used.

45. Although paras. 2.4.2 -.3 speak of the checklist as an aid or guide to the planning of the pupil’s work, to be studied with care, completion of the checklist is also stated to be mandatory (although it may be amended “to reflect the particular work undertaken”). At the end of each period of pupillage the pupil must certify that listed items have been completed “to the best of his or her ability”, and the supervisor is required to certify accordingly. Submission of these documents is a condition of obtaining both the six months’ and the twelve months’ certificates. The form of certificate to be completed by the pupil supervisor is currently included in the Pupillage File. Note 7 emphasises that it must be accompanied by the completed checklist.

46. The keeping of work diaries and portfolios is also recommended. Samples are in the Appendices to the *Pupillage File*.

47. *Code of Conduct*. The previous Consolidated Regulations specified, as one of the pupil's duties, compliance with the Code of Conduct. The new Regulations omit this requirement; but para. 1001 of the Code of Conduct makes it clear that, once a person has been called to the Bar, and has not ceased to be a barrister, he or she is bound by the Code. That will include pupils who have been called. Paragraph 801 of the Code requires pupils, among other things, to employ themselves full time in pupillage, unless permission is given by the supervisor to take part-time work which does not materially interfere with the pupillage, and to preserve clients' confidentiality. The supply of legal services and the exercise of a right of audience are permitted under paragraph 802 after completion of, or exemption from, the non-practising six months, but only with the permission of the pupil supervisor or head of chambers. Noting briefs may be accepted during the non-practising six months.

48. During pupillage, pupils may not hold themselves out as a member of chambers or permit their name to appear anywhere as a member. A barrister who is a pupil of an employed barrister or who spends a period of external training with an employed barrister or a solicitor is treated for the purpose of the Code as if he or she were employed during that period by the employer or firm as the case may be: para. 803.

49. The Code of Conduct is currently being separately reviewed by the BSB.

Supervisors and training organisations

50. *Code of Conduct*. Para. 804 of the Code of Conduct requires a barrister who is a pupil supervisor to comply with Part V of the Consolidated Regulations (which should now mean the new Training Regulations); to take all reasonable steps to provide his or her pupil with adequate tuition, supervision and experience; and to "have regard" both to the pupillage guidelines issued from time to time by the Bar Council (now via the BSB)

and to the Equality and Diversity Code for the Bar. Later in this Report we discuss the meaning and effect of this requirement.

51. Para. 805 of the Code of Conduct stipulates that, except where a pupil is in receipt of an award or remuneration paid in lieu for payment for work done, a barrister must pay a pupil (or an employed barrister must ensure that a pupil is paid) for work done for the supervisor which, because of its value to the supervisor, warrants payment.

Training Regulations

52. Reg. 35 and Schedule C are concerned with the approval and registration of pupil supervisors. Regs. 37-41 provide for the approval of training organisations and set out circumstances in which they can lose their approval. They are discussed in Chapter 5 below.

53. BSB guidelines. In parallel with the *Pupillage File* issued to pupils the BSB issues to all pupil supervisors a document entitled “*Guidelines for pupillage training organisations*”. This document will be “the pupillage guidelines” referred to in para. 804 of the Code of Conduct. It is one of the documents to which a pupil supervisor must “have regard”. In this Report we refer to it as the “*Guidelines*”.

54. The *Guidelines*, like the *Pupillage File* issued to pupils, are a compendium of mandatory instructions and general guidance and advice. Pupillage training organisations are informed that they must have a Pupillage Policy Document or Documents as a condition for obtaining authorisation. The Code of Conduct and the Bar’s Equality and Diversity Code are referred to as giving guidance as to the contents of the Pupillage Policy Document. In fact the current version of the Code of Conduct does not refer to Pupillage Policy Documents. The Equality and Diversity Code however requires details to be set out of selection procedures, which must be fair and properly publicised; the roles and duties of pupil supervisors; the funding of pupillages during the first and second six; and the pattern of pupillage. It is pointed out (see the Training Regulations) that pupil supervisors may, unless otherwise permitted, take only

one pupil at a time; but pupils may spend their time with more than one supervisor. Work has to be distributed fairly between working pupils in chambers. The selection of pupils for tenancy or permanent employment must follow procedures laid down in the Equality and Diversity Code. Organisations are also referred to in yet another document: the BSB's *Good Practice in Pupillage*. There must be appropriate complaints and grievance procedures and organisations are referred to the need to maintain and conscientiously use the pupil's checklist.

55. Pages 10-12 of the *Guidelines* set out lengthy guidance for pupil supervisors issued by the Pupillage Sub-Committee of the BSB.

56. Further guidance is also given on pages 14-17. This advice alternates with statements of the rules relating to the registration of pupillage, the issuing of certificates, external training, reduction in pupillage, the status of qualified legal practitioners who might seek pupillage, and other regulatory matters.

57. On pages 21-23 there is a suggested form of pupillage contract. This is followed in pages 24-28 by a set of detailed rules or guidelines headed "Recruitment of pupils".

58. More guidance then follows on applicants who may be granted a reduction in pupillage; the advertising of pupillages; and guidelines on how an organisation should react to individual approaches from persons seeking reduced periods of training. Statements of good and bad practice in relation to the payment of travel expenses to pupils are set out. Reference is made to the Pupillage Funding and Advertising Requirements 2003, published as Annex R to the Code of Conduct. It is said that a copy of these Requirements is attached but they appear to have been omitted from the current edition of the *Guidelines*.

59. Finally, there is a series of Annexes which consist of forms, mandatory or advisory, for the registration of pupillage and of a material change in pupillage; a Certificate of Satisfactory Completion of training; a pupil's appraisal preparation form;

an appraisal form; a pupil assessment record form; and application forms for waivers from the pupillage funding or advertising requirements.

60. The *Guidelines* refer to the Bar Council's On-line Pupillage Application Scheme (OLPAS, now called Pupillage Portal). We will refer to this scheme as OLPAS/PP. However the details of the scheme are not set out. Since more than half of the pupillages awarded each year are obtained through this scheme it is unfortunate that training organisations are not given more detailed guidance here on how the scheme is intended to operate. We discuss this more fully in Chapter 6 below.

Exemptions

61. Part VII of the Training Regulations entitles the BSB to grant exemptions from part or all of any of the stages of training, including pupillage. In addition exemptions may be granted from the advertising and funding requirements. This discretion is exercised by the BSB's Qualifications Committee through one of 7 panels which report to it. Its decisions may be appealed to a High Court judge whose jurisdiction stems from the ancient role of Visitor to the Inns of Court. Appeals are entertained on grounds equivalent to grounds for judicial review. Under the provisions of the Civil Law Reform Bill, the jurisdiction of the Visitors is to be transferred to the High Court, and the BSB is currently considering amendments to the BTRs to reflect this.

62. The Qualifications Committee has published its Criteria and Guidance for the granting of exemptions in a document which illustrates the circumstances in which exemptions from different requirements might be obtained. It is published on the BSB website, but it is not contained or referred to in the BSB's *Guidelines* or *Good Practice in Pupillage*.

Discussion

63. We make two main observations about this material.

64. First, we think that its form can be greatly improved. We do not understand why one set of information – the *Pupillage File* – should be issued to pupils and others – the *Guidelines* and *Good Practice in Pupillage* – should be issued to supervisors and training organisations. Secondly we believe that the material can be more clearly and effectively organised. There is an excess of cross-referencing and, more importantly, no clear demarcation between what is a mandatory requirement on the one hand and what is simply guidance, advice or suggested good practice on the other. The mandatory element most obviously includes the Training Regulations, the Code of Conduct, the Equality and Diversity Code, the “further training” specified by the BSB under the Training Regulations, and the rules for checklists and certification. Guidance includes suggested recruitment procedures, forms for pupillage policy documents, other forms, what amounts to good practice for pupils and supervisors in record-keeping, the monitoring of work, the payment of expenses and many other matters of day-to-day management. It is unsatisfactory that the criteria and guidelines developed by the Qualifications Committee on the granting of exemptions are not incorporated into these documents, and we have commented on the absence of any detailed explanation of the workings of OLPAS/PP.

65. Accordingly we strongly recommend that all this material should be assembled in a single document, more systematically laid out. The new document should be a Handbook similar to the Handbook issued by the BSB on the BVC/BPTC. Mandatory requirements and advice and guidance should be clearly distinguished from each other. The Handbook on Pupillage should be universally issued to pupils, supervisors, chambers and employers alike. Among other things, a single document will cut out the risk of inconsistencies and duplication between the material given to the different parties. Each will be able to see what the others are supposed to be doing. A draft of the suggested new Handbook on Pupillage accompanies this Report.

66. Secondly, and more importantly, the rules for training and assessment are vague and require further clarification. The reference to “training” in the Training Regulations is supplemented by the four competences listed in the *Pupillage File* (see paragraph 42 above) which specifies that a pupil’s performance and understanding of legal practice must be “sufficient”. No guidance is given on the standard which will count as sufficient. The same point can be made about “satisfactory completion” of the further training provided by the Inns and Circuits. Reg. 51 states that a pupil is to be treated as having satisfactorily completed a period of pupillage if he or she has been “diligent” in receiving the instruction given and has “achieved the minimum standard required of a pupil at the end of the relevant period.” There is neither a definition nor any guidance as to what that minimum standard might be. Similar comments can be made at other places in the documents.

67. In later Chapters in this Report we discuss the content of the instruction and training which pupils, in our view, ought to receive; and we attempt to define the standards of performance which we believe pupils should achieve in order to justify the grant of the six months’ and twelve months’ certificates. We emphasise that it is in the public interest and the interests of clients that the professional training and standards of performance of the newest recruits to the Bar should be clearly articulated.

68. Our recommendations are carried forward in the draft Handbook. The Handbook also incorporates much of the advice on good practice which can be found in the existing documents but which does not call for separate discussion in this Report.

Conclusions and recommendations

[3] The information and guidance issued by the BSB to pupils, pupil supervisors and training organisations should be assembled in a common Handbook on Pupillage in the form which accompanies this Report.

[4] The separate *Pupillage File, Guidelines for pupillage training organisations and Good Practice in pupillage* should be discontinued.

[5] The new Handbook should clearly distinguish between the mandatory requirements laid down by the Bar Training Regulations, the Bar's Code of Conduct and the BSB's other formal rules on the one hand, and material which consists of advice and guidance as to good practice on the other.

[6] The standard of performance to be achieved by pupils to gain a Provisional or Full Qualification Certificate and the manner in which their work should be assessed are not defined in the Training Regulations or the BSB's Guidelines or other documents and must be clarified.

[7] The new Handbook must clearly set out the standard of professionalism to be achieved for entry into practice and the methods by which competence should be assessed.

CHAPTER 3

THE PUPILS

69. At the start of our review we determined to get a clear picture of today's pupils. In the year 2007-8 there were 562 first six pupillages. Of the pupils who completed the BSB's annual questionnaire for that year 470 (92.3%) stated that they were at the self-employed Bar and 39 (7.7%) stated that they were at the employed Bar. The average annual number of first six pupillages in the four-year period 2004-5 to 2007-8 was 539. There were 463 first six pupillages in 2008-9.

70. We know that there was fierce competition for these places. In each of the five years 2004-5 to 2008-9 between 1200 and 1400 of the students who completed the BVC and were called to the Bar were looking for pupillage in England and Wales. The remainder (500-600) planned to pursue legal careers in other jurisdictions, or other careers. Paragraph 28 of the BVC Report records that in 2008 just over half of the available pupillages (294) were advertised through OLPAS/PP. No fewer than 3768 individuals applied for those pupillages, the number of current BVC students being swollen by those who had been called to the Bar but had not obtained pupillage in previous years. Allowing for the fact that there will be additional applicants for pupillage who only apply for pupillages in chambers advertising outside OLPAS/PP, or at the employed Bar, this Working Group estimates that the total number of individuals seeking pupillage in any year cannot be less than 4000. Whether the introduction of an aptitude test for admission to the new BPTC, and the raising of the pass standard, will have an impact on these numbers remains to be seen.

71. Who then are the pupils? How many are male or female? Are they all, as is sometimes suggested, white middle-class alumni of Oxford and Cambridge or of the other 20 research universities in the Russell Group? Is there a difference between London and the regions?

72. These questions, and others concerning, for example, age and disability are significant not just for the BSB. It is in the public interest that the profession should attract a range of top-quality practitioners which, consistently with high quality, can understand and reflect the different viewpoints and experiences of the whole of society. The Bar Council, which is currently implementing the recommendations of the Neuberger and Milburn Reports, is committed to a policy of ensuring that the Bar offers candidates from all backgrounds an equal opportunity to compete and succeed in the profession.

73. As regulator the BSB has a duty to ensure that the procedures for the selection of pupils are fair and conscientiously followed. Restricting the pool of talent from which barristers are drawn will undermine the standards of excellence which the profession seeks to encourage; and if the profession is seen to be drawn from a narrow group it will lose the confidence of the public. A profession dedicated to the pursuit of justice must ensure that its own internal structures are founded on principles of fairness, and that talent is encouraged and nurtured without favouritism. Over and above this there are significant legal requirements which outlaw discrimination and must be scrupulously followed.

The data

74. In the five consecutive years 2004-5 to 2008-9, the BSB has collected data from each year's pupils on their gender, age, ethnicity, education, educational attainment and socio-economic background. The response rate to this questionnaire has exceeded 90%. Data on 2582 pupils have been collected. With the assistance of Jennifer Sauboorah of the BSB we have been able to construct a total of 28 Tables which appear in Annex 7. Readers will detect some arithmetical inconsistencies between various Tables. These result from rounding errors and variability in the completion of the questionnaires: not all respondents answer every question. These inconsistencies are not considered to be statistically significant.

75. The detailed results may be found in Annex 7. The main results are set out in the next paragraph.

76. *Gender:* The numbers of men and women undertaking pupillage are nearly equal. In some years the proportion of women slightly exceeds that of men. In other years it is the other way round. (Table 1).

Table 1: Gender of registered pupils (all)

	2004-05	2005-06	2006-07	2007-08	2008-09
Male	276 (52.4%)	250 (48.5%)	238 (45.2%)	261 (46.4%)	280 (54.4%)
Female	251 (47.6%)	261 (50.7%)	264 (50.1%)	249 (44.3%)	210 (40.8%)
Missing data	29 (5.2%)	4 (0.8%)	25 (4.7%)	52 (9.2%)	25 (4.9%)
Total	556 (100%)	515 (100%)	527 (100%)	562 (100%)	515 (100%)

77. *Ethnicity:* The average percentage of pupils who identified themselves as “white-British”, “white-Irish” or “white-other” was 77.6%. The remaining 22.4% were drawn from a very wide range of ethnic and cultural backgrounds. (Table 2).

Table 2: Ethnicity of registered pupils (all)

Ethnicity	2004-05	2005-06	2006-07	2007-08	2008-09
White-British	399 (71.8%)	396 (76.9%)	361 (68.5%)	376 (66.9%)	383 (74.4%)
White-Irish	17 (3.1%)	7 (1.4%)	14 (2.7%)	17 (3%)	20 (3.9%)
White Other	18 (3.2%)	20 (3.9%)	19 (3.6%)	9 (1.6%)	17 (3.3%)
White & Black Caribbean	4 (0.7%)	5 (1%)	18 (3.4%)	12 (2.1%)	9 (1.7%)
White & Black African	1 (0.2%)	0	3 (0.6%)	2 (0.4%)	1 (0.2%)
White and Asian	7(1.3%)	3 (0.6%)	16 (3%)	3 (0.5%)	5 (1%)
Other Mixed	5(0.9%)	9(1.7%)	13 (2.5%)	7 (1.2%)	9 (1.7%)
Asian-Indian	27(4.9%)	19 (3.7%)	18 (3.4%)	19 (3.4%)	8 (1.6%)
Asian-Pakistani	10 (1.8%)	11 (2.1%)	8 (1.5%)	7 (1.2%)	5 (1%)
Asian- Bangladeshi	2 (0.4%)	4 (0.8%)	3 (0.6%)	6 (1.1%)	4 (0.8%)
Asian-Other	4 (0.7%)	6 (1.2%)	5 (0.9%)	16 (2.8%)	6 (1.2%)
Black-African	8 (1.4%)	5 (1%)	3 (0.6%)	6 (1.1%)	6 (1.2%)
Black-Caribbean	5 (0.9%)	3 (0.6%)	6 (1.1%)	2 (0.4%)	7 (1.4%)
Black-Other	2 (0.4%)	3 (0.6%)	0	0	1 (0.2%)
Chinese	4 (0.7%)	3 (0.6%)	0	13 (2.3%)	4 (0.8%)
Other	9 (1.6%)	14 (2.7%)	14 (2.7%)	12 (2.1%)	3 (0.6%)
Unknown (not disclosed)	34 (6.1%)	7 (1.4%)	26 (4.9%)	55 (9.8%)	27 (5.2%)
Total	556 (100)%	515 (100%)	527 (100%)	562 (100%)	515 (100%)

78. *Socio-economic background*: Socio-economic background was assessed according to the occupation of the principal wage-earner in the pupil's family. The highest average percentage (46.2%) came from "higher managerial and professional" families. Higher and lower managerial and professional groups between them produced the just over two thirds of all pupils. The smallest (3.1%) was drawn from the "routine and semi-routine" occupational group (Table 3).

Table 3: Socio-economic background of registered pupils by principal wage earner (all)

	2004-05	2005-06	2006-07	2007-08	2008-09
Higher managerial & profs	251 (45.1%)	331 (64.3%)	159 (30.2%)	196 (34.9%)	291 (56.5%)
Lower managerial & profs	139 (25%)	91 (17.7%)	102 (19.4%)	116 (20.6%)	79 (15.3%)
Intermediate occupations	35 (6.2%)	35 (6.8%)	88 (16.7%)	81 (14.4%)	50 (9.7%)
Small employers & own account works	36 (6.4%)	2 (0.4%)	63 (12%)	27 (4.8%)	10 (1.9%)
Lower supervisory & technical occupations	5 (0.9%)	4 (0.8%)	28 (5.3%)	64 (11.4%)	12 (2.3%)
Routine and Semi-routine occupations	9 (1.6%)	5 (1%)	43 (8.2%)	11 (2%)	14 (2.7%)
Unknown / missing	812 (14.5%)	47 (9.1%)	44 (8.3%)	67 (11.9%)	55 (11.5%)
Total	556 (100%)	515 (100%)	527 (100%)	562 (100%)	515 (100%)

79. *Education:* In every year more than 60% of pupils were educated at Russell Group universities, including Oxford and Cambridge. The split between Oxbridge and other universities in the Russell Group demonstrates a slight predominance of the non-Oxbridge universities in that group (Table 4). On average 26.7% of respondents had First Class degrees (all universities), just over 60% had Upper Second Class degrees and 10.2% had Lower Second Class degrees (Table 5a). The numbers of holders of Lower Second Class degrees appear to be falling each year. The number of pupillages awarded to holders of Third Class or other degrees in any year is very small. We note that admission to the BPTC will from 2010 be limited to holders of First and Upper or Lower Second Class degrees.

Table 4: Academic background of pupils (all)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
Russell Group (with Oxbridge)	326 (61.9%)	324 (63.3%)	335 (67.4%)	350 (68.8%)	321 (65.5%)
Non-Russell Group	197 (37.5%)	185 (36.1%)	62 (32.5%)	158 (31.1%)	164 (33.5%)
Russell Group without Oxbridge	165 (31.4%)	177 (34.7%)	174 (35%)	189 (37.2%)	
Oxford/Cambridge	161 (30.7%)	147 (28.7%)	161 (32.3%)	161 (31.6%)	157 (32%)

Table 5a: Degree Results of pupils

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
1 st	127 (21.4%)	108 (21.1%)	149 (29.6%)	147 (28.8%)	160 (32.7%)
2:1	310 (58.8%)	329 (64.3%)	296 (58.8%)	320 (62.7%)	273 (55.7%)
2:2	73 (13.9%)	68 (13.3%)	48 (9.5%)	29 (5.7%)	42 (8.6%)
3rd	6 (1.1%)	2 (0.4%)	1 (0.2%)	4 (0.8%)	11 (2.2%)
Other	8 (1.5%)	1 (0.2%)	2 (0.4%)	8 (1.6%)	4 (0.8%)

80. *London and the regions:* Compared with the regions, London offers pupillage to a higher percentage of graduates from the Russell Group, and to a distinctly higher percentage of graduates of Oxford and Cambridge (Tables 5b and 5c). A higher percentage of pupils registered in London possess First Class and Upper Second Class degrees (Tables 6a and 6b). Both London and the regions divide their pupillages between men and women equally (Tables 7a and 7b). There is a lower proportion of pupils from ethnic minorities in the regions compared with London (Tables 8a and 8b). Tables 9a and 9b suggest that there is a slightly higher concentration of pupils from higher and lower managerial and professional families in London compared with the regions. However in so far as the Tables record regional differences they are limited to a small number of percentage points.

Table 5b: Academic background of pupils (London only)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
Russell Group (with Oxbridge)	231(43.8%)	228 (44.5%)	254 (50.4%)	240 (47%)	239 (48.7%)
Non-Russell Group	110 (20.8%)	103 (20.1%)	83 (16.5%)	93 (18.2%)	100 (20.4%)
Russell Group without Oxbridge	91 (17.2%)	104 (20.3%)	117 (23.2%)	113 (22.1%)	102 (20.8%)
Oxford/Cambridge	140 (26.5%)	124 (24.2%)	137 (27.2%)	127 (24.9%)	137 (27.9%)

Table 5c: Academic background of pupils (Regions)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
Russell Group (with Oxbridge)	95 (18%)	96 (18.7%)	81 (16.1%)	109 (21.3%)	82 (16.7%)
Non-Russell Group	87 (16.5%)	79 (15.4%)	79 (15.7%)	65 (12.7)	62 (12.6%)
Russell Group without Oxbridge	74 (14%)	73 (14.2%)	57 (11.3%)	75 (14.7%)	62 (12.6%)
Oxford/Cambridge	21 (3.9%)	23 (4.4%)	24 (4.7%)	34 (6.6%)	20 (4.1%)

Table 6a: Degree results of pupils (London)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
1 st	114 (21.6%)	88 (17.1%)	121 (24%)	111 (21.7%)	122 (24.8%)
2:1	180 (34.1%)	202 (39.4%)	181 (35.9%)	199 (39%)	188 (38.3%)
2:2	37 (7%)	40 (7.8%)	31 (6.1%)	15 (2.9%)	23 (4.6%)
3rd	4 (0.7%)	1 (0.1%)	1(0.1%)	4 (0.7%)	7 (1.4%)
Other	6 (1.1%)	1 (0.1%)	2 (0.3%)	3 (0.5%)	3 (0.6%)

Table 6b: Degree results of pupils (Regions)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
1 st	13 (2.4%)	20 (3.9%)	28 (5.5%)	36 (7%)	37 (7.5%)
2:1	130 (24.6%)	124 (24.2%)	115 (22.8%)	120 (23.5%)	84 (17.1%)
2:2	36 (6.8%)	28 (54.9%)	17 (3.3%)	14 (2.7%)	19 (3.8%)
3rd	2 (0.3%)	1 (0.1%)	0	0	4 (0.8%)
Other	2 (0.3%)	0	0	5 (0.9%)	0

Table 7a: Gender of pupils (London)

	2004-05	2005-06	2006-07	2007-08	2008-09
Male	190 (36.4)	172 (33.5%)	155 (30.8%)	170 (33.3%)	197 (40.2%)
Female	153 (29%)	159 (31%)	187 (36.3%)	164 (32.1%)	146 (29.7%)
Total	343 (65.4%)	333 (65%)	342 (67.1%)	334 (65.4%)	280 (70.3%)

Table 7b: Gender of pupils (Regions)

	2004-05	2005-06	2006-07	2007-08	2008-09
Male	86 (16.3%)	75 (14.6%)	83 (16.5%)	91 (17.8%)	82 (16.7%)
Female	98 (18.5%)	102 (19.9%)	77 (15.3%)	85 (16.6%)	63 (12.8%)
Total	184 (34.8%)	179 (34.3%)	161 31.9%	176 (34.5%)	147 (30%)

Table 8a: Ethnicity of pupils (London)

Ethnicity	2004-05	2005-06	2006-07	2007-08	2008-09
White-British	248 (69.7%)	247 (74.0%)	228 (66.7%)	234 (62.2%)	252 (73.5%)
White-Irish	14 (3.9%)	5 (1.5%)	13 (3.8%)	10 (2.7%)	16 (4.7%)
White Other	13 (3.7%)	18 (5.4%)	19 (5.6%)	9 (2.6%)	13 (3.8%)
White & Black Caribbean	3 (0.8%)	4 (1.2%)	14 (4.1%)	10 (2.7%)	8 (2.3%)
White & Black African	1 (0.3)	0	3 (0.9%)	2 (0.6%)	1 (0.3%)
White and Asian	5 (1.4%)	3 (0.9%)	10 (2.9%)	0	5 (1.5%)
Other Mixed	4 (0.1%)	8 (2.4%)	7 (2.0%)	3 (0.8%)	8 (2.3%)
Asian-Indian	19 (5.3%)	11 (3.3%)	11 (3.2%)	15 (4%)	7 (2%)
Asian-Pakistani	6 (1.7%)	6 (1.8%)	6 (1.8%)	4 (1.1%)	3 (0.9%)
Asian- Bangladeshi	1 (0.3%)	3 (0.9%)	3 (0.9%)	6 (1.6%)	4 (1.2%)
Asian-Other	2 (0.6%)	5 (1.5%)	5 (1.5%)	16 (4.3 %)	5 (1.5%)
Black-African	7 (2%)	5 (1.5%)	3 (0.9%)	4 (1.1%)	5 (1.5%)
Black-Caribbean	4 (1.1%)	1 (0.3%)	6 (1.8%)	1 (0.3%)	7 (2%)
Black-Other	2 (0.6%)	2 (0.6%)	0 (0.0%)	0	1 (0.3%)
Chinese	3 (0.8%)	2 (0.6%)	0 (0.0%)	9 (2.4%)	4 (1.2%)
Other	7 (2%)	9 (2.7%)	13 (3.8%)	10 (2.7%)	2 (0.6%)
Unknown (not disclosed)	17 (4.8%)	5 (1.5%)	1 (0.3%)	43 (11.4%)	2 (0.6%)
Total	356 (100%)	334 (100%)	342 (100%)	376 (100%)	343 (100%)

Table 8b: Ethnicity of pupils (Regions)

Ethnicity	2004-05	2005-06	2006-07	2007-08	2008-09
White-British	151 (75.5%)	147 (81.2%)	133 (71.9%)	142 (76.3%)	129 (75%)
White-Irish	3 (1.5%)	2 (1.1%)	1 (0.5%)	7 (3.8%)	4 (2.3%)
White Other	5 (2.5%)	2 (1.1%)	0	0	4 (2.3%)
White & Black Caribbean	1 (0.5%)	1 (0.6%)	4 (2.%)	2 (1.1%)	4 (2.3%)
White & Black African	0	0 (0.0%)	0	0	0
White and Asian	2 (1%)	0 (0.0%)	6 (3.2%)	3 (1.6%)	0
Other Mixed	1 (0.5%)	1 (0.6%)	6 (3.2%)	4 (2.2%)	1 (0.6%)
Asian-Indian	8 (4%)	8 (4.4%)	7 (3.8%)	4 (2.2%)	1 (0.6%)
Asian-Pakistani	4 (2%)	4 (2.2%)	2 (1.1%)	3 (1.6%)	2 (1.2%)
Asian- Bangladeshi	1 (0.5%)	1 (0.6%)	0	0	0
Asian-Other	2 (1%)	1 (0.6%)	0	0	1 (0.6%)
Black-African	1 (0.5%)	0 (0.0%)	0	2 (1.1%)	1 (0.6%)
Black-Caribbean	1 (0.5%)	2 (1.1%)	0	1 (0.5%)	0
Black-Other	0	1 (0.6%)	0	0	0
Chinese	1 (0.5%)	1 (0.6%)	0	4 (2.2%)	0
Other	2 (1%)	5 (2.8%)	1 (0.5%)	2 (1.1%)	0
Unknown (not disclosed)	17 (8.5%)	5 (2.8%)	25 (13.5%)	12 (6.5%)	25 (14.5%)
Total	200 (100%)	181 (100%)	185 (100%)	186 (100%)	172 (100%)

Table 9a: Socio-economic background of pupils by principal wage earner (London)

	2004-05	2005-06	2006-07	2007-08	2008-09
Higher managerial & profs	182 (52%)	225 (67.6%)	109 (29.9%)	134 (37.1%)	194 (55.4%)
Lower managerial & profs	89 (25.4%)	49 (14.7%)	69 (18.9%)	79 (21.9%)	62 (18.1%)
Intermediate occupations	20 (5.7%)	26 (7.8%)	71 (19.5%)	53 (14.7%)	34 (9.7%)
Small employers & own account works	22 (6.3%)	2 (0.6%)	36 (9.9%)	14 (3.9%)	7 (2%)
Lower supervisory & technical occupations	0	4 (1.2%)	17 (4.7%)	37 (10.2%)	11 (3.1%)

Routine and Semi-routine occupations	2 (0.6%)	2 (0.6%)	32 (8.8%)	8 (2.2%)	9 (2.6%)
Unknown / missing	35 (10%)	22 (17.5%)	10 (8.5%)	36 (10%)	33 (9.4%)
Total	350 (100%)	333 (100%)	365 (100%)	361 (100%)	350 (100%)

Table 9b: Socio-economic background of pupils by principal wage earner (Regions)

	2004-05	2005-06	2006-07	2007-08	2008-09
Higher managerial & profs	69 (33.5%)	106 (58.2%)	50 (30.9%)	62 (30.8%)	97 (58.8%)
Lower managerial & profs	50 (24.3%)	42 (23.1%)	33 (20.4%)	37 (18.4%)	17 (10.3%)
Intermediate occupations	15 (7.3%)	9 (4.9%)	17 (10.5%)	28 (13.9%)	16 (9.7%)
Small employers & own account works	14 (6.8%)	0 (0%)	27 (16.7%)	13 (6.5%)	3 (1.8%)
Lower supervisory & technical occupations	5 (2.4%)	0 (0%)	11 (6.8%)	27 (13.4%)	1 (0.6%)
Routine occupations	7 (3.4%)	3 (1.6%)	11 (6.8%)	3 (1.5%)	5 (3%)
Unknown / missing	46 (22.3%)	22 (12.1%)	13 (8%)	31 (15.4%)	26 (15.8%)
Total	206 (100%)	182 (100%)	162 (100%)	201 (100%)	165 (100%)

81. These data were considered further and developed in a paper prepared by Dr. Anna Zimdars of the University of Manchester and Dr. Sauboorah both for the BSB and for the group monitoring the implementation of the Neuberger Report on behalf of the Bar Council. This important paper (“Some Observations on Meritocracy and the Law: the profile of pupil barristers at the Bar of England and Wales 2004-2008”) is currently being reviewed for publication.

82. The paper draws comparisons between the “earnings” of different groups of pupils in their first and second six. “Earnings” means the aggregate of the funding of the pupillage award plus the pupil’s own earnings during his or her second six. This may serve as a proxy for the different types of practice to which the pupils become attached – publicly- or privately-funded, commercial or chancery, common law, family and criminal law.

83. There is a detailed breakdown of numbers and groups between the self-employed and employed Bar. Comparisons are also made between the composition of the body of pupils, graduates generally, and the general population.

84. The paper by Zimdars and Sauboorah sets out a complex analysis of these data. At the risk of blurring some of the information and argument which it contains we select what seem to us to be the main conclusions.

1. *The Bar shows higher female participation, particularly among new entrants, than the professional employment sector at large, although not as high as the solicitors’ profession.*
2. *The Bar also shows higher ethnic minority participation than the economically active population with higher qualifications.*
3. *When comparing pupil barristers with the university population, pupils showed higher educational attainment in terms of degree class and the prestige of the university attended than all graduates.*
4. *The profile of pupils tends to be less diverse than the profile of university students, with a significant drop in representation of working-class students.*
5. *There are proportionately fewer female pupil barristers than there are female university graduates.*
6. *The strongest predictors of pupils’ “earnings” are related to education. There is an earning premium for Oxford, degree class and BVC attainment. The premium for an Oxbridge pupil is higher than a pupil with a First from a university other*

- than Oxbridge. Study at Oxford or Cambridge and the attainment of a First Class degree appears to be the most desirable combination for high earnings.*
7. *Ethnic minorities are over-represented in London but pupils of working-class origin are not significantly more likely to join the regional Bar.*
85. The paper concludes with these paragraphs which we wish to set out in full:

“The Bar compares favourably to population comparators with regards to ethnicity and gender. Nonetheless, given the profile of university graduates, there still seems scope to expand the intake of new barristers from lower social-class origin and to recruit from a larger number of universities.

Once individuals have entered the Bar, attainment factors are the largest predictor of earnings, employment location and employment status. High attainment and an Oxbridge education are related to high earnings, opting for self-employment and for London. While the earnings pattern is compatible with the meritocratic paradigm, the employment status pattern may raise some questions regarding whether barristers in employed and self-employed practice are of the same academic calibre. There also appears to be some brain-drain away from the regional Bar to London, although this issue may not be a unique challenge to the Bar but might be apparent in other professional employment sectors.

Furthermore, Origin factors also play a role that is not explained by the prior impact of Origin on educational attainment. Women and those older than 25 earn significantly less during pupillage. Women, those older than 25 and those with a disability are more likely to join the employed Bar. Those who are older than 25 and ethnic minorities are less likely to be outside of London. Some of these effects are not surprising – i.e. current employment policies frequently make the public sector a friendlier work-place for women and those with a disability; ethnic minorities are concentrated in metropolitan areas such as London in general. The age effect on employment may also be an indication that older workers trust the more transparent procedures of the public sector to be easier for them to navigate. It is of course also possible that older pupils are less able to secure pupillage in the private sector. Finally, the negative effect of being female on earnings raises concerns and this would also be the case even if women were found to opt for less highly remunerated areas of practice as these choices are in themselves influenced by perceived or actual opportunity structures.”

86. Existing data held by the BSB and Bar Council (see Annex 6) have built upon commissioned studies of pupillage in the late 1990s such as (Shapland and Sorsby's *Good Practice in Pupillage*, 1998). Other data have been sourced from figures from Inner Temple, e.g. surveys of their barristers who obtain pupillage.

Discussion

87. Some conclusions may be stated with a reasonable degree of confidence. First, the numbers in the Tables are very probably accurate in themselves. Secondly, the high response rate is likely to give a true answer to the questions posed in paragraph 71 above: who are the pupils and where do they come from? Thirdly, the distribution of pupillages between men and women, members of the ethnic majority and minorities, and pupils drawn from different socio-economic backgrounds yields a greater diversity within contemporary pupils than many commentators on the profession might expect.

88. With regard to educational background and attainment, the fact that more than 60% of pupils are graduates of the Russell Group of universities, that nearly half of those are graduates of Oxford or Cambridge, and that a very high proportion of pupils from all universities have First or Upper Second Class degrees may not come as a surprise. Whether this is a cause for satisfaction or concern we do not decide.

89. What these figures cannot and do not show is whether the process by which these pupils have been selected was fair or biased. That is because we do not have corresponding data on the candidates who applied for pupillage but were rejected. Moreover even if we had those data it would still be difficult to draw any statistically significant conclusions.

90. The point can be illustrated very simply. If half the pupillages were awarded to women but 75% of the applicants had been women, it would be tempting to argue that the selection process was biased against women. But that conclusion could not be justified without knowing everything about the qualities and qualifications of the unsuccessful women compared with the successful men, and the reason why they were

rejected. It is also the case that different chambers and employers have different selection criteria. Some automatically reject holders of Lower Second Class degrees. Others (such as the Government Legal Service) will reject graduates with a Lower Second unless there are special circumstances which explain or offset that level of degree. Some look for qualities and achievements outside academic attainment. Others concentrate more on the way in which candidates answer questions, both in the application form and at interview, which are designed to match the chambers' or employer's particular interests.

91. It is also impossible to draw any conclusions about the way in which the careers of these different groups of pupils will develop beyond what we might know about the type of practice in which they are trained as pupils. It would be particularly misleading to attempt a comparison between the composition of today's pupils, divided into these different groups, and the composition of the practising Bar as a whole. For example, the proportions of women, or members of ethnic minorities, within the profession as a whole may have been determined by factors which do not greatly affect the present generation of new recruits. The Bar's Equality and Diversity Code now applies to the way in which the profession treats (among others) its own members, at every stage of their career. The enforcement of that Code is one of the BSB's disciplinary responsibilities. The profession has not been subject to this regime in the past. However the way in which barristers with different qualifications and attributes develop their careers after pupillage lies outside our terms of reference.

92. We make the following recommendations.

93. First, the BSB must continue to collect these data and monitor the background, level of educational attainment and other characteristics of recruits to the profession. This will, among other things, assist the Bar Council in implementing its policy of promoting open access to the profession for all applicants who possess the necessary skills.

94. Secondly, we note that Dr. Zimdars has already embarked on the much more ambitious task of collecting data on BVC/BPTC students generally with a view to comparing that group as a whole with those members of it who actually obtain pupillage. Carrying this project to the point at which a meaningful comparison can be made between applicants who are accepted for pupillage and those who are rejected is a formidable research project. It will not, we believe, carry weight until a great deal more information is obtained about the qualities and achievements of the unsuccessful applicants, compared with those who succeeded. Nevertheless we recommend that this important research should continue.

95. Thirdly, the BSB should take steps to ensure that the procedures by which pupils are selected by chambers and employers are fair and open and do not discriminate between applicants for reasons which are extraneous to their ability to offer clients legal services of the highest quality. The recruitment of pupils is discussed in Chapter 6. The enforcement of the Code of Conduct and good practice are discussed in Chapter 14.

Career prospects for pupils

96. Pupils who successfully complete their training and are awarded their Final Qualification Certificate have good prospects of obtaining a tenancy, or a position at the employed Bar. The Table below sets out the number of tenancies and positions taken up in both sectors for the last six years from 1st October 2003-30th September 2004 onwards and compares those numbers with the number of pupillages in the preceding year.

Table 10: The number of tenancies and positions taken up at the self employed and employed Bar

Year	Pupillage 1st 6 registrations	Pupillage 2nd 6 registrations	Tenancies at self-employed Bar	Positions at employed Bar
2003/2004	518	557	601	182
2004/2005	556	598	544	156
2005/2006	515	567	531	191
2006/2007	527	563	499	228
2007/2008	562	555	494	239
2008/2009	463	518	497	213

97. The inference which we draw from this Table is that, in very broad terms, the number of pupillages available in any year is linked to the number of appointments which will exist for beginners in the following year, and deliberately so. The Bar, again in broad terms, appears to be both offering and limiting training to the number of pupils which is commensurate to its business needs. Intense competition occurs between those who are seeking pupillage, as we pointed out at the beginning of this Chapter. For those lucky enough to obtain pupillage there is a strong probability that they will progress into practice. This conclusion has a bearing on other issues which are addressed in this Report, especially that of the recruitment and funding of pupils.

Conclusions and recommendations

[8] The BSB has assembled a body of data on the gender, ethnicity, socio-economic background and educational attainment of pupils which is reliable and comprehensive.

[9] The distribution of pupillages between men and women, members of ethnic minorities and majorities, and pupils from different socio-economic backgrounds shows a greater diversity among today's body of pupils than many commentators might expect.

[10] The principal qualification for obtaining pupillage appears to be high educational attainment.

[11] The BSB must continue to collect these data from newly-registered pupils.

[12] However no safe conclusions can be drawn from the data about the fairness of the selection procedures used by chambers and employers.

[13] The research which has started into the backgrounds of all applicants for pupillage should continue so that a proper comparison can be made between successful and unsuccessful applicants.

[14] Those who are successful in obtaining pupillage have a very good prospect of entering into practice as a barrister either at the self-employed or employed Bar.

CHAPTER 4

TRAINING ORGANISATIONS

98. In this Chapter we discuss two issues concerning approved training organisations (ATOs).

- The process by which they are approved by the BSB, and the criteria applied in approving them.
- The numbers of ATOs and the record which is kept by the BSB.

The process of approval

99. Most chambers at the self-employed Bar and many employers, predominantly in the public service, appoint and train pupils.

100. Regulation 37 of the Training Regulations states that the BSB “will” designate an organisation as an approved Training Organisation (ATO) if it is satisfied:

- “(a) that one or more registered pupil supervisors who are available to provide training practise in the organisation; and*
- (b) that the organisation has made proper arrangements for dealing with pupils in accordance with the Code of Conduct.”*

Requirement (a) - that an organisation should have “one or more” practising registered supervisors - is curiously phrased. Is the requirement not always satisfied if there is just one? Requirement (b) requires compliance with the Code of Conduct. While some parts of the Code apply to organisations, much of it applies to individual barristers. The relevant parts of the Code are discussed in the next paragraphs.

101. Paragraph 404.2 of the Bar’s Code of Conduct requires barristers at the self-employed Bar who are responsible for the administration of chambers to take all reasonable steps to ensure that proper arrangements are made for dealing with pupils and

pupillage. They must ensure that pupillage vacancies are advertised in the manner prescribed by the Bar Council (now acting through the BSB). Annex R to the Code of Conduct contains the regulations for the advertising and funding of pupillages. We discuss it in Chapters 6 and 8 below. Paragraph 404.2 also stipulates that in making arrangements for pupillage “*regard is had*” to the pupillage guidelines issued from time to time by the Bar Council and the Equality and Diversity Code for the Bar.

102. Paragraph 804 of the Code of Conduct reinforces para.404.2. It requires pupil-supervisors to take reasonable steps to provide their pupils with adequate tuition, supervision and experience, and “*to have regard*” to the BSB’s *Guidelines* and the Equality and Diversity Code.

103. One of the key requirements of the Equality and Diversity Code (para.1.19) is that chambers should have in place a pupillage policy, now known as a Pupillage Policy Document (see below), which includes a pupillage selection procedure. Annex R and the Equality and Diversity Code clearly apply to organisations as well as to individuals.

104. The effect of requirement (b) is that a prospective training organisation must directly comply with those parts of the Code of Conduct (and the documents incorporated into it) which bind organisations, and satisfy the BSB that its members will comply with the relevant parts of the Code which affect individuals. The BSB will therefore inquire into both the organisation and its members before it can be satisfied that the organisation meets requirement (b). These matters are explained on pages 3 and 4 and elsewhere in the present *Guidelines*.

105. Regulation 39(a) requires the BSB to give notice in writing to any organisation which it decides should not be designated as an ATO. The power to designate or refuse to designate an organisation as an ATO is currently exercised in the first instance by the BSB’s Qualifications Committee. It is clear that approval may be withheld if the organisation fails to meet requirement (a) or (b).

106. An organisation which is aggrieved by a refusal to designate it as an ATO may ask the BSB to review its decision; and it has a further right of appeal to the Visitors under Part X of the Regulations.

107. Approval may be withdrawn under reg. 38 if it is shown that the training provided by the organisation is or has been “*seriously deficient*”, or that it has not made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct. Notice of the decision in this case must be given not only to the organisation but also to existing or future pupils and their Inn. Again, this jurisdiction is vested in the first instance in the BSB’s Qualifications Committee. A disqualified organisation has a right to call for a review of the decision and a right of appeal. Pupils who are caught in this situation have to resort to the various agencies who give advice to pupils, listed in Chapter 14.

Additional requirements

108. Despite the apparently mandatory or promissory words of reg.37 - that the BSB “*will*” accredit an organisation which fulfils requirements (a) and (b) - in practice it applies requirements which are much more stringent. The Qualifications Committee operates “*Criteria and Guidelines for Applications for Authorisation as a Pupillage Training Organisation*”, which are accompanied by a detailed application form. These documents are currently available on the BSB website. They make it clear that compliance with requirements (a) and (b) in reg.37 is not, in the eyes of the BSB, enough. Their effect is summarised (in part only) on pages 3-5 of the *Guidelines for pupillage training organisations*.

109. The source of these additional requirements is a submission made by the Bar Council to the Lord Chancellor on 23rd March 2005 in support of an application to amend the previous Consolidated Regulations to include a new regime for the approval of training organisations and supervisors. The proposed regime was substantially the same as the regime which appears in the new Training Regulations, except in one critical respect. The amendment proposed to the Consolidated Regulations stated that “*the*

Council may” [emphasis added] accredit a training organisation “*subject to such terms as the Council may determine*”. Annex 2 to the submission then set out proposed terms for the approval of training organisations which correspond with the present *Criteria and Guidelines* referred to above. The amendment to the Consolidated Regulations was approved: see CRs 47.2. Approval was given presumably on the basis that those terms would be applied. Whether they can still be enforced, in the light of the different, mandatory wording of reg. 37, is open to debate.

110. Under the *Criteria and Guidelines* an application will not be entertained unless it is made in the version of the application form which is current at the date of the application, and has attached to it certain prescribed documents. One of them is a formal Pupillage Policy Document which must cover twelve separate sets of arrangements for dealing with different aspects of pupillage. They go far beyond the simple requirement in the Equality and Diversity Code that the policy should include a pupil selection procedure. In addition the Pupillage Policy Document must contain a programme demonstrating how pupils will achieve a satisfactory understanding of the seven skills set out in the Collyear report, quoted in paragraph 23 of this Report, and it must give assurances about the library facilities and other resources available to pupils.

111. The *Criteria and Guidelines* demand an undertaking to provide training in accordance with guidance given from time to time by the BSB. They also require assurances that each pupil will be supervised on a regular basis by a registered supervisor, and will have regular contact with at least one other solicitor or barrister with at least three years experience of practice, in addition to the supervisor. At least one of the other lawyers referred to must be and, for the last three years, must have been entitled to exercise a right of audience before every court in relation to all proceedings. This last requirement, which we will call “the higher rights requirement”, goes far beyond requirement (a) in reg. 37.

The Hendy Report

112. Two further additional requirements are suggested in the Hendy Report: first that requirement (a) should be enhanced to require an organisation at the self-employed Bar to have not less than two accredited supervisors and secondly that it should have in place a designated director of studies to supervise training overall.

Authorisation of training organisations: discussion

113. From 2001 until 2007, approval of ATOs was dealt with by a member of the secretariat. Under that system, applications by ATOs for registration were submitted and dealt with in accordance with the criteria in the *Guidelines for Pupillage Training Organisations*, which were available on the website. This system was considered unsatisfactory principally because the procedure gave no scope for any discretion or for refusal in spite of the criteria being fulfilled. It was also considered that approval of ATOs should be dealt with by committee. Since 2007 a panel of the Qualifications Committee has therefore been dealing with approval of ATOs. In addition, it was decided at the same time that both employers' organisations and chambers should apply for authorisation, so that both were treated in the same way. Until 2007, only employed bar organisations had to apply for authorisation. Chambers were automatically deemed suitable to take pupils. Since 2007 newly formed chambers have to comply with the same criteria as organisations which had not taken pupils in the past.

114. We have thought it right to go into the processes of authorisation in some detail because the BSB and the Bar Council have received a volume of complaints about the stringency of the *Criteria and Guidelines* and the opacity of the system. We have sympathy with those who find the present system difficult to understand, not least because (again) the materials which make it up are not assembled in one place. Putting it all together, we have found, is a time-consuming process. Complaints come particularly from employers who would like to take on pupils but are frustrated in their attempts to do so because they fall foul of some of the more detailed requirements set out in the application form. One of the main stumbling-blocks is the higher rights requirement. These complaints have been repeated to us in the course of this review, especially at our

meetings with representatives of the employed Bar. The same point is made in paragraph 243 of the Neuberger Report.

115. There are some questions of policy here which have to be answered. First, the BSB has to decide whether it accepts the obligation or promise which appears to be imposed upon it by reg. 37 of the Training Regulations - that it “will” authorise any organisation which satisfies requirements (a) and (b) - or whether it wishes to revert to the more flexible discretionary but rigorous system in place under the previous Consolidated Regulations, which produced the present *Criteria and Guidelines*. If it is content with reg.37 as it stands, it might be difficult for the BSB to claim the right to enforce the additional requirements laid down in the latter document. If on the other hand it prefers a fully discretionary system, the proper course must be to repeal reg. 37 and restore CR. 47.2, or something like it. That will then entitle it to maintain and enforce the *Criteria and Guidelines* without controversy. But another question then will then arise. Are the *Criteria and Guidelines* satisfactory as they stand, or should they be amended? How should the BSB respond to the criticisms made by the employed Bar? Lastly and in any event does the BSB accept the Hendy recommendations?

116. We recommend that the issues should be resolved as follows:

- (1) The discretionary system is more appropriate for a regulator and should be restored. It gives it far greater control over applications and enables it to meet special facts and circumstances which can arise in individual cases. Regulation 37 should be replaced by a new regulation in the form of CR 47.2.
- (2) The *Criteria and Guidelines* are broadly acceptable, including the higher rights requirement. Pupils being trained to exercise higher rights should be trained by those with such entitlements. The criticisms made by the employed Bar in the past of the requirement for there to be a pupil supervisor plus another person with higher rights was eased in 2007, to require that only one person needed that entitlement. Moreover if the recommendation contained in paragraph (1) above is accepted, the BSB

will have a discretion to approve an organisation even where the higher rights requirement is not met, provided that in all other respects the organisation is suitably qualified to train pupils. These arrangements must be properly publicised.

- (3) We support the second of the two suggestions made in the Hendy Report, namely that every ATO should have a director of training, and we see no reason why it cannot be applied to the employed Bar as well as to chambers. Provided that the director is aware of the responsibilities involved, and has undergone the same training as a supervisor, there is no reason why that person should have to be an accredited pupil-supervisor him- or herself. It can be the head of chambers, another senior practitioner within the organisation or a senior administrator (as already happens in the CPS).

117. The other suggestion in the Hendy Report, namely that every ATO should possess not less than two registered pupil-supervisors, would in our view be likely to bear unnecessarily harshly on smaller sets; and we do not see the justification for having different rules for the employed and the self-employed Bar. In Chapter 11 we meet the point in part in our discussion about the procedure for certifying pupils' performance at the end of the first and second six months of training. We do not therefore support this proposal; but we acknowledge that it deserves careful consideration.

118. Any new system which is put in place must be given the widest publicity, especially among employers. The current uncertainty and sense of frustration must be dispelled, so that more employers will be willing and able to offer pupillages.

Numbers of ATOs

119. The BSB keeps an accurate record of ATOs that currently take pupils. This current software listed around 300 sets of chambers in London and the Regions, and 11 separate employers (as at the end of 2009). However, there is currently no dedicated database of all ATOs that have been approved at some point to take pupils.

120. The ATOs at the employed Bar which appear on the current list are the Treasury Solicitor, the Department of Work and Pensions, the Department for the Environment Food and Rural Affairs, HM Revenue & Customs, the Home Office, the Crown Prosecution Service (CPS) and one London Borough. Three firms of solicitors are also on the list and one pharmaceutical company. The CPS has 22 offices which are authorised to take pupils.

121. The BSB does not currently have a single unified database which records all the training organisations which have been authorised. It only records those currently offering pupillage. A simple reading of the list shows, for example, that the name of at least one organisation at the employed Bar which is represented on the Bar Council's Committees, and is known to take pupils from time to time, is omitted. The list of accredited government departments is also incomplete. The number of ATOs is in this way understated. But in the other direction no record is kept of how often and when an ATO has accepted pupils, or the date when it last accepted one. Nor is it clear whether the dissolution or merger of chambers is picked up. There is therefore a corresponding risk that the number of ATOs may be overstated. The accuracy of BSB's list of ATO's needs to be properly resourced so that it can be properly maintained.

Numbers of ATOs: discussion

122. It is plain that improvements to the BSB's database, and its record-keeping systems are long overdue. The same will be shown to be true in the next Chapter where we discuss the database of pupil supervisors. We set out our more detailed observations on record-keeping generally at the end of that Chapter.

Conclusions and recommendations

[15] The system whereby the BSB approves training organisations and the status of the criteria used in the process need to be clarified.

[16] Regulation 37 of the Training Regulations should be repealed and replaced by provisions corresponding to the previous Consolidated Regulations reg. 47.2

which gave the regulator a broad discretion to lay down and change from time to time criteria and guidelines for approval.

[17] The *Criteria and Guidelines* currently operated by the Qualifications Committee should be amended by adding an additional requirement that an ATO should have as a member, or member of its staff, a director of pupil training who (although not necessarily a registered supervisor) has undergone a supervisors' training course within the last five years.

[18] Any new system for the approval of ATOs must be well publicised.

[19] The BSB's systems for recording details of ATOs are in urgent need of improvement. Databases must be updated, with effective interfaces and interaction in order to improve effective record keeping.

CHAPTER 5

SUPERVISORS

123. Regulation 35 of and Schedule C to the Training Regulations stipulate who may act as a pupil supervisor. The rules are clearly set out in the Schedule and we summarise them here.

124. A pupil supervisor must be on the BSB's register of approved supervisors, hold a current practising certificate and have regularly practised as a barrister during the past 2 years (para. 1).

125. The process of registration is conducted through the barrister's Inn of Court. Application is made to the Inn in a manner approved by the BSB. It must be supported by two references from a judge or senior member of the profession and by the applicant's head of chambers or employer (as the case may be). If the applicant is also the head of chambers or the most senior person in the organisation a second reference is required: see para. 5.

126. It is the responsibility of the barrister's Inn to satisfy itself that the applicant, having a current practising certificate, "*has the necessary experience and is otherwise suitable to act as a pupil supervisor*" and has submitted an application in proper form, duly supported by referees. It is not known how many applications for registration have been refused by the Inns.

127. Para. 6 of Schedule C deals with the training of pupil supervisors. Such training "*may be normally required*". It is now in fact required in every case, before a barrister can be entered on the register. We discuss the training of supervisors in detail in Chapter 13 below.

128. Although the point is a minor one, it is not entirely clear whether it is the barrister's Inn or the BSB which has the last word on whether a name gets on to the register. Is the Inn's nomination final and binding, or can the BSB refuse registration, for example on the ground that it believes that the nominee is not after all suitable? Since the BSB is the regulator the last word should in our view rest with it.

129. There are provisions in the Training Regulations for the removal of a supervisor from the register: where the barrister ceases to practise or is suspended from practice; asks to be removed from the register; fails to complete any required training; is found by the BSB to be unsuitable for any reason; or has not acted as a pupil supervisor for the previous 5 years (para. 7). There are provisions, in para. 14, for the review of a decision and any subsequent appeal which correspond to the provisions applicable to ATOs. Under the previous Consolidated Regulations Queen's Counsel were disqualified from acting as pupil supervisors and their names were automatically removed from the register on their appointment. This rule is no longer in force.

130. Complaints about supervisors are made to the BSB. Problems relating to pupil supervisors normally come to light at triggered visits but may also be referred to the BSB by the supervisor's Inn. Pupils may also initiate a complaint. In contrast with the process of registration, which is principally in the hands of the Inns, the jurisdiction to remove a supervisor from the register on the ground of unsuitability is vested in the BSB. Complaints against pupil supervisors are made to the Complaints Committee of the BSB. Statistical information about these complaints is difficult to produce, because there are very few complaints.

131. A decision to de-register a supervisor must be communicated to the supervisor.

Numbers of supervisors

132. The Inns between them submit about 200 names of barristers each year for registration. As in the case of ATOs, the BSB maintains a central register of all approved

supervisors on a rudimentary database. There are (in round figures) 3850 names on the list.

133. As in the case of ATOs, the accuracy of this record is open to serious question. About 12% of the barristers registered were approved as supervisors more than 20 years ago. A significant number were called to the Bar in the 1960s. When the ban on Queen's Counsel taking pupils was in force, their names were automatically removed from the register on appointment. There was and is no systematic method for removing the names of others, for example if they take a judicial appointment, retire from practice, have not taken a pupil in the previous 5 years, or indeed have died.

134. It is therefore likely that the number of registered supervisors whose names are recorded on the BSB's database is seriously over-stated.

Discussion: registration

135. We support the current system of registration and recommend that it should be continued. The Inns are the natural agency for handling applications from barristers to become supervisors. They know, or will certainly have records of, their members. At present the Inns are the main providers of training for supervisors; but we have been informed that some Circuits also provide training. This practice is not well known, because one Circuit told us that the rules should be changed to allow Circuits to offer supervisor-training. In Chapter 13 below we explain how supervisor-training can be enhanced and we recommend for the avoidance of doubt that all the Circuits, as well as the Inns, should be expressly sanctioned by the BSB to train supervisors. But the final nomination should still be made by the Inns, and any certificate that a proposed supervisor has attended training outside his or her Inn should be submitted to the Inn.

136. We have also recommended that the Inn's nomination of a supervisor should be subject to the final approval of the BSB, and not binding upon it. We recommend a process whereby the Inn proposes the name and the BSB notifies the Inn and the supervisor that the nomination has been accepted. In a very small number of cases the

BSB may wish to refuse a nomination, or at least refer it back to the Inn. It should have the right to do so.

137. The condition that all registered pupil supervisors – past as well as present - must undergo training needs to be more strictly enforced. The powers under para. 7(c) and (e) of Schedule C to the Training Regulations to remove supervisors from the register who have failed to complete any training or have not supervised a pupil for five years are scarcely if ever exercised. This may explain in part the state of the BSB's register; and the state of the register explains why the powers cannot at present be effectively exercised.

Discussion: record-keeping

138. This brings us finally to the question of record-keeping, which was also fully considered by the Hendy Committee. It is plain that the current state of the records both of ATOs (which we discussed in the previous Chapter) and supervisors is not acceptable and needs to be improved. Both the BSB as regulator and the Bar Council as policy-maker have to know exactly what resources are available for training recruits to the profession. Without this knowledge it is impossible to formulate, much less to implement, plans for future access to the profession; to understand what career opportunities exist; to judge what the future size of the profession might be; or (from the BSB's point of view) to know whom or what it is regulating.

139. It is also important for students reading for the Bar and their career advisers to know in general terms the amount of the resources available for training and how they translate into career advancement.

140. We have said that the figure recorded for pupil supervisors (approximately 3850) is likely to be exaggerated. However to ensure that there is an adequate supply of pupil supervisors to train some 400 or 500 pupils each year there must, in our judgment, be at least 2000 supervisors on the register. The Hendy Committee agreed with this assessment. In Chapter 2 above we recorded the fact that most pupils at the self-

employed Bar now spend twelve months in a single set of chambers, working successively with two or more supervisors. We recommended that, in most cases, this would be the best practice. Similarly, at the employed Bar many pupils have two or more supervisors. It must also be remembered that not all supervisors continuously train pupils year in and year out. They may take a break from training for a variety of possible reasons. We also refer to para. 10 of Schedule C to the Training Regulations which prohibits a supervisor (without the consent of the BSB) from supervising more than one pupil at a time. If then we are right, for all these reasons, in our target figure of about 2000, the BSB has to be satisfied that the number of registered supervisors who are actively training or are ready to train pupils matches that figure. If it does not there will have to be a recruitment drive to bring the number up.

141. We note that the BSB is already taking steps to improve the state of its records, particularly with regard to pupil supervisors. Some fundamental questions are being asked. How many of the registered supervisors are still in practice? When did they last accept a pupil? When (if at all) did they last undergo training as supervisors? How many Queen's Counsel wish to be restored to the register, now that they have become entitled to supervise pupils? When the register has been brought up to date, how can it be kept up to date? We recommend that high priority is given to this task.

142. The Hendy Committee made the constructive suggestion, which we endorse, that record-keeping would be assisted if every set of chambers and all organisations employing barristers were required to identify in their Annual Return to the Bar Council their accredited pupil supervisors and the period (if any) during which each has actively supervised a pupil during the last 12 months. The last date when they underwent training (if at all) could also be included.

143. To improve the register and to solve the twin problems of training and of supervisors who have not supervised for five years, we recommend the following sequential approach:

- (1) identify and remove from the register all those who are no longer in practice or who, for any reason, do not wish any longer to be supervisors;
- (2) identify the supervisors who have not taken a pupil for five years;
- (3) give these pupil supervisors the option either to be removed from the register or to retain registration by undergoing training. Those not responding will be removed from the register;
- (4) identify all other supervisors who have not undergone training during the last five years or at all.

144. The supervisors in category (4), or at the very least those who have never been trained, should be required to undergo training to maintain their registration, as soon as is practicable. The Hendy Committee (which also makes this recommendation) has left it open to ourselves to lay down a timetable for the implementation of it, but we are not able to do so because we do not know how many individuals this might involve. In Chapter 13 below we discuss the further recommendation made by the Hendy Committee that all pupil supervisors should undergo re-training every five years. This recommendation too could not be implemented without good record keeping.

Conclusions and recommendations

[20] The system for the nomination of pupil supervisors through the Inns of Court is appropriate and works satisfactorily. Subject to [21] and [22] below it does not need to be changed.

[21] The Circuits should be expressly authorised to deliver supervisor training courses; but the nomination of a supervisor should always be made by that person's Inn.

[22] The Training Regulations should be amended to make it clear that the BSB has a residual discretion to refuse to accept the nomination of a barrister as a pupil supervisor. The grounds of refusal should be communicated to the barrister and his or her Inn and be subject to review and appeal under the Regulations.

[23] The accuracy of the BSB's registers of ATOs and pupil supervisors must be thoroughly checked. The registers urgently need to be brought up to date and the

system of record-keeping must be improved, in order to ensure that training takes place as specified in para 143.

[24] Among other things the register of pupil supervisors must in the future include details of the dates when a supervisor last took a pupil and when he or she last attended a training course.

CHAPTER 6

RECRUITMENT OF PUPILS

145. In the public's and its own interest the Bar needs to recruit candidates of the highest calibre. But competition for the best candidates is intense, on two fronts.

146. First, as a profession the Bar is in direct competition with others. It is often said that one main competitor is the solicitors' branch of the legal profession. That statement, while true, needs to be treated with some caution. Discussions with pupils and young practising barristers carried out during the course of this review show that many have always had the Bar and only the Bar in their sights as a career. For a variety of reasons they say they have never been attracted to an alternative career as a solicitor. Some more senior practitioners will say the same; and many solicitors say exactly the same about the Bar. However it cannot be doubted that there are many careers, in the legal profession and elsewhere, which siphon off graduates of outstanding promise who, given the right incentives, would flourish at the Bar.

147. In this competitive arena the Bar does suffer from some handicaps. The high cost of the BVC/BPTC, much of it unfunded, and the uncertainty of obtaining pupillage are often cited. The extent to which these factors are in truth handicaps, given the number and diversity of applicants for pupillage, is worthy of more detailed research; but there is undoubtedly much truth in the point.

148. Secondly, there is strong competition for the best pupils between chambers and employers of barristers. At the self-employed Bar various inducements are offered to encourage applications to individual sets of chambers. The most visible is the size of pupillage awards. At the time of writing this Report some commercial and chancery chambers appear to have entered a bidding war, awards of £55,000 for a twelve months' pupillage being surpassed elsewhere by offers of £60,000. While the size of these offers

may add prestige to the chambers which make them, the influence which they have on an individual's choice of chambers is, again, something which needs to be evaluated. Some pupils have suggested to us that the key decision for them is the field of law in which they wish to practise in the long term, and the reputation of the chambers to which they apply, rather than the amount of the pupillage award itself. Nevertheless attracting the very best, by all legitimate means, is a high priority.

149. Pupillage awards are not the only way in which chambers market their wares. Entry into university life is also seen as important: sponsoring moots, attending careers fairs, giving prizes for examinations in subjects allied to chambers' field of practice, and mini-pupillages for undergraduates are examples. Personal contacts with tutors and lecturers are also considered to be valuable.

150. At the employed Bar employers also actively encourage new recruits. A meeting at the Middle Temple in October 2009 found the Treasury Solicitor and his Deputy, the First Parliamentary Counsel and the Director of Public Prosecutions explaining to students the many attractions of practice in their sections of the Bar, pointing out the diversity, collegiality and importance of the work and the flexibility of working practices which they can offer.

151. There is no reason to criticise and every reason to encourage this level of competition. It is our view that regulation of the recruitment process by the BSB should be as light as circumstances allow. As one member of the BSB's Pupillage Committee pointed out to us "*(1) neither the SRA [Solicitors' Regulation Authority] nor any other regulators restrict, or will restrict, the freedom of their constituents to recruit as and when they like, and (2) it is normal practice in other professions to those who are seeking training to search out opportunities whenever they like and receive full or conditional offers as and when they are offered*".

152. Regulation should in our view be imposed solely for the purpose of achieving these following objectives: to ensure that recruitment procedures are open and fair to all

candidates; that they maximise the opportunity of all candidates of high calibre to compete for an appointment on equal terms; and that they comply with the law and good practice relating to discrimination, equality of opportunity and diversity. Where strict regulation is inappropriate the BSB is well-placed to offer guidance and advice on good practice.

153. Pages 24 to 28 inclusive of the BSB's "*Guidelines for pupillage training organisations*" contain a mixture of detailed instruction and advice on the recruitment process. Much of the discussion which follows in this Chapter reflects on those guidelines. Do they promote the objectives referred to in paragraph 151 above; or are they unduly restrictive and bureaucratic?

The five-year rule

154. Regulation 29 of the new Training Regulations reproduces the earlier restriction contained in the Consolidated Regulations that a person may not commence pupillage after the expiration of 5 years from the date when he or she was certified as having completed and passed the BVC/BPTC, except with the permission of the BSB.

155. The underlying purpose of this rule, as we understand it, is to ensure that a person enters pupillage with his or her vocational training fresh in the mind. The restriction can be waived in appropriate cases; but in principle we think the 5-year period is correct and recommend that the regulation should stand.

Advertising vacancies

156. "*The Pupillage Funding and Advertising Requirements*" which came into force in 2003 are now incorporated into the Bar's Code of Conduct as Annex R. These requirements are therefore binding upon the Bar.

157. Paragraph 4 requires all vacancies for pupillages to be advertised on a website designated by the Bar Council. The advertisement must contain the following prescribed information:

- “(a) *The name and address of chambers.*
 (b) *The number of tenants.*
 (c) *A brief statement of work undertaken by chambers eg “predominantly criminal”.*
 (d) *The number of pupillage vacancies.*
 (e) *The level of award.*
 (f) *The procedure for application.*
 (g) *The minimum educational or other qualification required.*
 (h) *The date of closure for the receipt of applications.*
 (i) *The date by which the decisions on the filling of vacancies will be made.”*

158. The purpose of this requirement is self-evident. It was designed to curb the nepotism, cronyism and dependence upon personal networks of which, rightly or wrongly, the Bar was once accused. It supports the objectives stated in paragraph 151 above.

159. It is also important to understand what is not prohibited. Publicising pupillages elsewhere, by advertising or by word of mouth, is not prohibited. There is nothing to stop the practice, well-tried throughout the world of employment and appointments, of “encouraging” a person to apply, which may or may not guarantee success to the applicant in question.

160. The Chancery Bar Association pointed out to us some possible weaknesses in the formulation of the regulation. To describe chambers in such simplistic terms as “predominantly criminal” gives only a faint insight into the work actually done there. However applicants will instinctively look at a chambers’ website which will or ought to give a lot more information. Secondly, it was said, and we agree, that advertisements ought to be much more exact in the qualities and characteristics of the candidates they are looking for. All chambers are overwhelmed with applications, many of them unsuitable and possibly doomed to fail. Applicants who are not going to get past the first sift, for example because of their class of degree, or a lack of debating or public speaking experience, should be warned off. If chambers are only going to take seriously or will at least look favourably upon applicants who have for example science degrees, medical or

other professional qualifications, or a knowledge of the tax system, they should make that clear. If it is necessary or desirable that applicants should have undertaken an assessed mini-pupillage that too should be specified.

161. We accordingly recommend that the regulations should require advertisements for pupillage to state as clearly as is reasonably possible the criteria, negative and positive, which chambers will apply in deciding which candidates to shortlist for interview. The dates by which tenancy selection will be made should also be made clear at the same time.

162. Where chambers stipulate that it is a condition of applying for pupillage that applicants must previously have undergone a period of work experience in chambers (mini-pupillage) chambers must comply with the advertising requirements, and all relevant equality and diversity requirements in relation to the award of mini-pupillages.

The application process

163. At the employed Bar applications are handled in accordance with normal procedures for recruitment. The Equality and Diversity Code applies, and no further comment is called for. At the self-employed Bar the Bar Council offers chambers the centralised online service OLPAS/PP which gives rise to some regulatory issues.

164. OLPAS/PP The Bar Council has for many years provided a centralized scheme for handling pupillage applications. The paper-based Pupillage Application Clearing House scheme (PACH) was replaced by OLPAS in March 2001. For pupillages commencing in 2009 OLPAS was replaced by PP. The scheme remains under the supervision of the Bar Council as a service to its members. Although the service raises some regulatory issues it is not the function of the BSB to provide the service.

165. It may originally have been the ambition of the Bar Council that all chambers would participate in its centralised scheme. OLPAS/PP is the prescribed channel through which all pupillages must be advertised, whatever chambers' other methods of

advertising might be. But participation in the OLPAS/PP recruitment process is voluntary, and approximately one half of chambers recruit outside it.

166. For those within the scheme the rules, simplified for 2009, are straightforward. There is a single “season” (previously there were two) during which the scheme operates. In 2009 the Portal opened on Saturday 14th March. The deadline for completing first round submissions was 1pm on 1st May. Offers were to be made not later than 2pm on 7th September. The closing date for accepting offers was 22nd September 2009.

167. Under the rules of the scheme candidates may apply for pupillage one or two years ahead depending how close they are to completing the academic stage (i.e. their degree and, if required, the law conversion course). Candidates completing the second or penultimate year of a law degree, or candidates about to embark upon a conversion course, may apply only to chambers offering pupillages two years ahead. Candidates in their final year of a law degree or the conversion course may apply to chambers offering pupillage one or two years ahead. They are also restricted to applying to not more than twelve sets of chambers. Candidates are not however confined to making applications within the scheme. They may additionally apply to as many chambers outside the scheme as they wish.

168. Chambers participating in the scheme are prohibited from making offers between 1st May and before 9am on 31st July each year. This restriction is explained on page 26 para 18 of the BSB’s *Guidelines*: interviews should not be held when potential applicants may be preparing for or sitting examinations. The closed season for making offers in May, June or July appears to be linked to that. All offers must remain open for at least 14 days.

169. We have received a number of comments on OLPAS/PP. The company now operating the scheme (GTI Recruiting Solutions) had some problems at the beginning of the 2009 season with transmitting the material, and there have been criticisms of the design of the on-line form which applicants are asked to fill in. One particular criticism

is that candidates are allowed at many places in the form to state their case in as many as 300 words. It is feared that this might lead to excessively prolix forms which would not be read.

170. The efficiency of OLPAS/PP is, in our view, essentially a matter between the Bar Council, the commercial organisation which administers it, and chambers who participate in it. If chambers are dissatisfied with the scheme for any reason it is open to them to recruit their pupils outside the scheme, the only requirement being that the Portal is the place where all pupillages must be advertised. Since the scheme is voluntary, and about one half of chambers do not participate in it, the internal rules limiting candidates to applying to not more than twelve pupilages, and preventing them from applying for pupillage more than one or two years ahead as the case may be, seem to be aimed at the practical and fair administration of the scheme and are not disproportionate or unduly restrictive.

171. Chambers outside the OLPAS/PP The treatment of chambers not participating in the scheme does raise some regulatory issues.

172. Paragraph 404.2 of the Code of Conduct requires those involved in arranging pupillage in chambers “to take all reasonable steps” to ensure that “regard is had” to the *Guidelines* (among other things). Section three on page 25 of the *Guidelines* urges all chambers to recruit pupils through the OLPAS system (para 7). Paragraph 8 states that where a set of chambers does not wish to use the system “it should avoid any action which, whether directly or indirectly, may undermine or be seen to undermine, the OLPAS system”.

173. It is not easy to understand what these statements in para. 404.2 mean. Do they mean that chambers are bound by the *Guidelines* or that they must have due regard to them but may depart from them? The text of the *Guidelines* themselves suggests that sometimes they are intended to be binding but at other times merely advisory.

174. Moreover, the concept of action which directly or indirectly might undermine or be seen to undermine the OLPAS system is extraordinarily vague. If the BSB were to attempt to take action against a set of chambers which had done something which might be seen to undermine the scheme it is easy to see how it would quickly become involved in a battle of words, under rule 404.2 and the guideline itself.

175. In truth it is difficult to deduce any certain meaning from the guideline. If one of its purposes is to protect participants in the scheme, who have accepted its internal rules, from competitors outside the scheme, who by definition have not accepted those rules, it needs to be justified.

176. In the past the guideline has been interpreted by some chambers as preventing non-OLPAS/PP chambers from recruiting inside the OLPAS/PP “season”, i.e. they must receive and possibly complete the processing of applications before the season opens or after it closes.

177. We note, by contrast, that the Bar Council’s Training for the Bar Committee received a lengthy report from its OLPAS Rules Working Group dated 3rd September 2007 (Appendix 10 to the Neuberger Report) which, after weighing all the arguments, came down in favour of a rule that there should be a common and compulsory timetable for all pupillage applications, whether they were inside or outside OLPAS/PP. The Neuberger Working Party agreed (Recommendation 43). On balance we believe that the case has been made out. We have pointed out that applicants within the OLPAS/PP scheme can apply for up to twelve pupillages inside the scheme, and there is no limit on the number of pupillages they can apply for outside the scheme. This freedom appears to allow sufficient flexibility in the market for places. Subjecting the whole process to a common timetable will eliminate confusion. If this change is made the terms of the present guideline can be amended to make clear exactly what activities by non-OLPAS/PP chambers are unacceptable.

178. Although the adoption of a common timetable may encourage more chambers to participate in OLPAS/PP we do not think that chambers should be compelled to participate if they do not wish to do so. Chambers are self-governing autonomous organisations. Dictating a process by which they are bound to recruit their pupils would be unacceptable.

Interviews and selection

179. Paragraph 305.1 of the Code of Conduct prohibits direct or indirect discrimination in relation to any other person (including a pupil or a student member of an Inn of Court) because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, age, religion or belief.

180. Rule 404.2(d) of the Code of Conduct also stipulates that those responsible for the administration of chambers must take all reasonable steps to ensure that proper arrangements are made in chambers for dealing with equal opportunity issues: see para 404.2(d). This includes the provision of a written Equal Opportunities Policy which must set out the policy adopted by chambers in relation to each of the Action Areas in the Equality and Diversity Code for the Bar, and it must have regard to the recommendations in that Code.

181. Section 1 of the Equality and Diversity Code sets out the Action Areas, and deals first of all with the recruitment of tenants as well as pupils. Guidance (so described) on the recruitment of pupils is set out in paras 1.18 and 1.19, and largely follows the guidance given on the recruitment of tenants. Attention is drawn to the advertising regulations and the use of an application form is recommended in preference to a curriculum vitae. Paragraph 1.4 recommends that selection criteria should be objective and relate to the work to be done in chambers.

182. Paragraph 1.5 recommends that short-listing should be carried out by more than one person and by reference to selection criteria which have been determined in advance. Paragraphs 1.6 and 1.7 likewise recommend that selection should be made on a collective

basis and not left to the decision, affirmative or negative, of one individual. As far as possible selection committees should reflect the full diversity of chambers' membership.

183. Paragraph 1.8 recommends that members of selection committees should be familiar with the Equality and Diversity Code. We think that the time has come to go one step further. We recommend that in the immediate short-term a selection committee must contain at least one member who has received formal equality and diversity training from the Bar Council. Recommendation 40 in the Neuberger report is that "*all barristers involved in selecting ... pupils should be required to be trained in non-discriminatory selection procedures.*" We agree that this should be the ultimate aim, and see no reason why it could not be quickly achieved.

184. Finally, guidance is given on interviews and on the exercises which may accompany them or be set before or after interviews have taken place. We note Recommendation 41 in the Neuberger Report, which is that "*Merit-based selection procedures involving written or oral work should be actively encouraged in place of interview-based selection procedures.*" We agree that it is undesirable to select pupils solely on the basis of a face-to-face interview. That recommendation should be incorporated into the Code, or any future guidance given by the BSB. Subject to that it is not in our opinion possible to give more detailed guidance than the guidance contained in this Code. Whether candidates should be subjected to more than one interview, how the interview should be structured, and the content and sequence of questioning is very much in the hands of the selection body. Experience shows that there is no single template. The guidance given in the Code emphasises the need for careful preparation, objectivity and a fair scoring system.

185. Section six on pages 26 to 27 of the *Guidelines* gives further advice and instruction on interviews. Paragraph 18 states that interviews should not take place when applicants might be involved in preparing for or sitting examinations and repeats the prohibition on making offers between 1st May and 31st July. If interviews take place during term time organisations are advised to treat sympathetically a request for an

alternative date for academic or other good reason: para 19. Adherence to the Equality and Diversity Code and good equal opportunities practices is recommended (para 20).

186. Paragraph 21 emphasises the point which we have already made above (but on our part with greater emphasis), namely that at least one member of any interview panel must have undertaken an appropriate course of training, which would include training in equality and diversity practice. Contributions to travel expenses are advised (para 22) and it is suggested that, wherever possible, applicants should be told when chambers are likely to reach a decision on applications (para 23).

187. We endorse the whole of the advice given in these documents. Paragraph 21 of the *Guidelines* should, as we have said, be made mandatory, and should explicitly refer to appropriate training in equality and diversity practice.

Offers and acceptances

188. Pages 27 and 28 of the *Guidelines* contain an amount of information and guidance on offers and acceptances. It is not necessary for us to analyse each of the paragraphs in question.

189. Offers must be made in writing, giving the date of commencement and the details of the monetary award to be made to the pupil.

190. Paragraphs 28, 29 and 30 appear to apply to all pupillage training organisations (including employers) the internal rules applicable to chambers using OLPAS/PP. Thus all offers have to remain open for at least 14 days; no offers can be made before 31st July in the year prior to the student's final year (i.e. during the second year for law undergraduates and the final year for non-law undergraduates) and no training organisation is allowed to make offers between 1st May and 31st July.

191. The requirement that an offer must remain open for at least 14 days is in our opinion fair and should be universal. The restriction on making offers at an earlier stage

in a student's career than his or her "final year" as defined is more difficult to justify. Recruitment into other careers takes place at a much earlier stage, and competing professions are not bound by restrictions such as these. While chambers participating in OLPAS/PP may be content to operate within these rules, a general prohibition is difficult to justify. If its purpose is to protect one group of pupillage training organisations from the more entrepreneurial and competitive practices of others it cannot be related to the objectives set out above and is unsustainable.

192. On the other hand the prohibition on making offers between 1st May and 31st July can be justified on the ground set out in paragraph 185 above. It allows applicants to prepare for and sit examinations without the distraction and pressure of having to make important career decisions.

193. Paragraphs 32, 33 and 34 in this section of the *Guidelines* appear to lay down regulations for applicants: they should respond as quickly as possible to offers, they should not accumulate offers or retain more than two offers for more than 7 days, and when they have accepted an offer they should withdraw all other applications and make no further applications. While we accept that applicants should behave responsibly and fairly, these paragraphs cannot be more than exhortation. There is no obvious mechanism by which they can be made binding upon applicants. Moreover we doubt whether this is the right place to publicise them, because applicants will not read this document, which is exclusively addressed to training organisations. They are not repeated in the *Pupillage File*; but even that document will not be seen by applicants until their pupillage has started. This problem will not arise when there is a universal Handbook.

Clearing

194. An additional service which OLPAS/PP provides is the maintenance of a pool of applicants (within that scheme) who are unsuccessful in their applications. After the "season" for making offers has closed, chambers who have been unable to recruit a suitable candidate (whether they were within the scheme or not) may look at candidates remaining in the pool and call them in for interview. In 2009 the deadline for pupillage

providers to enter the pool (“clearing”) was 9 am on 24th September. The process of clearing took place during the month of October.

195. The existence of this service, which is clearly valuable, does not raise any regulatory issues for the BSB. Lord Neuberger’s Working Party also recommended (Neuberger Report Recommendation 31) that the Bar Council should devise a clearing system enabling chambers who have unfilled vacancies to enter a pool: a “chambers pool”, as we understand it, to match the “pupil pool” already operated by OLPAS /PP. We support this recommendation which, as is stated in the Neuberger Report, is a matter for the Bar Council, not the BSB.

Conclusions and recommendations

[25] The BSB’s regulation of the recruitment of pupils should be imposed solely to ensure that procedures are fair to all candidates; maximise the career opportunities of all candidates of high calibre; and comply with the law and good practice relating to discrimination, equality of opportunity and diversity.

[26] The rule that a barrister may not (unless the BSB permits) enter pupillage more than five years after passing the BVC/BPTC should remain.

[27] The *Pupillage Advertising and Funding Requirements* should be amended to require ATOs to describe with greater precision the qualities, qualifications and (if appropriate) experience they favour in selecting pupils and to indicate categories of applicant (e.g. holders of Lower Second Class or non-science degrees) they are unlikely to shortlist.

[28] Participation by chambers in OLPAS/PP should remain voluntary.

[29] Any technical changes which might be made to the form and content of the OLPAS/PP scheme are a matter for the Bar Council, the provider of the service and participating ATOs. These are unlikely to raise concerns for the BSB.

[30] However, the Code of Conduct should be amended to require all chambers, whether they participate in the OLPAS/PP scheme or not, to process pupillage applications according to the timetable laid down by OLPAS/PP. The timetable will

be a regulatory matter if it is to be enforced through the Code of Conduct and bind all ATOs.

[31] Rule 404.2 of the Code of Conduct and its relationship with the *Guidelines* or (if adopted) the Handbook on Pupillage need to be reconsidered.

[32] All pupillage selection panels should contain at least one member who has received formal recruitment and equality and diversity training. In the medium term all members should have received that training.

[33] If it is a condition of obtaining pupillage that applicants must previously have undertaken a mini-pupillage in chambers, the advertising and recruitment rules relating to pupillage must be observed in relation to the award of mini-pupillages.

[34] The regulations laid down in the *Guidelines* for offers and acceptances of pupillage should be made mandatory for all ATOs, although it is doubtful whether they can be effectively enforced against candidates.

[35] The clearing service offered by OLPAS/PP should be universally available and supplemented by a corresponding service for ATOs where vacancies for pupillage are unfilled.

CHAPTER 7

DURATION AND PLACE OF PUPILLAGE

196. In this Chapter we address four questions.
- a. Is twelve months the right period for pupillage?
 - b. How should “twelve months” or any other period be computed?
 - c. Should the BSB allow part-time pupillages?
 - d. Where should pupillage be undertaken?

Twelve months

197. At the self-employed Bar the period of twelve months has been recognised for over a century as the appropriate period for the training of a pupil. But formerly there was no restriction on appearance in court or undertaking other direct work for clients during the first six months. Before then pupils could conduct cases from the day they were called to the Bar.

198. The BSB’s Consumer Panel asked us whether a barrister who had undertaken no more than one year’s training could fairly be entrusted with the handling of a client’s case. The answer is to be found in Rule 603(a) of the Code of Conduct. A barrister must not accept any instructions if he or she lacks sufficient experience or competence to handle the matter. The responsibility for refusing work which lies beyond his or her competence is the personal responsibility of the barrister; but it is fair to say that a heavy burden of responsibility also lies upon the barrister’s clerk.

199. The argument in favour of retaining twelve months was succinctly put by the Constitutional and Administrative Law Bar Association (ALBA) in its excellent paper to us:

“In our view, 12 months is about the right length of time for pupillage, and we see no reason why pupils who have gained 6 months of experience within a PTO [ATO] should not be permitted to practise in the second 6 months, albeit under the active guidance of a more senior

barrister. An individual who has gained 6 or 12 months of experience will not, of course, be the 'finished article': barristers never stop learning, and each month of practice brings new experiences and better judgement. What is vital is that new practitioners (whether 'second 6' pupils or junior tenants in the first few years of practice) are well supported by their colleagues, and always have a more experienced colleague they can turn to for advice or to talk through a legal or professional problem."

200. We agree. It will also be borne in mind that the standard of internal and external training for pupils at the self-employed Bar is constantly being raised. Recommendations contained in this Report itself are intended to have that outcome. It is also to be hoped that, when the BSB's proposals for the improvement of the BPTC have been carried into effect, pupils will be better prepared even before they begin their training.

201. Moreover we can foresee that a lengthening of the period of pupillage would quickly lead to a decline in the number of pupillages available. No one has suggested that the period of pupillage should be shortened.

202. The period of twelve months is of course a minimum. The rule does not prevent ATOs from making their own internal arrangements. At the employed Bar, employers, with whom pupils have a contract of employment, may well take the view that they need to train their pupils for a longer period before they can be entrusted with work of their own. We have also been told that certain specialist chambers will not allow new tenants to undertake direct work for clients until after one or two years of practice, those early years being spent in devilling the work of more senior practitioners. The BSB as regulator is not however concerned with requirements for additional training which some chambers or employers might have in place, after the period of pupillage properly so-called has been served, provided that these additional requirements are clearly set out and promulgated to prospective pupils. The evidence we have received shows that the Bar overwhelmingly supports the twelve months' period. There is in most organisations a large range of straightforward work which pupils can comfortably perform, in court

and out of court, in their second six. Pupils undertaking this type of work provide a valuable service to clients and to the chambers or employer in question. There is no need for change.

“Twelve months”

203. Regulation 30 of the Training Regulations identifies the two periods of “six months” which constitute pupillage. Except with the written permission of the BSB the second six must begin within twelve months after completion of the first six: reg. 32. There is no exact guidance given on how the “six months” is calculated. An amount of commonsense is called for.

204. Pupils at the employed Bar, who are likely to be engaged under contracts of employment, will be subject to the European Working Time Directive. This means that they will be entitled to two weeks’ holiday for each period of six months plus public holidays. There is a debate as to whether the Directive applies to pupils at the self-employed Bar. Paragraph 2.1 of the Pupillage File appears to be written on the assumption that the Directive does apply. It therefore advises that the minimum number of hours each week should be 35 and the maximum 48 (unless a waiver has been signed) and that all pupils are entitled to the minimum holiday allowance. It states that “*any period of absence that exceeds the allowed period of holiday should be made up by an equivalent extra period at the end of that particular part of your pupillage*”.

205. We do not wish to enter into the debate as to whether the Directive applies to pupils at the self-employed Bar. Whether it applies or not we think that the minimum entitlement derived from the Directive should be the benchmark. Absences from chambers for periods in excess of the periods referred to should be monitored carefully. The BSB has to be satisfied that pupils receive the full amount of their prescribed training. Occasional absences for sickness or other reasons will not give rise to concern but it is the duty in our view of pupil supervisors and training organisations to ensure that each of the two periods of six months is substantially and properly served, if necessary by postponing the date when the relevant certificate is signed. If a pupil

supervisor is absent during either of the two six-month periods, for any reason, it should be his or her duty, or (if our recommendation is accepted) the duty of the director of training, to ensure that the pupil can work under supervision.

206. However the BSB is not in our view in a position to do more than lay down general principles. The way in which individual chambers or employers deal with attendance and supervision problems on a day-to-day basis rests between themselves and their pupils.

Part-time pupillages

207. Rule 801(b) of the Code of Conduct requires a pupil to “*apply himself full time to his pupillage save that a pupil may with the permission of his pupil-supervisor or head of chambers take part time work which does not in their opinion materially interfere with his pupillage*”.

208. At first glance, the *Guidelines* at page 20 interpret this paragraph of the Code strictly. It is stated that under the Code “*it is not possible to offer/undertake pupillage part-time*”. However Rule 108 of the Code authorises the Bar Council generally to waive the provisions of the Code in appropriate circumstances. The power to waive Rule 801 is now vested in the BSB. This function is currently exercised by its Qualifications Committee. (Later in this Report we recommend the merger of the functions of Committees). We understand that the Qualifications Committee has waived paragraph 801(b) of the Code in a number of cases in the past. Before 1 September 2009, both the Consolidated Regulations and the Code of Conduct required pupillage to be full-time, but waivers were occasionally granted. Between 1 January 2006 and 31 August 2009, a total of four pupils applied for and were granted dispensations from both the CRs and the Code. The Bar Training Regulations no longer require pupillage to be full-time. Since 1 September 2009 only the Code stipulates that pupillage must be full time. Since 1 September 2009, one pupil has been granted a waiver from this provision. Of the five pupils granted dispensation, two had caring responsibilities for children, two had health problems and one wanted to continue with other work alongside pupillage. In each case

the application was supported by chambers. The part-time arrangements ranged from 2.5 to 4 days per week, with the pupillage extended, in each case, so as to be equivalent to a full-time pupillage.

209. The *Guidelines* also record the view of the BSB that part-time pupillages should in principle be looked upon with favour, and state that it is not easy to lay down precise rules as to when they should be permitted, or how a part-time pupillage might be undertaken. Requests for part-time pupillages are usually based on special personal circumstances and need to be looked at on a case-by-case basis.

210. The question of part-time pupillages is also discussed in paragraphs 262-265 inclusive of the Neuberger report. That Working Party advocated a flexible and understanding approach. It too concluded that the issue could not be governed by a rule of universal application, but could only sensibly be dealt with on a case-by-case basis. It encouraged greater flexibility than what was perceived to be current practice: see para. 264. Its Recommendation 34 is that:

“Waivers for part-time pupillages should still be obtained from the [BSB] before they can actually be undertaken, but the procedure should be better advertised. The [BSB] should be flexible and understanding in its approach to applications for waivers. The Bar Council should undertake research in consultation in order to draw up more detailed guidance on part-time pupillages.”

211. We agree with this Recommendation. It is not difficult to see how a requirement for a part-time pupillage might arise outside the need, or simply wish, to do other part-time work. As experience shows, family or other commitments, sickness, disability or other personal circumstances will call for sympathetic treatment.

212. We also agree that it is important that part-time pupillages should remain under the supervision of the BSB. The BSB (or its Qualifications Committee) can then among other things lay down in any particular case how “part-time” a pupillage can be. It is likely to insist that attendance in chambers or at work on a regular basis will still

nevertheless be necessary. Pupillages which are undertaken on one or two days a week, for example, might not be acceptable. Within this framework the BSB can ensure that the amount of training a part-time pupil receives will, in aggregate, amount to the same amount of training which a full-time pupil receives, as discussed earlier in this Chapter.

213. Ultimately however much will turn upon what can be agreed between the pupil and his or her supervisor. But it cannot be forgotten that one of the reasons why part-time pupillages are encouraged by the BSB and in the Neuberger report is to ensure that the body of pupils is as diverse as possible, and that a fair opportunity to succeed is open to all who can demonstrate the necessary qualities for success. Chambers and employers will therefore have to exercise great care before they reject an application for part-time pupillage if it is made by a person whose age, disability or economic, family or other circumstances make it difficult for pupillage to be undertaken full-time.

214. Beyond the record of formal applications for waivers, which will only tell part of the story, the demand which exists in fact for part-time pupillages has not, so far as we are aware, been measured. It needs to be researched. The number of applications made for waivers, and the number of waivers granted and refused, together in each case with the ground for the decision, need to be carefully recorded.

Place of pupillage

215. When the Consolidated Regulations were formulated, the English Bar was not as strongly represented in the other Member States as it is now. There is now a flourishing European Circuit of the Bar whose members include English barristers and other European lawyers of corresponding status and practising rights throughout the Union. Reg 31 of the Bar Training Regulations, following the Consolidated Regulations, provides that the first non-practising six must (except with permission) be served in England and Wales. We recommend that this rule should be repealed, entitling pupils to undertake their entire twelve months within any Member State as of right. Such pupils will of course have to undertake the compulsory pupils' courses provided by the Inns and Circuits in England and Wales.

Conclusions and Recommendations

[36] The period of full-time pupillage should remain fixed at twelve months.

[37] Within each period of six months pupils should be allowed two weeks' holiday plus public holidays.

[38] Supervisors should ensure that the period of pupillage is otherwise substantially completed, if necessary by extending time before issuing a six or twelve months' certificate.

[39] The power of the BSB to permit part-time pupillages, and the basis upon which permission will be granted, should be better publicised.

[40] The volume of demand for part-time pupillages should be researched.

[41] Applications for part-time pupillage should continue to be treated by the BSB flexibly on a case-by-case basis.

[42] The amount, type and quality of training a part-time pupil receives should be the same as that which a full-time pupil receives delivered over a proportionately longer period of time, and the same standard must be attained.

[43] Pupils should be entitled to undertake the whole of their pupillage with an ATO and an accredited supervisor in any Member State of the European Union. BTR 31 should be amended accordingly.

CHAPTER 8

FUNDING

216. We have found that the funding of pupillage is the most controversial if not divisive of all the issues we have had to examine.

The basic rule

217. Paragraphs 1 to 3 of the *Pupillage Funding and Advertising Requirements 2003*, incorporated into the Code of Conduct, are concerned with payment to pupils. They apply to the self-employed Bar only. During the first non-practising six months a pupil must receive not less than £5,000, payable in monthly instalments of £833.33, plus expenses reasonably incurred on travel for the purposes of the pupillage during the month and for attendance during that month at courses which the pupil is required to attend. The same payments must be made during the second practising six, but chambers are then entitled (but not bound) to deduct any amount which the pupil may have received during the month in question from his or her own practice as a barrister, and any amount which the pupil may similarly have received during the preceding month. A pupil's receipts may never in any month fall below the aggregate of £833.33 plus expenses.

218. Paragraph 3 prohibits members of a set of chambers from seeking or accepting repayment of any of the prescribed sums before or after the pupillage has ended except in a case of misconduct.

Reasons for the basic rule

219. In Chapter 1 we have traced the steps which led up to the introduction of this rule in 2003. The reasons why it was introduced are obvious and, in our view, still relevant. The financial stresses on candidates for the Bar are considerable. The prospect of receiving no payment during pupillage would, we have no doubt, act as a further deterrent to recruitment which would be additional to the inherent cost of the

BVC/BPTC, and the uncertainty of getting any pupillage at all. Pupillage would be restricted to individuals whose personal circumstances permitted them to work for at least six months if not twelve without payment. The reputation of the Bar as an open, accessible profession would be severely damaged. The basic rule is nevertheless subject to exceptions and can in limited circumstances be waived.

Exceptions

220. The funding requirements do not apply to qualified solicitors transferring to the Bar, nor to other qualified lawyers or teachers of the law of England and Wales “*of experience and distinction*” para 5(b)). Nor do they apply to pupils who are seconded to sets of chambers as part of a pupillage training programme offered by another pupil training organisation (para 5(c)). This is a reference to pupils at the employed Bar who are commonly seconded to self-employed chambers as part of their training. Paragraph 5(d) excludes pupils who have completed both the non-practising and the practising six months pupillage. This we take to be a reference to the “third six” which we discuss in the next Chapter. For the reasons we give, do not think that a “third six” should be classified as a pupillage at all.

Waivers

221. The power to grant waivers is contained in paragraph 5(f). Waivers are at present granted by Panel 5 of the Qualifications Committee of the BSB. The Table below shows the number of waivers granted for the 6 years from 2003 to 2008 inclusive. It will be seen that the highest number of waivers granted is 34 in 2006. The figures represent a tiny fraction of all pupillages.

Tables 16a-c: Analysis of Funding and Advertising Applications 2007-2009

16a: Breakdown of the number of applications considered per year by Panel 5 of the Qualifications Committee

Type of Waiver Application	Year of Application					
	2007 Number of Waivers Granted	2007 Number of Waivers Refused	2008 Number of Waivers Granted	2008 Number of Waivers Refused	2009 Number of Waivers Granted	2009 Number of Waivers Refused
Advertising Waiver Applications	15	4	0	2	9	7
Funding Waiver Applications	0	4	1	4	1	1
Advertising and Funding Waiver Applications	6	7	17	4	11	3
Sub Total	21	14	18	10	21	11
Grand Total	35		28		32	

Table 16b: Reasons why waivers were granted

Description of Reason for application	Year of Application		
	2007	2008	2009
Original PTO unable to continue to support pupil	9	1	3
After training pupil will return to previous employer	3	5	3
After training pupil wishes to practise in another country	2	7	7
PTO wishes to offer a pupillage to an experienced individual, in most cases a reduced pupillage would have also been granted.	0	2	2
PTO made an administrative error during the application process	3	1	1
PTO wishing to expand and take on a pupil but cannot fund pupillage	0	1	3
PTO are now in a position to offer a further pupillage	4	1	1
Pupillage can commence earlier than advertised	0	0	1
Total	21	18	21

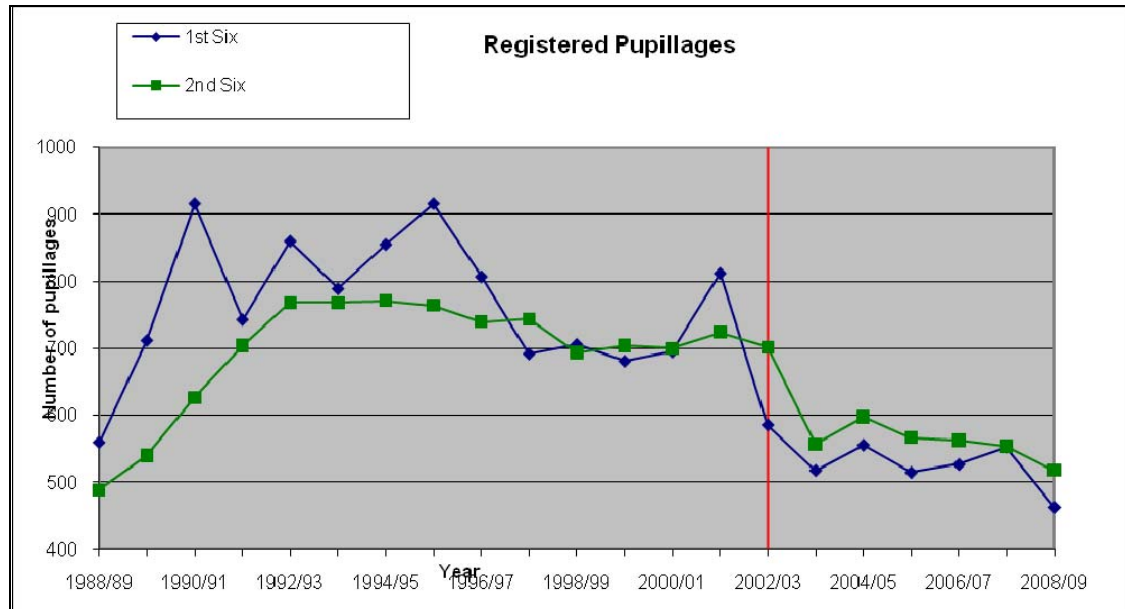
16c: Reasons why waivers were refused

Description of Reason for refusal of application	Year of Application		
	2007	2008	2009
Chambers no longer wishes to fund pupil. Waiver refused on the grounds of concern for the pupil in these circumstances.	1	1	1
Individual will complete pupillage at another PTO. Waiver no longer required	1	0	0
Information supplied in evidence for application does not support PTO Pupillage Policy Document	1	0	0
PTO not in a province and no other reason provided as to why funding cannot be offered.	1	0	1
Clear breach of the advertising rules.	1	0	0
Contrary to application, there was no evidence produced to prove that the applicant intends to practise in another country.	0	2	0
No exceptional circumstances, pupillage place should be obtained in a fair and open competition.	9	7	9
Total	14	10	11

NB: These statistics are based on the decisions of the Advertising and Funding Panel (5) of the Qualifications Committee. The applicants can appeal to the Qualifications Committee if they are not satisfied with the decision.

Effect of the rule

222. Table 17 below shows the number of registered pupillages from 1988/89 to 2006/07 inclusive. In 1990/91 there were more than 900 pupillages. The same figure was achieved in 1996/97. After that numbers continued to fall except for a bulge of just over 800 pupillages in 2000/01. After the introduction of compulsory funding in 2003 the number has consistently fluctuated between 500 and 600. A similar number was achieved in 2008/09.

Table 17: Number of Registered pupillages 1988-2009

NB: The vertical line denotes introduction of compulsory funding in 2003

223. It would be difficult to argue that the decline in numbers of pupillages had nothing to do with the introduction of compulsory funding. The two must be connected, and that should not be surprising. After the introduction of compulsory funding pupillage has increasingly been regarded as an investment by chambers in their own future. In Chapter 1 we referred to the long-established practice in the regions and the growing practice in London to link pupillage with ultimate tenancy.

224. A further effect of compulsory funding is that the training is almost certainly taken much more seriously both by chambers and the pupils.

225. In November 2007 the Pupillage Sub-Committee of the BSB's Education and Training Committee sent a questionnaire to 370 sets of chambers designed to establish whether the rules governing pupillage were meeting the needs of the Bar and of those who wished to become barristers, and to find out what impact the funding regulations had

had on the number of pupillages and the quality of training on offer. 93 responses were received.

226. From this sample a complex picture emerged. It appeared that the number of pupillages offered by chambers was as much driven by the work available for them and the need to recruit junior tenants as the cost of funding. As a factor in deciding how many pupillages to offer the cost of funding, although relevant, could not be seen in isolation.

227. Chambers which depended largely on publicly-funded work reported that the level of work for pupils and the junior Bar had decreased considerably in the previous two years. They were therefore concerned at the lack of work at the junior end; and it was the lack of work itself as much as the cost of funding pupillages which brought about a reduction in the number of pupils. Some of these chambers benefited from having pupils in their second six when they could be sent into court. Funding a first six was less attractive.

228. Chambers undertaking mainly privately-funded work gave a very different account. They had already been offering payments to pupils before 2003, and the amounts offered were well in excess of the prescribed minimum. Compulsory funding was a material consideration in deciding how many pupillages to offer but it was outweighed by other strategic considerations.

Criticism of the basic rule

229. Criticism of the basic rule has been quite outspoken. It is said that the compulsory funding of pupillages, particularly at the publicly-funded Bar, if continued, will result in a continuing decline in the number of pupillages available and (according to one prominent practitioner) the destruction of the Bar.

230. It is not however clear to us whether these critics are advocating the total abolition of the basic rule, or simply a much more sympathetic and understanding approach to the question of waivers.

231. There is clear evidence that chambers which are wholly or mainly dependent on publicly-funded work are becoming less willing to take pupils although the need or desire is still there. The plight of that area of the Bar is well known: there is less work, and fee income is decreasing. The Crown Prosecution Service and solicitors with higher rights of audience are appearing with every-increasing frequency in criminal cases which were previously sent to the self-employed Bar. Very low and still-decreasing legal-aid fees in family and criminal work are undermining the viability of some practices.

232. We agree that compulsory funding does have an influence on a chambers' decision to offer pupillages. But the decision is, in our opinion, more complex than that, as the response to the BSB's questionnaire has shown. One very important question is whether the chambers have enough work to sustain a pupil in the first six, and to keep the pupil busy with enough paid work in the second six.

233. Some of the complexities of the problem can be illustrated by referring to the special case of small sets of chambers.

Small chambers

234. In 2007 the Bar Council set up a working group to look into the impact on small chambers of many of the recent and future changes that the Bar was experiencing, both as a result of market and economic forces and government initiatives. The working group submitted its report in April 2008. For the purposes of the report "small chambers" were loosely defined as chambers consisting of 20 members or less. A questionnaire was sent out some 130 chambers and 33 replies were received.

235. One of the problem areas identified was that of pupillage. In summary it was reported to the working group that small chambers found it difficult to fund pupillages due to the size of chambers, and this in turn restricted their ability to grow or expand.

236. The working group was very sympathetic towards the concerns expressed:

“The tragedy of the above and in line with our researches is that whereas small chambers are in effect crying out for pupils and consider them as an essential and integral tool in their future survival, they have difficulties in funding even a single annual pupillage, and this situation is unlikely at present to improve without positive assistance from the Bar Council.”
(page 13).

A radical review of the entire pupillage system was called for in the light of the difficulties expressed.

237. The working party proposed a number of solutions to the perceived problem. It did not however suggest that the basic rule should be abolished. One proposal was that there should be a “hybrid system” of funding allowing sets of chambers below a certain number (maybe 10) to pay less than the prescribed minimum, the balance being made up by a scholarship scheme funded by the Inns of Court or the Bar Council. Whether the Inns or the Bar Council could support such a scheme would be for them to decide. It was suggested that it might be a condition of membership of the scheme that the chambers in question should subscribe an annual amount to a central funding pool. A variant on this proposal was to allow for “sliding scale” waivers, relieving chambers of the burden of some of the required £10,000 provided that the balance could be obtained from elsewhere – but not, we infer, from the pupil.

238. The second main proposal was that the Bar Council should set up a clearing system enabling smaller chambers more easily to identify junior barristers who had completed their 12 months’ pupillage elsewhere, were still looking for a tenancy, and would be interested in joining one of the smaller sets. The setting-up of a service of this kind would undoubtedly alleviate one of the problems reported by the smaller chambers,

namely the difficulty in expanding their numbers. It will be for the Bar Council, working through the Neuberger Monitoring and Implementation Group or another group, to decide whether a clearing system of this kind is desirable and feasible. It does not seem to us to raise any regulatory problems, at least at present, for the BSB.

Two special cases

239. *(1) Mature pupils* The Bar is enriched by entrants to the profession who have had previous careers. Engineers, architects, medical doctors, bankers, town planners, tax inspectors and solicitors are some examples. Some of them achieve the highest distinction in the profession, including appointment to the High Court bench. They will typically have accumulated sufficient savings to finance themselves through the vocational course and pupillage. They may therefore say to the chambers to which they are applying for pupillage that they do not require any funding. How should these cases be handled?

240. It must first be remembered that (unless the advertising requirements have been waived) these applicants will be applying for a pupillage which has been properly advertised and is open to all. These mature applicants will be competing with others who are many years their junior. It is conceivable that their past career and the knowledge and experience which they have gained will give them an edge over the others. That cannot be a cause for concern. (On the contrary, concern is more frequently expressed about possible discrimination against candidates in older age groups).

241. It would not be right however to allow a mature student who was adequately self-financed to gain an advantage because he or she was willing to relieve the chambers of the obligation to pay. We would expect chambers which had advertised one or more pupillages, and had stated the amount of the award which a pupil would receive, to pay any pupil who was appointed exactly the same amount that any other pupil would be paid.

242. A variant on this case is that of a set of chambers which might, for example, have advertised two pupillages carrying a stated award but found that there were three candidates whom it would wish to select, one of whom was a mature candidate offering to come unpaid. If chambers wanted to appoint the mature candidate as an additional pupil it would require a waiver from the advertising as well as the funding requirements. If the Qualifications Committee could be convinced of the genuineness of the case it might be persuaded that chambers were, in effect, creating an additional pupillage. But it is not possible to state in advance how the Committee might react to those facts. The Committee's current practice is described below.

243. *(2) International students* We have been pressed by the Bar Council's International Committee to recommend a further exemption from the basic rule, namely barristers from overseas jurisdictions, principally in the Commonwealth, who have successfully completed the vocational course and have been called to the Bar and wish to undertake six or twelve months' training in chambers in London before returning to practise in their home jurisdiction.

244. We have no doubt that the continuing contacts and collegiality which exist between the Bar of England and Wales and Bars overseas is beneficial to the profession. More than 20% of the students undertaking the vocational course arrive from overseas. They make important contacts here and carry back home, we believe, the benefits of experience in the Inns of Court and of the course itself. These contacts are maintained throughout the professional career of many of our overseas colleagues and a not inconsiderable amount of the overseas work of practitioners in this country is generated by these contacts. The importance of continuing to recruit overseas students onto the vocational course, and the links which they thereby make with the English Bar, were deployed forcefully as part of the argument against deferral of call, which the BSB accepted.

245. Chambers specialising in overseas work would therefore understandably like to offer pupillages to students intending to practise overseas in their home jurisdictions.

Many members of the Bar have had such pupils and know that they value the experience. We agree that they must be accommodated but not, in our view, by allowing a blanket exemption from the advertising and funding requirements.

246. The difficulty thrown up by these cases is as follows. The pupil may perfectly genuinely, at the beginning of his or her pupillage' say that, upon completion of the pupillage, he or she intends to return home and will not therefore be competing for a tenancy or other appointment at the self-employed or employed Bar in England and Wales. But if the course of training undertaken is a pupillage in the ordinary sense, the pupil will be entitled to a Provisional Qualification Certificate at the end of the first six and a Full Qualification Certificate at the end of the second six. Depending then upon his or her status in the United Kingdom there would be nothing under the rules to stop the pupil from applying for and obtaining a tenancy or other appointment. The BSB has actual experience of cases of this kind.

Current practice in granting waivers

247. The circumstances in which waivers are granted are currently set out in the Qualifications Committee's *Criteria and Guidelines*, which place the onus firmly upon the chambers seeking the waiver to show why, in an exceptional case only, these requirements should be waived. The Committee normally draws a distinction between cases where the prospective pupil intends to practise at the Bar in England and Wales and cases where the prospective pupil has no such intention e.g. overseas barristers who will return to practise in their home jurisdictions. In the former case, more compelling reasons for the grant of a waiver will be required in order to ensure that, as far as possible, all those competing for the opportunity to undertake pupillage with a view to entering practice will be competing on equal terms. In the case of those not intending to practise at Bar of England and Wales, the Panel will generally grant a waiver if the prospective pupil, at the end of the pupillage, will return to his or her home jurisdiction. The pupil must genuinely intend to do so. In these cases chambers must guarantee a proper pupillage and the potential pupil must not suffer unnecessary hardship. A waiver will not however be granted simply on the grounds that the prospective pupil is willing

and able to fund himself or herself through pupillage. To do so would undermine the whole scheme of compulsory funding and benefit those from more affluent backgrounds, who (or whose family) can afford to provide finance during pupillage.

248. Before granting a waiver, the Committee has to be satisfied that the prospective pupil will receive appropriate training in pupillage. This factor is particularly important in any application for waiver based upon the small size of chambers or its low income. In these cases, the Committee looks carefully at the number of tenants, their seniority, the range of their experience, the Pupillage Policy Document and matters covered in the Pupillage Checklist, the chambers' location and relevant reports (if any) from pupillage monitoring panels. Applications for a waiver in respect of a person who already has another professional qualification will be sympathetically considered if the person concerned does not intend to enter self employed practice at the Bar or if he or she does intend to enter practice in an area where his or her other professional qualification is likely to be of particular value. The Panel will need to see clear evidence that the person for whom the waiver is being sought is of high calibre, and comparable in standard to others who secure pupillage. In practice, applications for waivers vary significantly and each one is dealt with on an individual basis.

Discussion

249. After reviewing this difficult topic we have come to the following conclusions. The basic rule is of overwhelming importance and should be upheld. The principal exceptions from the rule – transferring solicitors, other qualified lawyers or teachers of law – are uncontroversial. The discretion to grant waivers should continue to be exercised sparingly. Nevertheless we fully recognise the current difficulties in which chambers undertaking publicly-funded work find themselves. These problems may well be exacerbated in the case of small chambers. The BSB is not in a position to implement the recommendation from the Small Chambers Working Group that financial support in the shape of a scholarship fund or otherwise should be provided to small chambers. That is a matter for the Bar Council and the Inns. It will however be right for the BSB to continue to look very carefully into applications, mainly made by publicly-funded

chambers especially small sets, to be allowed to advertise an unfunded pupillage. But it must also be borne in mind that if the turnover of work in chambers is insufficient to fund a pupillage it may also be insufficient, by the same token, to provide a pupil with adequate training. A careful balance will have to be struck.

250. No exception from the basic rule will normally, in our view, be justified in the case of a mature pupil who has sufficient resources to fund himself or herself through the vocational course and pupillage. It would however be a step too far to prohibit absolutely the exercise of discretion in such a case, particularly if it could be shown that an offer of pupillage to a mature self-funded pupil would not be at the expense of another candidate who would otherwise be appointed.

251. The BSB must continue to guard against abuses of the system. The discretion to allow waivers should be exercised only in the most exceptional cases.

£10,000

252. We have considered the minimum prescribed amount. It seems to us that £10,000 is too low a sum in modern times. At present, trainee solicitors outside London have to be paid a minimum of £16,650 pa and trainees inside London a minimum of £18,590 pa. Balancing changes in the value of money against the circumstances in which many publicly-funded chambers find themselves, we recommend that the minimum amount should now be £12,000 a year, and that the BSB should keep that amount under review every year.

Deductions and cash flow

253. The BSB has evidence that some chambers ignore the spirit and occasionally the letter of the *Pupillage Funding and Advertising Requirements*. Pages 29 and 30 of the *Guidelines* set out examples of good and bad practice. Bad practice is not however limited to these examples. We consider that the BSB should lay down more explicit rules of compliance, for the benefit of pupils.

254. With regard to the award itself, it must be made clear that the monthly payments have to be made to pupils (or in the second six credited) without deductions. We have been told that some chambers make a deduction for clerks' fees, administration or chambers' overheads. These and similar practices are a flagrant breach of the rules. They should be expressly forbidden.

255. Secondly, we are also concerned that some chambers are less than diligent in the payment of the expenses – principally travel expenses – incurred in connection with pupillage which pupils are entitled to be paid under the *Funding Requirements*. Some pupils are uncertain about how they should submit their claim, or to whom it should be made. Others, after claiming twice and getting no response, give up asking, or settle for half.

256. In a pupil's second six it is permissible for chambers to set off against the monthly payment fees received during that month, or the previous month, from the pupil's own practice. The amount deducted should in our view be the pupil's net profit after deduction of expenses.

257. At the present time fees for publicly-funded work (which many pupils undertake in their second six) are increasingly squeezed; and privately-paid fees for small matters are often no more generous. But the cost of travel is increasing. This cost is not, however, a cost which is recoverable under the *Funding Requirements* because it is not incurred in connection with pupillage. The profit earned from a court appearance which requires a significant journey may therefore be negligible.

258. The principle underlying compulsory funding is that, each month, pupils should have a guaranteed amount on which they can live during their training. Deducting gross receipts during the second six, without recognizing this overhead, will undermine the guarantee. The problem can be solved in one of two ways: either (1) chambers will reimburse the pupil for the cost of earning the fee when the cost is incurred, and then deduct the gross fee when it is received, or (2) the gross fee is netted off when it is

received and only the net amount is deducted. Because it helps the pupil's cash flow, we prefer (1).

259. We accordingly recommend that the *Funding Requirements* should be appropriately amended to cover these cases. Secondly, the rules for the payment of the award, permissible deductions and the machinery for the payment of expenses must appear in every chambers' Pupillage Policy Document. Thirdly, we refer to recommendation [17] made in Chapter 4 above that every ATO should have in place a director of pupil training. It should be the duty of that director to ensure that the payment of pupils is promptly and correctly handled.

Conclusions and recommendations

[44] The requirement that all pupillages should be funded unless the BSB otherwise permits should remain in force.

[45] The exception in favour of transferring solicitors, other lawyers and law teachers should continue to be allowed.

[46] The discretion to waive the funding requirement should continue to be exercised sparingly

[47] Small chambers, and some others, which are wholly or mainly dependent on publicly-funded work, may be able to establish a special economic case for a waiver, depending on the turnover of work and their general finances.

[48] Waivers should not normally be allowed in favour of pupillages given to mature candidates transferring from another career.

[49] The advertising or the funding requirements may continue to be waived in favour of international students who genuinely intend, after practical training in England or Wales, to practise abroad. These applications must be scrutinized with great care.

[50] The minimum amount of the pupillage award should be raised from £10,000 to £12,000 a year, payable as before in equal monthly instalments.

[51] The *Funding Requirements* should be amended to ensure that pupils are paid promptly and in full the amount of their award and their recoverable expenses.

[52] Where chambers, in a pupil's second six, legitimately set off, against the pupillage award, fees received by the pupil from his or her own practice, the amount set off should be the pupil's net profit after expenses, and not the gross fee. The better practice would be to fund the expenses, when they are incurred, to assist cash flow and set off the gross fee when it is received.

CHAPTER 9**THE THIRD SIX**

260. Not all barristers at the self-employed Bar, after completing their twelve months' pupillage and obtaining a Full Qualification Certificate, are able immediately to obtain a tenancy in chambers. They can and do make various arrangements while they are looking out for a permanent seat.

261. Sometimes they can simply stay where they are as "squatters". Their pupillage is at an end. They are in a position to accept instructions through the clerks to appear in court and to undertake paperwork. They can devil for members of the chambers. The financial and other terms on which this is done are settled between the squatter and chambers. They may be hoping for a tenancy in those chambers in due course, or they may be looking for one elsewhere. Squatters have in some cases been known to remain in chambers for a long time.

262. A squatting arrangement can also be made with other chambers, perhaps to meet an unusual demand for an extra pair of hands, but that is unusual. More commonly ex-pupils are invited to come into chambers where they have not previously worked on a probationary basis, with a view to a tenancy. During the probationary period the barrister will undergo further training and supervision from a member of chambers, as if he or she were a pupil. This is commonly called a "third six". In practice the period may be more or less than six months, and in some cases it may be more than a third so-called pupillage. Third sixes are especially useful where the ex-pupil has been provisionally accepted as a tenant in new chambers but is transferring into an area of practice in which he or she has not yet been fully trained.

263. While the third six may loosely be called an extended pupillage it should be emphasised that it is not a pupillage properly so-called. Part V of the Training Regulations does not apply to it. The pupil has obtained a Full Qualification Certificate and, for the purposes of those Regulations, pupillage is at an end. Nor do *The Pupillage*

Funding and Advertising Requirements apply to it although (as we said in the last Chapter) they have been drafted on an assumption that a person may be a pupil after the expiry of the twelve months: see paragraph 5(d).

264. The true position is in our view quite clear. Once barristers have completed twelve months' pupillage and are in possession of a Full Qualification Certificate they are entitled to practise under any of the arrangements described above until they have found a permanent seat in chambers. They cannot practise without a Practising Certificate, but it is not a condition of holding a Practising Certificate that a self-employed barrister must be a member of chambers. To obtain a Practising Certificate the barrister must provide in writing to the Bar Council details of the current address(es) with telephone number(s) of the chambers from which he or she provides legal services: see Code of Conduct Annex D para 15(c). The address at which the barrister is squatting or receiving further training will meet the requirement. They are not, however, pupils. They are bound by the Code of Conduct and are by that token regulated by the BSB. They also have the protection of the Code of Conduct and the Equality and Diversity Code, and must be treated fairly.

265. Arrangements of this kind do not in our view adversely affect the public interest. They give flexibility and open up clear opportunities to newly-qualified practitioners. They enable them to fill gaps and to offer a service which would not otherwise be provided. Many successful careers have been built in this way. Barristers undertaking a so-called "third six" are not within the regime which governs pupils properly so-called.

Conclusion

[53] The so-called "third six" pupillage should not be treated as a pupillage for the purpose of the Code of Conduct or the Training Regulations. It is an entirely voluntary arrangement between the barrister and the organisation concerned. The training delivered by the organisation (if any) does not fall within the jurisdiction of the BSB.

CHAPTER 10

STANDARDS AND ASSESSMENT OF PERFORMANCE

266. Regulations 49 and 50 of the Training Regulations require the BSB to issue pupils with a Provisional and Full Qualification Certificate if, at the end of the first and second six months respectively, it is satisfied that he or she has “*satisfactorily completed*” the relevant period of pupillage.

267. Regulation 52 states that the BSB may accept, as evidence that a pupil has satisfactorily completed any period of pupillage, a certificate to this effect from his or her supervisor. This Regulation appears to suggest that other evidence might also be acceptable. However the notes appended to the form of checklist contained in the *Pupillage File* suggest the contrary, at least so far as the second six months are concerned. It is stated there that a practising certificate will not be issued unless and until the Certificate of Satisfactory Completion has been submitted together with a completed checklist.

268. Refusing a certificate is a rare event. Over the past three years only two pupils have been refused certificates on the ground of poor performance. There are two possible explanations for this very low failure rate.

269. The first is that the relationship between the supervisor and the pupil is likely to mould the pupil into the supervisor’s own habits of working, and set a style and standard of performance for the pupil which he or she can easily assimilate. Some supervisors may also be influenced by a subconscious concern that it will reflect badly upon their abilities as teachers if their pupils fail. The friendly relationship which builds up between a supervisor and a pupil also makes it difficult for the supervisor to disappoint the pupil at the end of the period of training.

270. Alternatively, there may be a much more straightforward explanation. The competition for pupillages is so intense that only the most able can get one. It may therefore be said that it is inherently unlikely that pupils who are of sufficient quality to obtain a pupillage will fail to complete their training successfully. Since most of them will wish to go on and practise they will work hard to earn the right to do so.

271. There may be an element of truth in each of these two possible explanations. But neither leads directly to the answer to the question addressed here.

What is the standard?

272. In Chapter 2 we noted that neither the Training Regulations nor the BSB's *Guidelines* nor the *Pupillage File* explain or define the level of competence which must be attained to satisfy the BSB. We recommended that the standard to be achieved and the criteria for assessment should be clearly set out in the proposed Handbook (Recommendations [6] and [7]).

273. In this Chapter we attempt to fill that gap.

274. A convenient starting-point for the discussion is the new standard of assessment which has been put in place for the BPTC in response to the BVC Report. One of the points emphasised in the BVC Report was that the Vocational Course should be moved out of the academic realm, from which the students should by then have migrated, into the professional arena. The re-naming of the course as the Professional Training Course was intended to highlight this point.

275. The BPTC Handbook, which is the product of the BVC Report, embodies this approach. Competence is assessed not by reference to academic marks. It is measured according to the value of the work to a prospective client. The specification in the BPTC Handbook (Part A, para. 2.1.5) for work considered to be "Outstanding" is that it must embody realistic professional advice or performance. By contrast candidates are judged

to be “Not Competent” if they are not “*capable of producing work on which a prospective client could rely*”.

276. In a professional environment the value and quality of work is always assessed according to its worth to the client. If the thrust of the reforms to the BPTC was to cement the Vocational Stage with the Professional Stage, i.e. pupillage, the natural consequence of that is that the standards of assessment to be applied to the work of pupils should equally be client-oriented. If advice is given in conference or in writing, is it clear, accurate, comprehensible and constructive? Does it address all the issues which the client faces? Where documents are submitted to court – statements of case, indictments, application notices of various kinds, witness statements, notices of appeal, skeleton arguments, written submissions – do they accurately and fairly represent the client’s case, and will they gain the respect of the court? Of overriding importance is oral advocacy. It must be measured against the client’s interests and needs. Is the advocate presenting the best possible case for the client in an attractive, persuasive and clear manner? Are all the points in the case properly and professionally dealt with?

277. There is nothing revolutionary in what we have said here. We are confident that most supervisors, consciously or sub-consciously, already apply these standards when they are assessing their pupils’ work. They are in effect measuring that work against their own performance. Nevertheless we think that there is merit in making it clear to pupils, their supervisors and the public that the right to practise necessarily involves the ability to perform, whether it is at the client’s or the public’s expense, at a level which will ensure that the work done renders a real and valuable service to the client.

278. In Chapters 8 and 10 of our draft Handbook on Pupillage the concept of service to the client is carried forward into the provisions of the curriculum for pupils. In Chapter 8, para. 2 for example, it is stated that “*the detailed requirements [of the curriculum] aim to ensure that barristers provide professional service of the highest standard to their clients*”. This test is then applied to the different elements of the pupil’s legal training, which we discuss in the next Chapter.

When is the standard applied?

279. The test we suggest in this Chapter is a generic test to be applied to all aspects of a pupil's work. It sets the framework within which all detailed assessments should be carried out. So far as the Provisional and Full Qualification Certificates are concerned, obviously the test is applied to the standard of the pupil's work generally at the end of the relevant training period. The pupil works towards the attainment of that standard as training progresses. Supervisors will however have that standard in mind from the first day.

Recommendations

[54] The standard of performance which a pupil's work must achieve is the standard at which the work (whether it is oral advocacy or written work of any description) professionally addresses all the points raised, and is capable of rendering a real and valuable service to the client.

[55] Work should not be considered satisfactory unless it achieves that standard.

CHAPTER 11

TRAINING IN THE WORKPLACE

“One Bar” and the growth of specialisation

280. Training as a pupil can offer many different experiences of work. The working environment at the employed Bar is not the same as that at the self-employed Bar. The self-employed Bar itself splits into many different specialisms. No fewer than 18 Specialist Bar Associations (SBAs) represent different fields of practice. Life as a tax barrister is not the same as life as a criminal advocate.

281. Successive chairmen of the Bar Council have nevertheless stressed that there is “One Bar”. All barristers, it is said, whatever the nature of their work, must possess a common core of skills. The personal and intellectual qualities required to understand and find solutions to clients’ problems, a knowledge of the law, the ability to interpret and apply it, the ability to assemble and analyse factual material, and skill in advocacy, are much the same across the board. Any differences between different types of practice are differences of emphasis only. Whether barristers are employed or self-employed they must have independence of mind and integrity. All barristers adhere to common ethical standards. These are some of the features which continue to bind the Bar together as a single profession.

282. In laying down regulations and guidance for pupillage both the BSB, and the Bar Council before it, have attempted therefore to identify and concentrate on the development and training of core skills which are a necessary ingredient of successful practice in any branch of the Bar. Becoming involved in the more specific requirements of different fields of practice would be an unmanageable task for the regulator. An overarching regulatory or governing body should not attempt it.

Core skills and checklists

283. Regulation 33 of the Training Regulations (see paragraph 35 above) states that a pupil's training must be adequate and comply with criteria published by the BSB. The areas of training the BSB has identified as necessary find their way into the *Pupillage File*: the rules of conduct and etiquette of the Bar; advocacy; conferences and negotiation; and legal research, drafting and opinion-writing (see paragraph 42 above). We agree that this list fairly represents the common core of requisite skills, and bear in mind that the second (advocacy) and the fourth (research and drafting) can cover a very broad range of activities.

284. These four skills are then translated into four checklists which set out various aspects and tasks arising under each of the four headings which pupils must be trained to understand and, where they involve actual legal work, perform. The checklists are introduced as a "guide" to the pupil and supervisor in respect of the training that the pupil should receive, and the complete checklist also forms the basis of monitoring. They are not however set in stone. Chambers are encouraged to produce their own check lists tailored to the pupillages they offer. At the end of the practising, i.e. the second, six months the pupil must submit a completed checklist with his or her Certificate of Satisfactory Completion. It is stated that a practising certificate will not be issued unless and until this has been done. The absolute requirement of a certificate accompanied by a completed checklist appears to go beyond the terms of reg. 52 of the Training Regulations which merely says that the BSB may accept such a certificate as evidence of satisfactory completion.

285. During the course of our review we have heard some criticism of checklists. It has been suggested that they encourage a method of assessment which consists of ticking boxes in place of a more measured qualitative assessment. The argument in favour of checklists is that they do achieve their aim. They provide a useful guide or reminder to pupil and supervisor of basic but important areas of practice which must be covered during the period of training. But the checklists in the past have been used in a context in which there has been no express guidance as to what amounts to satisfactory or

competent understanding, or performance. In each checklist there is a column headed “Satisfactory” to be completed by the supervisor against each area of activity or task. This, the critics say, is the box which is ticked without any real evaluation of performance.

286. We support the practice of checklists and consider that completion should be a mandatory requirement. In the last Chapter we defined a standard which, in our view, the BSB should lay down as the standard by which a pupil’s performance can be measured. If this recommendation is accepted the way in which the checklists are completed in the future will have to change.

Checklist One: conduct and etiquette

287. The first checklist requires pupils to gain an understanding and appreciation of the operation of the rules of conduct and etiquette at the Bar and to achieve a working knowledge of them. The introductory note to this checklist acknowledges that many of the points will have been covered during the BVC course or on courses run on Ethics by the Inns or Circuits, which are discussed in the next Chapter. It also acknowledges that the points raised in the checklist cannot go any further than a discussion between pupil and supervisor (if that). Apart from showing an understanding of the relevant rules there is no “performance” on the part of the pupil which can be measured.

288. We agree with the way in which this checklist is presented. Supervisors will be made aware of the fact that the new vocational course – the BPTC – will include as a separate examination subject the issue of professional ethics. Pupils graduating from that course (from 2011 onwards) will therefore have received at the vocational stage more detailed training than pupils in the past.

289. It is also the case, and worth repeating, that the pupil will undergo further formal training in professional ethics as part of the mandatory course which he or she has to attend at an Inn of Court or on Circuit. Members of this working group attended a particularly challenging teaching session at Lincoln’s Inn’s Practice Management Course

in which pupils were asked to give spontaneous solutions to difficult ethical questions. It was easier in that environment to make an assessment of each pupil's performance.

290. It is nevertheless important to retain this checklist. One of the supervisor's responsibilities should be to encourage discussion of ethical issues on an informal basis. Different ethical problems arise in different areas of practice. Some supervisors will often be confronted by them while their pupils are in training. In other areas of work ethical issues arise infrequently. While a formal assessment of a pupil's understanding of the rules of conduct and etiquette should be carried out as part of the formal teaching course delivered by the Inns or Circuits, these issues should also come into play in training with the supervisor, if only at the level of a formal discussion.

Checklist Two: advocacy

291. The introductory note to the checklist on advocacy correctly states that a fundamental objective of pupillage is the development and practice of advocacy skills. The checklist requires familiarity with the operation of the courts, knowledge of the way in which court staff, clients, witnesses and members of the public should be treated, and the presentation of cases in writing and orally both at trial and on appeal.

292. The checklist in principle is unexceptionable and we have no criticism of it. There are however some problems which have to be faced by supervisors who are called upon to assess their pupils' performance.

293. First, the opportunity for pupils to engage in live advocacy is limited. In their first six they cannot go into court. In their second six they will or will not go into court, depending upon the type of practice in which they are engaged. At the self-employed Bar there are many areas of practice, for example at the commercial Bar, where the chances of a pupil going into court even to make a simple formal application are negligible or nil. Secondly, where pupils do have the opportunity to take cases in court, for example at the criminal Bar or on Circuit, their performance is not often or at all observed by their supervisor. It is not usually feasible for a supervisor to attend a hearing in a magistrates'

or County Court, where the pupil's case is probably one in a long list, in order to see how he or she performs.

294. These problems, which are very real problems for the self-employed Bar, are reproduced at the employed Bar. We were informed by the CPS that pupils who are sent to present the case for the prosecution, or to take the prosecution list, in a magistrates' court are from time to time accompanied by a senior advocate who will sit at the back of the court, take notes, and give advice after the event. This practice would be difficult if not impossible to replicate in other areas of the employed Bar.

295. This problem cannot be put aside. It is not enough to say in this instance that the testing of advocacy skills should be given to the Inns and Circuits. If (as we believe) training in advocacy is essential for all pupils, chambers and employers must look for different solutions. We suggest the following.

- (1) Whether there is court work for pupils or not, chambers and employers (as is common practice with many already) must run in-house advocacy training sessions, requiring pupils to conduct cases orally which are appropriate to the type of practice where training is taking place.
- (2) Pupils should be directed to conduct cases for the Free Representation Unit or other local *pro bono* organisations.
- (3) Supervisors or colleagues who themselves are appearing before a court or any tribunal in a relatively straightforward matter, such as an interlocutory application should require the pupil to prepare the case and present it at a mock hearing before the supervisor or his or her colleague, and then attend the hearing.

296. At the end of the twelve months the pupil should be able to present a record of advocacy actually performed by the pupil which has been assessed by the supervisor or his or her colleagues. If an appearance in court can be monitored or observed by a more senior member of the organisation (not necessarily the supervisor personally), or chambers are able to obtain feedback from a judge or recorder who has heard the pupil

(as happens frequently on Circuit), that is obviously a bonus. This should be additional to any training on a course delivered by an Inn or Circuit, and any exercises in chambers. The assessment which is entered into the checklist must be based on actual observation of the pupil's performance, in court in-house.

Checklist Three: conferences and negotiations

297. The introduction to this checklist acknowledges necessarily that a pupil's actual performance in this area cannot be monitored or assessed by direct observation. If, in his or her second six, a pupil has a conference with the client or conducts negotiations on behalf of a client, the confidentiality attaching to that activity cannot be breached by the presence of an observer.

298. The introductory note to this checklist covers this point exactly. The pupil's development of conference and negotiating skills can only be assessed insofar as the pupil participates in the supervisor's practice. Preparation and making a note in advance of a conference, taking a note during a conference and discussing it afterwards are the means by which the pupil's competence in that area can be assessed. In the case of negotiation it is more difficult because the pupil is likely to be at an arm's length away from discussions with the other side, unless negotiations are conducted in writing.

299. Pupil-barristers at the employed Bar may more easily be directly engaged in this aspect of their supervisor's work, and assessment may be much easier to carry out. Despite the difficulties we recommend that the checklist should stand in its present form.

Checklist Four: legal research and drafting

300. A pupil's written work is by its very nature the easiest to assess by reference to the standard which we have recommended in Chapter 10. However the checklist itself seems to have been written principally with civil practitioners in mind.

301. Section 1 of the checklist refers to the writing of Opinions and Advices, which are of course applicable to all branches of the law. Section 2 refers to letters written in

accordance with pre-action protocols and Part 36 Offers. Section 3 deals with pleadings. Section 4 refers to Witness Statements and Affidavits, and section 5 to the drafting of orders, including Tomlin form and other consent orders.

302. While there may be some aspects of this checklist which have a bearing on criminal practice, much of it does not and we can foresee that supervisors who do criminal work might have some difficulty in complying with this checklist at all.

303. Checklist 2 (advocacy) does not redress the balance. Section 2 of that checklist refers to preparatory paperwork to support oral argument. There is no reference to indictments, applications for permission to appeal or notices of appeal in either checklist. The checklist annexed to our proposed Handbook attempts to redress the balance.

Specialist checklists

304. Part 5 of the form of checklist in the *Pupillage File* invites specialist chambers to insert their own additional checklist of tasks appropriate to the work in which they specialise. There are 13 sample checklists that have been prepared by a number of SBAs and the CPS. These are intended to give further guidance to supervisors, who can select an appropriate list or lists and use them to plan the training they deliver.

305. The completion of a specialist checklist is not said to be mandatory. We think that it should be. The SBAs in our opinion have performed a valuable service in drawing up checklists for their own areas of specialisation. Some practitioners will find that they can use the checklist prepared by their SBA without amendment. We also acknowledge that there are other practitioners whose work comprises or contains elements of two or more specialisations. There are others whose work is unique and will not fit into any particular category. Many chambers, because of their work, belong to more than one SBA. Part 5 of the checklist in the *Pupillage File* concludes with the note that chambers and employers may also develop their own checklists, subject to approval by (nowadays) the BSB. Our recommendation is that they should be required to do so.

306. We do not however envisage that pupils and supervisors must complete every item on the checklist. Much overlap and cross referencing will happen in practice, when they are being filled in.

307. We do not for the time being include as Appendices to the draft Handbook the SBAs' sample specialist checklists. We recommend that the BSB should ask the SBAs to review their checklists in the light of this Report. They can then be added as Appendices to the Handbook in the future, with the explanation that they are for guidance to enable all ATOs to draw up their own.

Discussion

308. We conclude that the certificate of satisfactory completion of the second six months, accompanied by completed checklists relating to conduct and etiquette, advocacy, conferences and negotiation, and paperwork plus a fifth checklist reflecting the supervisor's own area of practice, should be a condition of the grant of a Full Qualification Certificate. Insofar as reg. 52 provides that these documents may be accepted only as evidence of satisfactory completion of a pupillage it should be amended.

309. In the light of the enhancement of teaching of professional ethics and etiquette in the BPTC, and the difficulty of assessing this aspect of a pupil's knowledge and understanding of the law adequately in the context of supervision, we recommend that the assessment of this area of practice in pupillage should be carried out informally by the supervisor and formally within the programme delivered by the Inns and Circuits.

310. The valuable work carried out by the SBAs in the development of specialist checklists appropriate to their own field of practice should continue. When the SBAs have reconsidered their checklists in the light of the Report they should be published in future versions of the Handbook on Pupillage, having the status of guidance. Supervisors will be free either to adopt them wholesale or amend and adapt them to suit their own practice.

311. Checklists should focus on the standards to be attained, at a specified level. They should not simply be treated as a list of ‘tasks’ completed. Their usage must be capable of being verified during any monitoring of pupillage in Chambers. Checklists and portfolios of pupils should therefore be retained for a period of three years.

Good practice

312. The formal training on offer must be supported by good practice in the planning of work and the personal handling of the relations between pupil and supervisor; in ensuring that from the very start the pupil is integrated into the working life of the organisation; and in maintaining high standards of personal conduct.

313. We wish to emphasise the need to back up the programme inherent in the checklists with an explicit Work Plan spanning the entire period of training. We have been shown a number of excellent examples. Many organisations now have these plans. Both the checklists which the organisation intends to use, and their accompanying Work Plan, should be incorporated into the Pupillage Policy Document.

314. There is a wealth of advice on good practice elsewhere, beginning with the seminal guide written by Professor Joanna Shapland and Dr. Angel Sorsby (Institute for the Study of the Legal Profession, Sheffield University, 1998) *Good practice in pupillage*, has found its way into various of the Bar Council’s and BSB’s documents and has been referred to earlier in this report. The most up to date version of this advice is now gathered together and incorporated into our draft Handbook, and we do not repeat it here.

Signing the certificates

315. Some concern has been expressed about the system whereby the pupil supervisors alone assess and finally ‘sign off’ a pupil as ‘satisfactory.’ In order to verify that pupils have attained the required standards, additional measures should be in place. We recommend that all those involved in the formal supervision of each pupil, and the

director of training should countersign a pupil's certificate, having first seen all the relevant materials produced by the pupil.

Conclusions and Recommendations

[56] The four core skills – understanding the rules and etiquette at the Bar; advocacy; conferences and negotiations; and legal research and drafting – should continue to be the focus of training in the workplace.

[57] Training in the supervisor's own area of practice will overlap with the development of these skills.

[58] Training in the workplace is enhanced by following good practice laid down by the Bar Council and the BSB.

[59] Pupils' work records must be capable of being verified during any monitoring of pupillage in Chambers. Checklists and portfolios of pupils should therefore be retained for a period of three years.

[60] At the end of pupillage, pupils must submit to the BSB four checklists indicating that training has been satisfactorily completed in each of the four core skills plus a fifth checklist related to the categories of task relevant to the area of practice in which the pupil has been trained. There may and probably will be overlap between the fifth and other four checklists.

[61] Certificates of satisfactory completion of the first six and the second six must be signed by all those formally involved in the pupil's supervision, including all supervisors and the Director of Training.

[62] To achieve satisfactory completion the pupil's work must meet the standard defined in recommendation [54].

CHAPTER 12

THE ROLE OF THE INNS, CIRCUITS, ADVOCACY TRAINING COUNCIL AND SPECIALIST BAR ASSOCIATIONS

Further training

316. Under reg 27(a) of the Training Regulations the BSB has the power to specify any “further training” which a pupil must undertake, beyond working with his or her supervisor, as a condition of completing pupillage. This provision is reinforced by regs 49 and 50, which require the satisfactory completion of any such training as a condition of obtaining the Provisional and Full Qualification Certificates respectively.

317. Regs 27(a), 49 and 50 replace regulations in identical terms in the previous Consolidated Regulations (see CRs 41.1(ii), 52.1 and 52.2).

318. Reg 33 (which is new) enables the BSB to lay down the criteria for the training of pupils.

319. For many years this “further training” has been treated as consisting of two components, an Advocacy Course, delivered by the Inns and Circuits, and a Practice Management Course. The latter course was previously called “Advice to Counsel” and was originally delivered by the Bar Council. It too is now delivered by the Inns and Circuits.

320. The only formal endorsement, at least in published documents, of these courses is a statement in the *Pupillage File* (para 2.3.5) which refers to them as “compulsory pupillage courses”. The Advocacy Course must be satisfactorily completed in the first six months. The Practice Management Course must be completed within twelve months, but it is recommended that it too should be taken in the first six.

321. The *Pupillage File* also refers to a Forensic Accounting Course, to be completed either during pupillage or by the end of the first three years in practice. Many pupils do take this course, and it has received a certain amount of criticism from new practitioners. We comment on it separately, later in this Chapter.

Content of the courses

322. We have seen and discussed the course programmes developed by the four Inns and the North Eastern Circuit. The other Circuits to our knowledge follow similar programmes. The framework and timetabling of the courses are not uniform. Each body has developed its own style. There is close but by no means exact correspondence on the content of the courses.

Advocacy Courses

323. The various Advocacy Courses contain most and in some cases all of the following components:

- First steps in civil advocacy;
- Applications advocacy;
- Pleas in mitigation;
- Case analysis;
- Witness handling (examination-in-chief and cross-examination);
- Closing speeches;
- Tribunal advocacy;
- Appellate advocacy;
- Written submissions and skeleton arguments;
- Mediation.

324. For the oral advocacy exercises some of the Inns and the Circuits have the use at weekends of actual courtrooms, and sitting or retired judges preside. Proceedings are then conducted in courtroom dress.

325. The training may be supplemented by the use of DVD recordings, court-based days observing actual proceedings followed by discussion, and talks from voice coaches.

Practice Management Courses

326. Various Practice Management Courses cover many but in no case all of the following topics:

- Ethics;
- Equality and diversity;
- Work of the Bar Council and the BSB;
- Circuits and messes;
- Complaints and professional discipline;
- Professional finances (tax, VAT, pensions, record-keeping etc);
- Professional indemnity insurance and common sources of claims;
- Services available to the Bar;
- Chambers' organisation;
- Barristers and their clerks;
- Barristers and instructing solicitors;
- Court etiquette and dress;
- Money laundering legislation;
- Data protection;
- Registration and certification of pupillage;
- The role of pupil supervisors;
- Checklists for pupils;
- Pupils' expenses and how to claim them;
- Practice management and marketing;
- The employed Bar;
- The "third six";
- The FRU.

Delivery of the courses

327. Practice varies as to how and when the courses are delivered. Middle Temple delivers both courses over a fortnight during the working week. The other Inns and the Circuits may combine or split the courses and deliver them over a series of evenings and a residential or non-residential weekend.

328. The Advocacy Course is delivered by experienced practitioners and sitting and retired judges. The Practice Management Courses are delivered by a mixture of practitioners, barristers' clerks and chambers' managers, accountants and financial advisers, solicitors, and officers of the Bar Council, the BSB and the Bar Mutual Indemnity Fund.

The Advocacy Training Council (ATC)

329. An important presence in the construction and delivery of the Advocacy Course is the ATC whose role has not so far been discussed in this Report. It must be mentioned at this juncture.

330. The ATC is a committee of COIC. It has a formal constitution and is recognised by the Bar Council as being responsible for the co-ordination of the delivery and monitoring of advocacy teacher training, and for setting standards and guidelines for the approval and grading of advocacy trainers.

331. It also provides a forum for the development and dissemination of good practice in relation to advocacy training and provides advice, support and encouragement for those who deliver it.

332. It is not a rule-making or regulatory body itself, but its importance has been recognised by the BSB for the purposes of the BVC/BPTC. The BSB imposes a requirement upon all providers of that course that advocacy training and assessment must and can only be carried out by tutors who have undergone and satisfactorily completed the advocacy teachers training course delivered by the ATC.

333. In relation to pupillage, following two Reports of its Advocacy Working Party (October 2002 and October 2003) chaired by Timothy Dutton QC, it has developed a set of detailed criteria (“the Dutton Criteria”) for the assessment of oral and written advocacy and a supporting Pupil Assessment Form enabling teachers on the pupils’ Advocacy Courses to assess whether an individual has satisfactorily completed that course in accordance with paragraph 2.3.5 of the *Pupillage File*.

334. At present the Inns and Circuits are not formally required to assess pupils by reference to the Dutton Criteria, and they are not required to use the ATC’s assessment forms. Nor is there a requirement by the BSB that (in contrast with the providers of the BVC/BPTC) their advocacy teachers must have completed the ATC teacher training course, although in practice most of them have done so. The Inns and Circuits retain a measure of autonomy over these matters. However representatives of the ATC from time to time observe the Advocacy Courses as they are being delivered and offer comments.

335. The Dutton Criteria and a link to the ATC’s assessment are included in our proposed Handbook. Whether they should be raised from their present status as influential guides to regulatory documents, and whether the BSB should require all teachers of advocacy on the pupillage courses to have been trained first by the ATC, are questions we discuss later in this Chapter.

The Joint Advocacy Group

336. Concurrently with the preparation of the report, a Joint Advocacy Group (JAG), comprising the BSB, the SRA and the Institute of Legal Executives (ILEX) has been at work with a view to compiling a common set of standards applicable to all advocates exercising rights of audience in any criminal court. It published a consultation paper which included a set of criteria for the assessment of competence in advocacy drawn from a number of sources, including the Dutton criteria and the list of competences to be demonstrated by applicants for silk. This initiative has gained the support of the Legal Services Board, which also envisages that the JAG will go on to consider the exercise of Higher Rights in family and then civil proceedings.

337. The JAG has received the responses to the consultation paper on Advocacy Standards, and the likely outcome of these initiatives will be a universal set of standards for all advocates. Whether these standards will be different from or more rigorous than the standards which this Report is aiming at for the Bar remains to be seen (at time of writing). When the relevant standards have been resolved and set they will have to be taken into account and adopted in the compulsory Advocacy Training Course for the Bar. But the process of developing the Advocacy Training Course which we are discussing in this Chapter should not be delayed.

Standards of the courses

338. There is no doubt that the Advocacy Training Course as it is at present delivered by the Inns and Circuits has been heavily influenced by the valuable work carried out by the ATC. The members of this working group are very familiar with both of the compulsory courses. We have attended them, observed them and in some cases taught parts of them.

339. The BSB will recognise that all the teaching on these courses is delivered voluntarily by practitioners, sitting and retired judges and the many others who participate in the Practice Management Course. They are not paid for their services, but deliver training to high standard which is carefully organised and structured in advance. The four Inns have education training departments – the precise titles vary – which look after these courses. The Circuits have education and training committees which take on the same responsibility.

340. Later on in this Chapter we discuss ways and means by which these courses can be developed and further improved.

Assessment

341. We have already noted in Chapters 2 and 10 of this Report that one of the most important questions the BSB has to answer is the assessment of pupils' standards of

performance. In the face of the requirement (in regs 49(a) and 50(a) of the Training Regulations, repeated in para 2.3.5 of the *Pupillage File*) that this further training must be completed satisfactorily, the providers of the courses, insofar as they call for “performance” on the part of the pupil as opposed to mere attendance, issue forms accordingly. In the infrequent cases in which a pupil’s performance falls below the standard which is perceived by the provider to be the right standard, they require the pupil to undergo further training.

342. Until now, however, there has been no agreement between the BSB and the providers of the courses as to what the standard should be. The generic standard which we have set and described in Chapter 10 of this Report is our attempt to fill that gap.

Discussion

343. We have received very few complaints from pupils about these courses. They have a preference for courses that divide pupils up broadly according to whether they are training in criminal law or civil law chambers, at least for some of the exercises. Members of the employed Bar do not, so far as we have been told, complain that the courses are aimed principally at self-employed practitioners. The experience which they gain reinforces the concept of “One Bar”. Some find it more and others less convenient to attend the Middle Temple’s two-week course, compared with courses which are split up over a series of evenings and a weekend.

344. Neither the BSB nor (in the past) the Bar Council have become deeply involved in the regulation of these courses, despite the fact that they themselves have decreed them to be compulsory. The system has worked largely on the basis of custom and practice, the BSB and the Bar Council trusting the Inns and the Circuits to deliver appropriate courses to a high standard. However the fact remains that these courses are delivered within the regulatory regime which governs pupillage, and they should in our view be subjected to some measure of oversight and supervision by the regulator.

345. The time has come, in our view, for the BSB to take the lead in laying down some common guidance for the content of these courses, and common standards, both generic and detailed, for the assessment of performance. The standard described by us in Chapter 10 is expressed as a framework, or a generic standard against which more detailed assessments can be carried out. Within the framework, in the case of advocacy, for example, the BSB and providers should be able to agree on more detailed criteria for assessment. These are likely to be the Dutton Criteria or something very similar to them. In due course, as mentioned above, they will also have to take account of the standards laid down by the Joint Advocacy Group, in so far as they are different.

346. We do not say that the BSB can or should instruct senior practitioners and members of the judiciary on how to train pupils in advocacy or other skills, nor the various other professionals on how to advise pupils on the management of their affairs. But some measure of overall control must be exercised.

347. The proper role of the BSB in our opinion is one of coordination. We recommend that it should convene and lead a forum of the Inns, the Circuits and the ATC for the exchange of views and the development of best practice. The ATC is seen by us as an essential participant in this forum. There should in our view be proper communication between the different providers as to the different ways in which they set out their courses and the different elements of training which are contained within them. Out of this discussion there will emerge lists of core topics which the BSB can then prescribe as the necessary elements, in outline, in each of the two courses.

348. Our own view is that all of the topics in paragraph 323 above under the Advocacy Course should be contained in every Advocacy Course; and most if not all of the topics listed in paragraphs 326 under the Practice Management Course should be included in that course. It is, however, surprising that none of the providers of the Practice Management Course has included as one of the topics the relationship between the barrister and the lay client. We recommend that that should be added, together with the role and function of the SBAs.

349. We now return to the two questions raised earlier in this Chapter in relation to the ATC. Should the BSB require the Inns and Circuits to employ as teachers of advocacy only those who have undergone the ATC's teacher training course; and should the BSB require the Inns and Circuits to apply the Dutton Criteria and the ATC's assessment form to the assessment of advocacy?

350. It is in our view premature at present to answer those questions in such precise terms. In principle we would recommend both that teachers of advocacy should have undergone some element of accredited training, and that there should be common standards across all providers of assessing pupils' performance in advocacy. It would not however be right immediately to impose upon the Inns and Circuits the ATC teaching or assessment criteria without giving them the opportunity to discuss them with the ATC in the forum which we think should be convened, hopefully in the very near future. They may wish to adopt the ATC guidance wholesale, or offer amendments to it.

351. Briefly therefore we conclude that the BSB should set up a discussion forum with a view to co-ordinating an agreed curricular framework for the compulsory pupillage courses delivered by the Inns and Circuits; that the ATC should fully participate in those discussions; and that the outcome of those discussions should be (1) a more detailed course specification which carries the authority of the BSB; (2) an agreed qualification for teachers of advocacy which all tutors on the Advocacy Course must possess; and (3) an agreed set of criteria for the assessment of performance in advocacy. These new requirements must then be published clearly and fully in the Handbook on Pupillage, with the authority of the BSB. Our proposed discussion forum should be re-convened regularly under the leadership of the BSB – we suggest biennially – to review these arrangements and amend them as necessary.

The Forensic Accounting Course

352. This course does not fit into the framework of the other two. First, it may be taken either during pupillage or the first three years of practice. Secondly, it is delivered

exclusively by a professional provider which charges a fee in the order of £400 for attendance. Because of the fee which (during pupillage) must be met by the pupil's chambers or employer, some pupils in chambers are prevented from attending it until they are in practice, and have to meet the expense out of their own pocket.

353. Views on the content of this course are very mixed. We have heard it both strongly condemned and praised. We understand that the provider's exclusive franchise will soon expire. The course should be reviewed by the BSB's working party on CPD, which has just begun its work, and the question whether it should be in the hands of a single provider should also be re-opened.

Role of the SBAs

354. In Chapter 11 we referred to the valuable work which some of the SBAs have done in developing checklists for pupils undergoing training in their own field of practice. We encouraged them to carry out further work and hope that they will do so.

355. We recognise however that the principal function of the SBAs is to provide CPD for established practitioners in their specialist fields. Our discussions with the SBAs show that a number of them also routinely invite their members' pupils to attend the educational events which they provide as CPD for new practitioners. This is an excellent practice which we would encourage all SBAs to adopt.

356. Apart from the practical instruction which these courses provide, they also give pupils the opportunity to meet and talk with practising barristers who are their contemporaries or near-contemporaries. We do not suggest that attendance at any of these events should be converted into the compulsory "further training" which has been the focus of this Chapter. Whether or not the SBAs are willing and have the resources to adopt the suggestion should be for them to decide.

Conclusions and recommendations

[63] The BSB should continue to require pupils to attend the compulsory Advocacy and Practice Management Courses delivered by the Inns and Circuits.

[64] For the avoidance of doubt all Circuits should be authorised to deliver the courses.

[65] The BSB as regulator should co-ordinate and exercise greater oversight of the content and standard of the courses and convene a biennial meeting of all providers to develop best practice.

[66] The ATC should be fully engaged in this [65] exercise.

[67] All teachers of advocacy delivering the compulsory pupillage advocacy course should undergo accredited advocacy training as agreed with the Inns, Circuits and ATC and be registered with the BSB accordingly.

[68] The Forensic Accounting Course should be reviewed as part of the BSB's review of CPD.

[69] The SBAs should routinely invite pupils to attend the courses they provide for junior practitioners.

CHAPTER 13

TRAINING OF SUPERVISORS

357. In Chapter 4 we referred to the statement in the Training Regulations (Sch. C para.6) that the BSB, in consultation with the Inns, “*may and will normally*” require pupil supervisors to undergo training before or after they have been registered. We are informed however:

- that a significant number of supervisors, especially those who were registered many years ago, have not received any training; and
- that there are no arrangements for re-training supervisors however long ago they were first trained, or last took a pupil.

358. In March 2003 the Bar Council received a report of a survey designed to test the level of support for the requirement of training for pupil supervisors which had been laid down much earlier by its Working Party on Pupillage in 1996, and with the standards set by the Collyear Committee in 2000. All training organizations were canvassed. 23 responded to the questionnaire. All expressed broad support for the principle of supervisor training in general terms. The level of support was uneven.

359. The training delivered to supervisors is left to the discretion of each Inn. We have found that the content and style of training varies.

360. This state of affairs is unsatisfactory. Because of our concerns about it we asked the Hendy Committee to collate information about the various types of training delivered and to consider whether, while respecting the autonomy and independence of each Inn, a common core programme, or a code of best practice, could be devised which could be overseen by the BSB, and then more effectively enforced.

361. What follows in this Chapter is substantially derived from the Hendy Report.

362. The Hendy Report makes two important points which are particularly relevant to the self-employed Bar: first, that (in contrast with other professions) supervisors rarely see their pupils in action in their second six, at least when they are in court or are meeting clients; and secondly that supervisors are not rewarded for the time they take to deliver training. The first point has been discussed in Chapter 11 above. The second point raises important issues about what training a regulator can reasonably expect practitioners to undergo.

363. It is of course advantageous to chambers and employers to have pupils. In a commercial era the philanthropy which once motivated barristers to take on pupils – sometimes a number at a time – has had to give way to the interests of the organisation. Compulsory funding is only one of the factors which have brought this about. Generally speaking pupils are now taken on because it suits the organisation to do so. But the work undertaken by the individual supervisor is considerable: arranging the pupil's work programme; explaining and discussing the supervisor's own cases; assessing the pupil's work; giving guidance on the pupil's own court appearances in the second six; liaising with colleagues who might have work which will interest the pupil. Very able pupils can return the favour by carrying out useful legal research, note-taking and preparing first drafts of documents. But the balance of advantage undoubtedly favours the pupil.

364. These responsibilities are underpinned by the Code of Conduct: see Rules 404.2 and 804 discussed in Chapter 4.

365. If the Bar is to continue to maintain a target figure of at least 2000 active pupil supervisors it follows that any regime for training must not be so onerous, bureaucratic and time-consuming that would-be supervisors will be discouraged from putting their names forward. A balance has to be struck between effective training and the amount of time that employed and self-employed barristers are willing and able to make available to attend any course.

Aims of pupil supervisor training

366. The long-standing requirement that pupil supervisors should receive some training has not been challenged during the course of our review. It is obviously necessary. The BSB should in our view take the lead in stating what the aims of pupil supervisor training are. We recommend the following statement, which we have developed in conjunction with the Hendy Committee.

Aims of Supervisor Training

367. The aims of pupil supervisor training are to:

- (1) prepare those members of the profession who are suitably qualified and committed to contribute to the development of the profession to nurture, develop and supervise pupils in order that they might become competent practitioners of the Bar of England and Wales, and be worthy of a full practising certificate;
- (2) enable practitioners effectively to train pupils, as both supervisor and assessor, so that pupils may fulfil the aims of pupillage as identified in section 2 of our draft Handbook on Pupillage;
- (3) enable practitioners to support their pupils professionally and personally;
- (4) remind practitioners of the formal obligations on pupils and supervisors and the structures relating to supervising pupils.

Outcomes

368. The intended outcomes of training are that supervisors will be enabled to:

- (1) understand their role as supervisor, and hence their role in upholding standards and the status of the practising certificate;
- (2) prepare pupils for practice at the Bar of England and Wales;
- (3) develop further the knowledge, skills and competences gained by pupils on the BPTC and the Inns' and Circuits' advocacy training courses in order that pupils can be assessed as competent in the practice of law and thereby gain a practising certificate;

- (4) assist pupils in further development of their advocacy skills, both oral and written;
- (5) instil in pupils a professional and ethical approach to practice as a barrister in accordance with the Code of Conduct;
- (6) prepare pupils for practice in a culturally diverse society;
- (7) prepare pupils for independent practice, whether at the self-employed or the employed Bar;
- (8) furnish pupils with skills and competencies necessary for practice, whether in Chambers or as an employed barrister;
- (9) encourage pupils to take responsibility for their own professional development;
- (10) provide the necessary support for pupils, academically, personally and as mentor or advisor; and
- (11) undertake competent assessment of their pupils.

Delivery of the course

369. At present supervisor training is delivered by the Inns and only some of the Circuits. It is however to be noted that attendance at a course given by any one of the four Inns or on Circuit is sufficient. Barristers are not obliged to attend the course delivered by the Inn or Circuit of which they happen to be a member.

370. Our meeting with the Wales and Chester Circuit revealed that not all Circuits are aware of the fact that they are entitled to deliver their own course. Members of Circuits who live and work some distance away from London find it time-consuming, expensive and inconvenient to attend a course at one of the Inns in London. All the Circuits in our view are as well-equipped to train supervisors as the Inns. They may be better attuned to the particular requirements and practising environment on the Circuit than an Inn, which may be delivering a more general course designed to accommodate a wider range of practitioners. We have already made the recommendation [21] that all Circuits should be authorised by the BSB to deliver pupil-supervisor training courses, subject to the controls discussed in this Chapter.

371. However the process of nominating supervisors should remain in the hands of the Inns. Administratively we see this working out as follows. A barrister who has applied to his or her Inn to be nominated as a pupil supervisor must attend a training course, which may be at any one of the four Inns or on Circuit. On completion of the course the barrister will receive a certificate of satisfactory attendance which will then be sent to the Inn in support of the application. The Inn will satisfy itself that attendance on a course and all the other requirements have been met. It will then make its nomination accordingly.

Content of the course

372. The Hendy Committee suggests that the following topics be included within the training:

- (1) *Induction and regular contact*: Great stress is laid in the *Guidelines* of the importance of the process of induction into chambers. The Middle Temple's useful *Pupil Supervisors' Briefing* contains no fewer than 61 basic points, setting out all the day-to-day things which a pupil needs to know about chambers, its members, staff and facilities and the future pattern of training.
- (2) *Regulations*: This will cover the regulatory obligations of the BSB and the obligations contained in the Code of Conduct and elsewhere which are imposed both on ATOs pupil supervisors and pupils. This material will be substantially covered in the Handbook on Pupillage, if it is adopted by the BSB.
- (3) *Roles and responsibilities*: The role of the supervisor in training, managing, mentoring appraising and assessing pupils should be explained by an experienced pupil supervisor. The content of the training as set out in the Handbook should also be explained.
- (4) *The curriculum the pupil needs to cover and the competencies he or she needs to acquire*: In addition to the basic skills set out in the Handbook supervisors can be advised on how to give guidance on career progression,

writing articles and books, and participating in legal bodies including Specialist Bar Associations and the Free Representation Unit.

- (5) Equality and diversity: Supervisors will need to receive instruction themselves on the Equality and Diversity Code and should be instructed on how to impart its requirements to pupils.
- (6) The compulsory courses for pupils: Supervisors must receive instruction on the compulsory courses (including advocacy) that pupils must undergo. This will enable supervisors to advise their pupils on those courses and understand what support to give. Supervisors should be informed on the role of the Advocacy Council.
- (7) Paperwork requirements: The paperwork which must be completed by supervisors and their pupils must be explained.
- (8) Operational problems: An experienced pupil supervisor should outline the difficult problems and dilemmas that can arise during the supervision of a pupil.
- (9) Mentoring, feedback, appraisal, assessment, monitoring and certifying at six and twelve months: Supervisors will need to understand the standards by which pupils' performance is measured in the manner discussed in detail in Chapter 10 of this Report.

373. The Hendy Committee recommended that much of this material can be set out on a CD Rom or distributed in hard copy. It is not necessary for the whole of it to be delivered orally by speakers. We agree. Some barristers who have attended these training courses have stated that their real need is for hard information about what they are required to do. Lengthy talks and discussions are not necessary. The Handbook, if adopted by the BSB will form the basis of instruction.

374. In the light of our discussion in Chapter 14 of this Report on pupils' complaints we recommend the addition of one further topic: Pupils' complaints: how to avoid them and how to handle them.

Course structure

375. The Hendy Committee agreed that the course should consist of 5 hours consisting of two parts. The course could be conducted over one day or two evenings. If it were held over two evenings, arrangements should be made to ensure that supervisors attend both sessions, and that accreditation would not be awarded until the whole course had been completed.

Co-ordination of courses

376. Within the framework we have set out above, which in our view should be mandatory, the Inns and Circuits will have enough flexibility to develop their own current and proposed materials according to their own circumstances and the resources they have available. It is however desirable that they should consult with each other and exchange information and ideas about how their courses are arranged. We have already made this recommendation in relation to the compulsory courses which they provide for pupils, and we make the same recommendation here.

377. To carry this idea forward we recommend that the BSB convenes a discussion forum involving all the Inns and Circuits at which they can present their material and show each other how their course is modelled. This group can then be convened (we suggest) biennially as a continuing discussion forum so that best practice can be developed as circumstances change.

Refresher training

378. In Chapter 5 above we recommended that barristers who had not taken a pupil for five years should be given an option whether to have their name removed from the register or undergo training in order to stay on the register. Barristers in this category should, in our opinion, undertake the full course.

379. We also identified another category of barristers, namely those who remain registered (because they have taken a pupil within the last five years) but have not received training for five years. These barristers too should be required to undertake

refresher training, if they wish to stay on the register. But in these cases we do not think it would be necessary for them to attend the full training course. A shorter form of refresher training should be devised, dealing principally with the changes which have been made in the relevant regulations and good practice over the last five years.

380. The Hendy Committee thought that the refresher course might consist of the second part of a course delivered in two sessions. We prefer to leave it to the Inns and Circuits to decide exactly what form their refresher training might take. We would expect much of the material to be delivered in writing or in electronic form. Whether it could be fitted into the full training course, as part of it, or form the subject of a separate and somewhat shorter course is something which those bodies should discuss between themselves.

Conclusions and recommendations

[70] The fact that many supervisors have never received training, and that there are no arrangements for refresher training for those who have been trained, is unacceptable.

[71] The content and style of training delivered by each of the Inns of Court vary.

[72] A common core programme or code of best practice should be devised and overseen by the BSB.

[73] Any course of training must recognise that supervisors already devote a lot of unremunerated time to training pupils. The course must not be so onerous and bureaucratic as to discourage barristers from becoming supervisors.

[74] The Handbook on Pupillage (or other BSB document) should state the aims of training and its intended outcomes.

[75] Circuits should be authorised to provide training as well as the Inns of Court.

[76] A certificate of satisfactory attendance should be provided to the barrister at the end of the course he or she has attended, to be forwarded to his or her Inn in support of its nomination of the barrister as a supervisor.

[77] The content of the course should be developed by the BSB in collaboration with the Inns and the Circuits and reviewed by them biennially.

[78] Much of the course should be delivered in written form or as a CD rom.

[79] The course should run for about 5 hours, or over 2 evenings. Barristers should attend the full course to obtain registration.

[80] Every 5 years registered supervisors should attend a refresher course, to be devised by the BSB in collaboration with the Inns and Circuits, to keep their names on the register. Those who have neither attended nor supervised for 5 years should be removed from the register.

CHAPTER 14

**COMPLAINTS, GRIEVANCES AND
ENFORCEMENT OF THE RULES OF THE
PROFESSION**

Jurisdiction of the BSB

381. The Bar's complaints and disciplinary system is vested in the BSB. In the first instance it is administered by the BSB's Complaints Committee. This committee deals with all complaints made against barristers. The Code of Conduct (Part X para 1001) defines a "barrister" as "*an individual who has been called to the Bar by one of the Inns of Court and who has not ceased to be a member of the Bar.*" Most pupils are called to the Bar before the first six months of pupillage begins. In order to exercise their right, under para. 802 of the Code, to practise in the second six they must in any case be called before the second period begins (see Training Regulations, reg.3 and references to "the practising period" of pupillage in regs. 30, 32 and 50). Pupils, once called to the Bar, are subject to the Code of Conduct in the same way as all other barristers.

382. The Complaints and Investigation Teams of the BSB process both "external complaints" (complaints made against barristers) and "internal complaints" (complaints made by barristers about, for example, the administration of the practising rules, such as the requirements for CPD and practising certificate fees). In their Performance Report 2008 they noted an 18% increase in complaints between 2007 and 2008, rising from 707 to 833. This increase was the product solely of a rise in the number of internal complaints. The number of external complaints went down.

Complaints against pupil barristers.

383. The BSB's Complaints Officers have told us that there have been very few "internal complaints" made against pupils over the last five years. During that same period, complaints against pupils, made by a client or a judge about the conduct of a pupil, have been extremely rare. The BSB sometimes has occasion to raise a complaint against a pupil – not more than once or twice a year in the same five-year period. Slightly

more frequently other barristers raise a complaint against a pupil; but this often takes the form of a counter-complaint, when the pupil has made a complaint first, typically against his or her supervisor or Training Organisation.

Table 18: Information on complaints

<i>Nature of complaint</i>	<i>Comment</i>
Complaints by barristers against pupils	2 per year over last 5 years (often as a counter-complaint where the pupil has first initiated a complaint)
Complaints by clients against pupils	None in the last 5 years
Complaints by judges or other tribunals against pupils	None in the last 5 years
Complaints made as own motion complaints by the BSB against pupils	No more than 1 or 2 a year over last 5 years

384. These figures are unlikely to tell the whole story. They are confined to formal complaints which reach (or are initiated by) the BSB. There is no reason to believe that the complaints system discriminates in favour of pupils any more than it discriminates against them. There is nevertheless a real possibility that the performance of a pupil, for example in court, will through his or her inexperience disappoint a client, without that ever leading to a formal complaint. We are sure that this happens. But in the absence of a formal complaint the way to limit clients' dissatisfaction must be to remind pupils, supervisors, barristers' clerks and others responsible for giving pupils court-work (or any other work) that para. 603 of the Code of Conduct prohibits any barrister from undertaking work which he or she is not competent to handle. In this respect pupils are no different from the rest of the Bar.

385. We have not found any evidence that training organisations, supervisors or third parties are inhibited from making an official complaint against a pupil, if they wish to do so, because of the present structure. Where formal complaints are made against pupils

they must in our view be dealt with as they are at present, through the BSB's established procedures.

Complaints made by pupils

386. The problem of the pupil who has a complaint or grievance against his or her supervisor, or another member of the training organisation, or the organisation as a whole, is much more intractable. Such cases are not peculiar to the Bar. They exemplify difficulties which any junior person or trainee has to face in any place of work.

387. We are satisfied that the problem is a real one. No statistics are available. Pupils are wary of making complaints of this kind because they are concerned about the effect which it will have on their career. If they do complain they may well do so anonymously, or in conditions of strict confidence. We do however know, from our meetings with the Young Barristers' Committee and the education officers of the Inns, and our own experience and observation, that genuine grievances exist. The very fact that pupils are unwilling to bring their complaints out into the open may itself encourage the misconduct or ill-treatment which gives rise to those complaints.

388. The Young Barristers' Committee and others have given us examples of the type of treatment to which pupils can be subjected. There is the obvious example of sexual harassment, mostly of women. There are other types of harassment, and bullying. All of these can bear very hard on pupils. A socialising or drinking culture can be imposed which pupils for a variety of reasons may not find acceptable. We were told of the case of a pupil supervisor who required the pupil to wait all day at the supervisor's home for a plumber to call. There are complaints about other types of exploitation such as the unfair distribution of work; inadequate arrangements for supervision when the supervisor is away from chambers; and alleged unfairness in the procedures for selecting tenants. The late payment of instalments of the pupillage award, illegitimate deductions, and the late or non-payment of expenses have also been referred to.

389. Our perception is that the problem is encountered more frequently at the self-employed rather than the employed Bar. The main reason for this is that employers, especially those in the public sector, have much better procedures and more human resources in place to deal with these issues. Pupils who are members of staff can more easily raise them without jeopardising their position. There may also be a secondary reason. In an environment where the trainers as well as the trainees are members of staff, bad behaviour on the part of the trainer can affect that person's career too.

390. We have raised this topic at all our meetings with our consultees. We have considered whether any changes are needed to make it easier for pupils to voice complaints they might have about their training organisation or supervisor. It seems to be common ground that there is no single method by which pupils' complaints and grievances can be brought into the open and (where that is possible) resolved.

Formal procedures

391. On a formal level a pupil can make a complaint under the BSB's complaints system in the same way as any other individual who wishes to complain about a member of the Bar. But even where the issue is serious, for example, a complaint of sexual harassment, the pupil may be unwilling to make an official complaint for fear of prejudicing his or her chances of being taken on as a tenant, or for fear of being labelled as a troublemaker. Pupils have sometimes intimated complaints to the BSB, but only anonymously, or off-the-record. On occasions the BSB has been able to persuade a complainant to go on the record, so that the complaint can be properly investigated and considered. However, it is usually impossible to investigate, let alone instigate the formal complaints procedure, if the complainant is unwilling to give evidence to support such an investigation.

Informal procedures

392. Because of this difficulty there is agreement among all our consultees on the need to make available and properly publicise a range of supplementary informal procedures between which pupils can make their own choice.

393. *Internal grievance procedures* First, the pupil might wish to use the internal grievance procedures laid down by the training organisation in its Pupillage Policy Document. The processing of internal grievances is something which ought to be in the hands of our proposed Director of pupil training, or of another independent and senior person. But this route will not work in every case. If the complaint is against the supervisor, much will turn on the relationship between the supervisor and the individual in charge of the procedure. The situation is even more difficult if the complaint is against the head of chambers.

394. *A chambers' mentoring scheme* Secondly, as we have recommended in our draft Handbook, all chambers should (as a matter of good practice) appoint, as some employers do, a junior member of chambers as the pupil's mentor or friend, with whom the pupil can talk informally about work as well as these more personal issues. The mentor or friend might be able to initiate or suggest a remedy which a pupil cannot.

395. Outside chambers, there are three main avenues which can be explored: the Bar Council, the Inns and the Circuits:

- *The Bar Council* has a helpline for pupils which can operate on an entirely confidential basis. During the course of our review (and perhaps in part because of it) this helpline has been given more publicity, and is now on the Bar Council's website. Contact with the helpline can lead to the case being taken up, at whatever level the pupil wishes, by a pupillage advisory panel of the Bar Council;
- *The Inns* have experienced education officers who know personally many of their Inn's pupils, having been involved in their training when they were Bar students and in their later progress. They all have a very good understanding of the way in which pupillage can and cannot work in chambers. The Inns also have sponsorship schemes, attaching Bar students to practitioners who meet them and discuss their careers with them. We suggest that the Inns consider the possibility that (if it does not already happen) the personal connection between student and sponsor might continue until the end of pupillage;

- *The Circuits* are in a position to provide outside London the pastoral support which the Inns provide more generally. We have noted that the Circuits have very good educational arrangements in place both for pupils and new practitioners. The practice is that these activities are in the charge of an education committee or similar group. We recommend that, in so far as a Circuit does not already have a facility in place to assist pupils who are confronted with difficulties of the kind discussed here, they should develop one. It should be properly publicised among the pupils, and offer a completely confidential service;
- *LawCare* is a charity that can also provide support and advice for lawyers (particularly those under stress or with health issues).

396. It must be emphasised that pupils should not be asked to engage in or do anything which is not related to their education as pupils. That will rule out anything from excessive photocopying to running errands. Their relationship with their supervisor must be treated as a professional relationship. Their privacy and autonomy must be respected. It is also important that pupils should be aware of the various means by which they can have their complaints taken up. In our draft Handbook these matters are clearly set out in some detail.

397. Finally we return to the question of the training of supervisors. Members of the employed Bar have told us that the supervisors of their pupils are given detailed guidance on the way in which they should manage the working relationship, including much material on office etiquette. In this area the employed Bar has much to teach the self-employed Bar. If our recommendations on the training of supervisors are accepted, that process will be more closely overseen by the BSB in the future than it has been in the past. The training should include advice on how to avoid the type of problem we have discussed in this part of the Chapter, and might be delivered by someone who has responsibility for pupils at the employed Bar.

Complaints against training organisations

398. Every year the Pupillage Sub-committee of the BSB's Education and Training Committee is called upon to investigate alleged breaches by chambers of the Code of Conduct or the Training Regulations in relation to pupillage. The number of allegations investigated each year is small. In the last five years it has been about 6-7 per year.

399. The breaches which are investigated typically are breaches of the *Pupillage Advertising and Funding Requirements*: awarding a pupillage to an acquaintance, or a relation, or similar, without advertising it properly, or at all; awarding an unfunded or underfunded pupillage without a waiver being obtained; or making illegitimate deductions from the award or the pupil's earnings.

400. There is no single means by which these allegations come to the BSB's notice. Often they may arise from a complaint by a third party who in one way or another has come to know of the breach in question. The weakness in the present system is that the BSB's role is entirely reactive. It can only intervene when it learns that something has gone wrong. It is therefore very likely that other breaches of the rules are occurring which are undetected. To address this problem the BSB's Quality Assurance Committee commissioned an investigation into a possible Chambers' Monitoring Scheme, which envisaged that all chambers should be visited under the scheme, whether the subject of complaint or not. The Final Report on the Pilot Scheme reported on investigations into a number of chambers on three matters: complaints handling procedures, pupillage and equality and diversity. It was delivered to the BSB in July 2009. The Report was encouraging from the point of view of both the viability and affordability of the process, and the general standards of compliance within the chambers investigated. We are informed that the BSB is working towards a full implementation of the scheme across all chambers.

401. We have studied the Report and strongly support its implementation. We recommend however that consideration should be given to a monitoring scheme which is specifically targeted on pupillage. Pupillage has many and varied facets, as we think this

Report shows. There is in our view a risk that it might not receive the full consideration it deserves if it was part only of a more general monitoring exercise.

Conclusions and recommendations

[81] Where formal complaints are made against pupils they should continue to be dealt with through the BSB's established complaints procedures.

[82] Because of the difficulties inherent in using those formal procedures in connection with complaints made by pupils, there is a need to make available a range of supplementary informal procedures which a complainant can use, which should be properly publicised.

[83] The supplementary procedures will comprise: chambers' own internal grievance procedures; a chambers' mentoring scheme; and the schemes run by the Bar Council, the Inns and the Circuits, and LawCare. These schemes are fully set out in the draft Handbook and offer a range of choices for the complainant.

[84] Supervisors must be trained in a clearer understanding of the proper role of the pupil and the pupil's relationship with the supervisor, and of the measures which can be taken to minimise such complaints.

[85] We strongly support the current pilot Chambers Monitoring Scheme and recommend that a scheme should be developed which is specifically targeted on pupillage.

CHAPTER 15

**MONITORING OF PUPILLAGE BY THE
BAR STANDARDS BOARD**

402. In Chapter 2 and elsewhere in this Report we have drawn attention to the fact that the formal regulations affecting pupillage, the guidance given by the Bar Council and the BSB on good practice, and other relevant materials, are contained in a number of different documents. Some of the material is only available on the BSB's or the Bar Council's website. We recommended [Recommendation 3] that, for the benefit of pupils, training organisations and supervisors, and the agencies delivering the compulsory courses, all of this material should be assembled into one comprehensive Handbook, available to all. Putting it into a single Handbook, published annually, will give coherence to the way in which pupillage is structured, managed and understood. It would also make it easier to propose and carry into effect the changes to the system which will inevitably have to be made from time to time, to keep the training of pupils up to date.

403. This inevitably leads us to ask where, within the BSB, the future responsibility will lie for maintaining and overseeing both the Handbook and the system of pupillage itself. Whose property will they be?

404. At present there is no single BSB committee which is responsible for all pupillage-related issues. The various aspects of pupillage are dealt with by various committees and sub-committees within the present BSB committee structure, or by the BSB's secretariat.

The current system

405. The current system may be summarised as follows:

- *The Bar Standards Board* takes overall responsibility for education and training, discipline and the enforcement of the Code of Conduct and the Training Regulations;
- *The Education & Training Committee* of the BSB has delegated responsibility for education and training, including the pupillage stage;
- *The Pupillage Sub-committee* of the Education & Training Committee deals with pupillage ‘problem’ cases and triggered visits to individual chambers where there appear to be breaches of the Code of Conduct (for example the *Funding and Advertising Requirements*) or other irregularities. It makes about 6 or 7 visits a year. It also contributes to policy-making. It also carries out a certain number of routine sample visits to chambers. These are likely in future to be linked in some way to the Chambers Monitoring Scheme;
- *The Qualifications Committee* of the BSB deals with special applications for dispensations, waivers and exemptions from various rules arising under the Code of Conduct and the Bar Training Regulations, for example in relation to the advertising or funding of pupillage, the length of pupillage, external training for pupils and the transfer to the Bar of qualified lawyers. It also authorises pupillage training organisations and will be concerned with cases where a pupil-supervisor may be removed from the register. Its work is delegated to six Panels of which five (nos 1, 2, 4, 5 and 6) deal in some way with pupillage:
 - *Panel 1* of the Qualifications Committee deals with applications for Call to the Bar by solicitors and overseas and other lawyers.

CHAPTER 15: MONITORING OF PUPILLAGE
BY THE BAR STANDARDS BOARD

These applications may include a waiver of the pupillage requirements;

- Panel 2 of the Qualifications Committee deals with modifications to pupillage training, for example the approval of “external training” and the granting of exemptions, (effectively, reductions in the pupillage requirements);
 - Panel 4 of the Qualifications Committee deals with (among other things) authorisation of pupillage training organisations and waivers from the requirements for entitlement to exercise rights of audience as a barrister, which may include exemptions from pupillage requirements;
 - Panel 5 of the Qualifications Committee deals with applications for waivers of the Pupillage Funding and Advertising Requirements;
 - Panel 6 of the Qualifications Committee deals with exemption applications that are not covered by other panels of the Qualifications Committee and so may relate to pupillage requirements;
- The Quality Assurance Committee of the BSB will run the newly developing Chambers Monitoring system which will cover pupillage;
 - The Complaints Committee of the BSB deals with formal complaints, including those relating to pupillage;

- *The Secretariat*
 - (1) In the Education Department, the Head of Education, Pupillage Officer and Pupillage Administrator play key administrative roles.
 - (2) The Qualifications Manager and staff manage the pupillage aspects of the Qualifications systems.
 - (3) Pupillage is registered and compliance with the pupillage regulations is monitored by the Standards and Quality Section. This section is also responsible for the Chambers Monitoring Scheme.
 - (4) The Complaints staff deal with issues related to pupillage as appropriate.
 - (5) Research and statistical information on pupillage is managed by the BSB Research and Projects Officer (currently working together with a freelance researcher undertaking work for the Bar Council).
 - (6) The Equality & Diversity advisers provide information and advice as necessary on pupillage.

The Bar Council

406. The Bar Council is also involved in the provision of advice on pupillage and its monitoring in various ways. Current major commitments are the implementation of the recommendations in the Neuberger Report, which included recommendations relating to pupillage, and the carrying out of research and gathering statistics on, among other things, pupillage.

Discussion

407. The very clear lesson we have learnt in carrying out this review is that both the institution of pupillage at the Bar and its management give rise to many and multifarious issues for the regulator. Some of those issues engage fundamental questions of principle about professional education and training. Others are concerned with the pastoral care of pupils, or administration and management. We have attempted to identify and discuss all of them in this report. Yet all these issues interact and overlap. None of them can be dealt with in isolation. Just as we have recommended that they should all be brought together

and laid out systematically in a single publication we think that they should also be brought under a single administrative umbrella at the BSB.

408. We accept that the current system and division of responsibilities works reasonably well and do not criticise the BSB, much less its staff, for the way in which it is currently run. But we also recognise there are internal structural difficulties, particularly for the Secretariat, many of which arise out of the allocation of different aspects of pupillage to different committees, with the result that some topics or problems have to be cross-referred to more than one group, creating uncertainty as to who will take a final decision. This is far from ideal, and has on one occasion drawn comment from a High Court judge. A single BSB committee which has overall responsibility for all pupillage-related matters would in our opinion produce a much more efficient and comprehensible system.

409. Precisely how the restructuring should be done is essentially a matter for the BSB; but we recommend that one committee should take over the following:

- (1) Approval of Training Organisations.
- (2) Monitoring of pupillage and ATOs.
- (3) Establishing pupillage training requirements, including curricula, checklists, compulsory training courses and standards of assessment.
- (4) Transferring Qualified Lawyers.
- (5) Exemptions from training requirements, including reductions in the length of pupillage and authorising external training.
- (6) Funding and advertising waivers.
- (7) Authorisation, registration, training and monitoring of pupil supervisors.
- (8) Enforcement of the Code of Conduct and the Training Regulations so far as they affect pupillage.
- (9) Any Other Business, for example, a review of a decision not to issue a Qualification Certificate.

410. There should also be one clear focal point in the Secretariat dealing with all pupillage matters.

411. The handling of complaints should be left with the Complaints committee.

412. The following matters should be dealt with by separate committees:

- (1) Complaints, which should be left with the Complaints committee (see above).
- (2) CPD (which falls outside the scope of pupillage, and applies to practitioners holding practising certificates) should remain the responsibility of the Education and Training Committee and its CPD sub-committee.

Conclusions and Recommendations

[86] The various interacting and overlapping issues which touch upon pupillage should no longer be dealt with by a number of different BSB committees.

[87] All pupillage issues should be brought together under a single administrative umbrella at the BSB.

[88] Save in relation to complaints one committee should have responsibility for all pupillage-related issues, with one focal point within the Secretariat for dealing with all pupillage-related matters.

[89] The precise re-structuring is a matter for the BSB.

[90] Complaints and CPD should remain the responsibility of the Complaints and Education and Training Committees respectively.

CHAPTER 16

FUTURE OF PUPILLAGE

413. In this Chapter we look at two important questions about the future of pupillage:
- Should the rules and guidance affecting pupillage be adapted in any way to accommodate the new business structures in which barristers might be practising in the future?
 - Can the number of pupillages be increased?

New business structures

414. The division of the Bar between self-employed and employed barristers, to which we have been referring throughout this Report, is likely to undergo change as a result of the Legal Services Act 2007. In the light of that Act, in November 2009 the BSB gave its consent to the formation of partnerships between barristers, and between barristers and solicitors. (This was subsequently approved by the LSB). Further into the future it is at least possible that barristers will enter into multi-disciplinary partnerships with solicitors and other professionals. There is the yet further possibility that they will be employed in multi-disciplinary practices which are not owned by the practitioners themselves but by third party investors.

415. To speculate on the extent to which these changes will come about in practice, or on the rate at which change will occur, is far beyond our terms of reference. We do not do so. But we have to consider how the system of pupillage will fit into any such arrangements.

416. Our starting-point is that anyone who wishes to hold himself or herself out as a practising barrister (whether or not he or she holds other qualifications) will continue to need a practising certificate from the BSB. That must mean, in our view, that the individual concerned will have complied with the various requirements set out in the Training Regulations or their replacement. It will of course be for the BSB to decide

whether there should be alternative routes to obtaining a practising certificate as a barrister; but if and insofar as the BSB continues to insist upon the three stages of training envisaged in the current Training Regulations, and subordinate requirements, including training in the core skills, pupillage will remain a necessary condition, unless a waiver is obtained.

417. On that footing we consider that the framework of pupillage which we have considered and recommended in this report and the draft Handbook will be as much appropriate to any new business structures, within which barristers might in the future be practising, as it is at present. There will be a close parallel between these new structures and the employed Bar. First, they will be able to recruit barristers who have completed pupillage and obtained a Full Qualification Certificate from any ATO, and present them as barristers with practising certificates in the usual way. Secondly, they will be able to apply to the BSB for authorisation as a training organisation, and their members will be entitled to apply to be registered as supervisors. If they and their members satisfy the criteria – as many organisations employing practising barristers, and the barristers in their employment do at present – they will be able to take pupils themselves.

418. Clearly the Handbook will have to be kept under review as new types of practice emerge. The criteria for training organisations and the registration of pupil supervisors may have to be adapted. The content of pupil- and supervisor-training programmes may have to be amended. That remains to be seen. That should not however lead to a lowering of the standards or a watering-down of the content of the training for lawyers who want, within any professional framework, to be known as and to practise as barristers. The standards we have set in Chapter 10 above, and the training discussed in Chapters 11 and 12, will continue to be relevant. The concept of “One Bar”, according to our understanding of it, should and we think will survive changes of the type envisaged by the 2007 Act.

419. It is in the interests both of the public and the profession that all holders of practising certificates at the Bar should work to the same high standards which we have

endeavoured to promote in this report. The employed Bar, as it is constituted at present, fully endorses those standards; and we would expect practising barristers working within any future type of arrangement to take the same view.

More pupillages?

420. Lord Neuberger's Working Party on Entry to the Bar addressed the disparity between the number of pupillages and the number of individuals seeking pupillage. We have given our estimate of the shortfall in Chapter 3 of this Report: approximately 4,000 BVC graduates competing for about 560 pupillages in 2008. We know that numbers of both applicants and pupillages have fallen since then; but the gap remains large.

421. The Neuberger Report contains recommendations (Nos.31, 32 and 37) for increasing the number of pupillages: the setting-up of a clearing house system, to make sure that all vacancies are filled; co-operation between the Bar Council and the BSB to ensure "*that more employed and other pupillages are made available*"; and establishing a funding pool to "*provide additional funded pupillages sponsored by employers or Government agencies unable to train pupils themselves, but keen to ensure a good supply of barristers with particular skills.*" There can be no objection to 'sponsored' pupillages whereby a pupillage (with no designated incumbent) is funded commercially or by individuals. Nor can there be an objection to small chambers clubbing together to fund a shared pupillage, as long as this has no influence on recruitment.

422. In earlier Chapters of this Report we have already commented on two of these recommendations. In Chapter 6 we recommended that the existing clearing service for pupils operated by OLPAS/PP should be matched by a corresponding service for chambers with unfilled vacancies. In Chapter 4 we called for greater clarity in the system of approving training organisations and, by better publicity, more encouragement to employers to offer pupillage. The idea of the funding pool parallels the recommendation of the Working Group on Small Chambers that a similar pool should be set up (by the Bar Council and the Inns) to assist small chambers, which we discussed in Chapter 8. We commented that it would be a task for the Bar Council, in conjunction with other

potential funders, to carry the idea of a funding pool or pools forward. It does not seem to us to be a matter for the BSB as regulator. We recommend that both suggestions should be considered by the Bar Council's Neuberger Implementation Group.

423. However we have also emphasised, throughout this Report, that the number of pupillages on offer is closely related to the number of new practitioners which the profession requires, or thinks it requires. The message in the Table at the end of Chapter 3 is quite clear. It has been reinforced at the many meetings we have held during this review. Neither chambers nor employers will put resources into providing pupillages which exceed their own perceived strategic needs or the funds they have at their disposal. At the self-employed Bar both are controlled by the amount of work coming in. In chambers undertaking publicly-funded work, in particular, the diminution in the supply of work, and the drop in fee-income, are keenly felt. There is no reason to suppose that chambers which are dependent wholly or mainly on privately-funded work look at things differently. When they are deciding upon the number of pupillages they should offer, and the amounts they should pay, they are guided by their own business interests, and rightly so. Employers of barristers too think in exactly the same way. Government departments – the principal employers – are constrained by budgets. Other employers have to comply with business plans. In this respect the Bar is no different from any other profession or organisation.

424. While therefore we have every sympathy with the many talented newly-called barristers who are disappointed in their search for pupillage, and fully support the modest range of measures referred to above, which may produce some more pupillages at the margin, we cannot see any large-scale initiative which the Bar Council – much less the BSB - can promote, even a massive injection of funds, which will come anywhere near to satisfying the demand for pupillage which exists among the entire body of BVC/BPTC students. Moreover it would be difficult to justify large-scale and costly measures if they simply produced a large number of pupils with Full Qualification Certificates and no job opportunities, except possibly on the somewhat unattractive ground that they would

provide a bigger pool from which chambers and employers could select their tenants or staff. At present, happily, high-quality candidates are not in short supply.

425. In so far as the problem results from the high numbers of students admitted to the BVC/BPTC, that issue was fully discussed in the BVC report, and measures which might have the effect of reducing numbers, or at least giving students full warning of the difficulties they face at later stages in their career, are being implemented by the BSB.

426. The ultimate constraints, in any case, are the numbers of training organisations and supervisors. Those numbers are finite, even if the final numbers possible have not yet been reached. We reject the idea that an alternative kind of pupillage can be devised which could take place outside the tried and tested framework of training in an approved organisation of practitioners, alongside a supervisor actively engaged in practice. To do so would be to lose sight of what the training is aimed at achieving: knowledge of the way in which the barrister can understand and respond to the needs of the client, and acquisition of the practical skills necessary to serve those needs, in accordance with the rules of the profession.

Conclusions and recommendations

[91] The likely increases in the types of structures within which barristers may practise in the future will not undermine the need for any barrister wishing to hold a practising certificate at the Bar from undertaking a rigorous and properly supervised pupillage focussed on the four core skills, as approved by the BSB.

[92] Within the overall framework of pupillage, the detailed content of training may over time have to be adapted, but that should not lead to a lowering or watering-down of standards.

[93] New organisations of practitioners will be entitled to apply for accreditation as ATOs.

[94] The implementation of the recommendations in this report and the Neuberger report may result in a modest increase in the number of pupillages, especially at the Employed Bar and within small chambers.

[95] However the numbers of ATOs and supervisors (actual and potential) are finite and the numbers of pupillages on offer in any year are governed by the business needs of the organisations offering them. Essentially the number of pupillages, as in any other profession is governed by market forces.

CHAPTER 17

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

427. In this Chapter we summarise all the conclusions and recommendations of the Working Group, by Chapter.

1 WHAT IS PUPILLAGE?

[1] Pupillage - a period of practical training under the supervision of one or more established practitioners – should continue to be an indispensable condition for practice at the Bar.

[2] Training should be undertaken for the full period in the same chambers or organisation under the supervision of two or more supervisors.

2 THE CURRENT REGIME

[3] The information and guidance issued by the BSB to pupils, pupil supervisors and training organisations should be assembled in a common Handbook on Pupillage in the form which accompanies this Report.

[4] The separate *Pupillage File, Guidelines for pupillage training organisations and Good Practice in pupillage* should be discontinued.

[5] The new Handbook should clearly distinguish between the mandatory requirements laid down by the Bar Training Regulations, the Bar's Code of Conduct and the BSB's other formal rules on the one hand, and material which consists of advice and guidance as to good practice on the other.

[6] The standard of performance to be achieved by pupils to gain a Provisional or Full Qualification Certificate and the manner in which their work should be assessed are not defined in the Training Regulations or the BSB's Guidelines or other documents and must be clarified.

[7] The new Handbook must clearly set out the standard of professionalism to be achieved for entry into practice and the methods by which competence should be assessed.

3 THE PUPILS

[8] The BSB has assembled a body of data on the gender, ethnicity, socio-economic background and educational attainment of pupils which is reliable and comprehensive.

[9] The distribution of pupillages between men and women, members of ethnic minorities and majorities, and pupils from different socio-economic backgrounds shows a greater diversity among today's body of pupils than many commentators might expect.

[10] The principal qualification for obtaining pupillage appears to be high educational attainment.

[11] The BSB must continue to collect these data from newly-registered pupils.

[12] However no safe conclusions can be drawn from the data about the fairness of the selection procedures used by chambers and employers.

[13] The research which has started into the backgrounds of all applicants for pupillage should continue so that a proper comparison can be made between successful and unsuccessful applicants.

[14] Those who are successful in obtaining pupillage have a very good prospect of entering into practice as a barrister either at the self-employed or employed Bar.

4 TRAINING ORGANISATIONS

[15] The system whereby the BSB approves training organisations and the status of the criteria used in the process need to be clarified.

[16] Regulation 37 of the Training Regulations should be repealed and replaced by provisions corresponding to the previous Consolidated Regulations reg. 47.2 which gave the regulator a broad discretion to lay down and change from time to time criteria and guidelines for approval.

[17] The *Criteria and Guidelines* currently operated by the Qualifications Committee should be amended by adding an additional requirement that an ATO should have as a member, or member of its staff, a director of pupil training who

(although not necessarily a registered supervisor) has undergone a supervisors' training course within the last five years.

[18] Any new system for the approval of ATOs must be well publicised.

[19] The BSB's systems for recording details of ATOs are in urgent need of improvement. Databases must be updated, with effective interfaces and interaction in order to improve effective record keeping.

5 SUPERVISORS

[20] The system for the nomination of pupil supervisors through the Inns of Court is appropriate and works satisfactorily. Subject to [21] and [22] below it does not need to be changed.

[21] The Circuits should be expressly authorised to deliver supervisor training courses; but the nomination of a supervisor should always be made by that person's Inn.

[22] The Training Regulations should be amended to make it clear that the BSB has a residual discretion to refuse to accept the nomination of a barrister as a pupil supervisor. The grounds of refusal should be communicated to the barrister and his or her Inn and be subject to review and appeal under the Regulations.

[23] The accuracy of the BSB's registers of ATOs and pupil supervisors must be thoroughly checked. The registers urgently need to be brought up to date and the system of record-keeping must be improved, in order to ensure that training takes place as specified in para 143.

[24] Among other things the register of pupil supervisors must in the future include details of the dates when a supervisor last took a pupil and when he or she last attended a training course.

6 RECRUITMENT OF PUPILS

[25] The BSB's regulation of the recruitment of pupils should be imposed solely to ensure that procedures are fair to all candidates; maximise the career opportunities of all candidates of high calibre; and comply with the law and good practice relating to discrimination, equality of opportunity and diversity.

[26] The rule that a barrister may not (unless the BSB permits) enter pupillage more than five years after passing the BVC/BPTC should remain.

[27] The *Pupillage Advertising and Funding Requirements* should be amended to require ATOs to describe with greater precision the qualities, qualifications and (if appropriate) experience they favour in selecting pupils and to indicate categories of applicant (e.g. holders of Lower Second Class or non-science degrees) they are unlikely to shortlist.

[28] Participation by chambers in OLPAS/PP should remain voluntary.

[29] Any technical changes which might be made to the form and content of the OLPAS/PP scheme are a matter for the Bar Council, the provider of the service and participating ATOs. These are unlikely to raise concerns for the BSB.

[30] However, the Code of Conduct should be amended to require all chambers, whether they participate in the OLPAS/PP scheme or not, to process pupillage applications according to the timetable laid down by OLPAS/PP. The timetable will be a regulatory matter if it is to be enforced through the Code of Conduct and bind all ATOs.

[31] Rule 404.2 of the Code of Conduct and its relationship with the *Guidelines* or (if adopted) the Handbook on Pupillage need to be reconsidered.

[32] All pupillage selection panels should contain at least one member who has received formal recruitment and equality and diversity training. In the medium term all members should have received that training.

[33] If it is a condition of obtaining pupillage that applicants must previously have undertaken a mini-pupillage in chambers, the advertising and recruitment rules relating to pupillage must be observed in relation to the award of mini-pupillages.

[34] The regulations laid down in the *Guidelines* for offers and acceptances of pupillage should be made mandatory for all ATOs, although it is doubtful whether they can be effectively enforced against candidates.

[35] The clearing service offered by OLPAS/PP should be universally available and supplemented by a corresponding service for ATOs where vacancies for pupillage are unfilled.

7 DURATION OF PUPILLAGE

[36] The period of full-time pupillage should remain fixed at twelve months.

[37] Within each period of six months pupils should be allowed two weeks' holiday plus public holidays.

[38] Supervisors should ensure that the period of pupillage is otherwise substantially completed, if necessary by extending time before issuing a six or twelve months' certificate.

[39] The power of the BSB to permit part-time pupillages, and the basis upon which permission will be granted, should be better publicised.

[40] The volume of demand for part-time pupillages should be researched.

[41] Applications for part-time pupillage should continue to be treated by the BSB flexibly on a case-by-case basis.

[42] The amount, type and quality of training a part-time pupil receives should be the same as that which a full-time pupil receives delivered over a proportionately longer period of time, and the same standard must be attained.

[43] Pupils should be entitled to undertake the whole of their pupillage with an ATO and an accredited supervisor, in any Member State of the European Union. BTR 31 should be amended accordingly.

8 FUNDING

[44] The requirement that all pupillages should be funded unless the BSB otherwise permits should remain in force.

[45] The exception in favour of transferring solicitors, other lawyers and law teachers should continue to be allowed.

[46] The discretion to waive the funding requirement should continue to be exercised sparingly.

[47] Small chambers, and some others, which are wholly or mainly dependent on publicly-funded work, may be able to establish a special economic case for a waiver, depending on the turnover of work and their general finances.

[48] Waivers should not normally be allowed in favour of pupillages given to mature candidates transferring from another career.

[49] The advertising or the funding requirements may continue to be waived in favour of international students who genuinely intend, after practical training in England or Wales, to practise abroad. These applications must be scrutinized with great care.

[50] The minimum amount of the pupillage award should be raised from £10,000 to £12,000 a year, payable as before in equal monthly instalments.

[51] The *Funding Requirements* should be amended to ensure that pupils are paid promptly and in full the amount of their award and their recoverable expenses.

[52] Where chambers, in a pupil's second six, legitimately set off, against the pupillage award, fees received by the pupil from his or her own practice, the amount set off should be the pupil's net profit after expenses, and not the gross fee. The better practice would be to fund the expenses, when they are incurred, to assist cash flow and set off the gross fee when it is received.

9 THE THIRD SIX

[53] The so-called "third six" pupillage should not be treated as a pupillage for the purpose of the Code of Conduct or the Training Regulations. It is an entirely voluntary arrangement between the barrister and the organisation concerned. The training delivered by the organisation (if any) does not fall within the jurisdiction of the BSB.

10 STANDARDS AND ASSESSMENT OF PERFORMANCE

[54] The standard of performance which a pupil's work must achieve is the standard at which the work (whether it is oral advocacy or written work of any description) professionally addresses all the points raised, and is capable of rendering a real and valuable service to the client.

[55] Work should not be considered satisfactory unless it achieves that standard.

11 TRAINING IN THE WORKPLACE

[56] The four core skills – understanding the rules and etiquette at the Bar; advocacy; conferences and negotiations; and legal research and drafting – should continue to be the focus of training in the workplace.

[57] Training in the supervisors own area of practice will overlap with the development of these skills.

[58] Training in the workplace is enhanced by following good practice laid down by the Bar Council and the BSB.

[59] Pupils’ work records must be capable of being verified during any monitoring of pupillage in Chambers. Checklists and portfolios of pupils should therefore be retained for a period of three years.

[60] At the end of pupillage, pupils must submit to the BSB four checklists indicating that training has been satisfactorily completed in each of the four core skills plus a fifth checklist related to the categories of task relevant to the area of practice in which the pupil has been trained. There may and probably will be overlap between the fifth and other four checklists.

[61] Certificates of satisfactory completion of the first six and the second six must be signed by all those formally involved in the pupil’s supervision, including all supervisors and the Director of Training.

[62] To achieve satisfactory completion the pupil’s work must meet the standard defined in recommendation [54].

12 THE ROLE OF THE INNS, CIRCUITS, ADVOCACY TRAINING COUNCIL AND SPECIALIST BAR ASSOCIATIONS

[63] The BSB should continue to require pupils to attend the compulsory Advocacy and Practice Management Courses delivered by the Inns and Circuits.

[64] For the avoidance of doubt all Circuits should be authorised to deliver the courses.

[65] The BSB as regulator should co-ordinate and exercise greater oversight of the content and standard of the courses and convene a biennial meeting of all providers to develop best practice.

[66] The ATC should be fully engaged in this [65] exercise.

[67] All teachers of advocacy delivering the compulsory pupillage advocacy course should undergo accredited advocacy training as agreed with the Inns, Circuits and ATC and be registered with the BSB accordingly.

[68] The Forensic Accounting Course should be reviewed as part of the BSB's review of CPD.

[69] The SBAs should routinely invite pupils to attend the courses they provide for junior practitioners.

13 TRAINING OF SUPERVISORS

[70] The fact that many supervisors have never received training, and that there are no arrangements for refresher training for those who have been trained, is unacceptable.

[71] The content and style of training delivered by each of the Inns of Court vary.

[72] A common core programme or code of best practice should be devised and overseen by the BSB.

[73] Any course of training must recognise that supervisors already devote a lot of unremunerated time to training pupils. The course must not be so onerous and bureaucratic as to discourage barristers from becoming supervisors.

[74] The Handbook on Pupillage (or other BSB document) should state the aims of training and its intended outcomes.

[75] Circuits should be authorised to provide training as well as the Inns of Court.

[76] A certificate of satisfactory attendance should be provided to the barrister at the end of the course he or she has attended, to be forwarded to his or her Inn in support of its nomination of the barrister as a supervisor.

[77] The content of the course should be developed by the BSB in collaboration with the Inns and the Circuits and reviewed by them biennially.

[78] Much of the course should be delivered in written form or as a CD rom.

[79] The course should run for about 5 hours, or over 2 evenings. Barristers should attend the full course to obtain registration.

[80] Every 5 years registered supervisors should attend a refresher course, to be devised by the BSB in collaboration with the Inns and Circuits, to keep their names on the register. Those who have neither attended nor supervised for 5 years should be removed from the register.

14 COMPLAINTS, GRIEVANCES AND ENFORCEMENT OF THE RULES OF THE PROFESSION

[81] Where formal complaints are made against pupils they should continue to be dealt with through the BSB's established complaints procedures.

[82] Because of the difficulties inherent in using those formal procedures in connection with complaints made by pupils, there is a need to make available a range of supplementary informal procedures which a complainant can use, which should be properly publicised.

[83] The supplementary procedures will comprise: chambers' own internal grievance procedures; a chambers' mentoring scheme; and the schemes run by the Bar Council, the Inns and the Circuits, and LawCare. These schemes are fully set out in the draft Handbook and offer a range of choices for the complainant.

[84] Supervisors must be trained in a clearer understanding of the proper role of the pupil and the pupil's relationship with the supervisor, and of the measures which can be taken to minimise such complaints.

[85] We strongly support the current pilot Chambers Monitoring Scheme and recommend that a scheme should be developed which is specifically targeted on pupillage.

15 MONITORING OF PUPILLAGE BY THE BSB

[86] The various interacting and overlapping issues which touch upon pupillage should no longer be dealt with by a number of different BSB committees.

[87] All pupillage issues should be brought together under a single administrative umbrella at the BSB.

[88] Save in relation to complaints one committee should have responsibility for all pupillage-related issues, with one focal point within the Secretariat for dealing with all pupillage-related matters.

[89] The precise re-structuring is a matter for the BSB.

[90] Complaints and CPD should remain the responsibility of the Complaints and Education and Training Committees respectively.

16 FUTURE OF PUPILLAGE

[91] The likely increases in the types of structures within which barristers may practise in the future will not undermine the need for any barrister wishing to hold a practising certificate at the Bar from undertaking a rigorous and properly supervised pupillage focussed on the four core skills, as approved by the BSB.

[92] Within the overall framework of pupillage, the detailed content of training may over time have to be adapted, but that should not lead to a lowering or watering-down of standards.

[93] New organisations of practitioners will be entitled to apply for accreditation as ATOs.

[94] The implementation of the recommendations in this report and the Neuberger report may result in a modest increase in the number of pupillages, especially at the Employed Bar and within small chambers.

[95] However the numbers of ATOs and supervisors (actual and potential) are finite and the numbers of pupillages on offer in any year are governed by the business needs of the organisations offering them. Essentially the number of pupillages, as in any other profession is governed by market forces.

Annex 1: Members of the Pupillage Review Working Group

Derek Wood CBE QC (Chair)	Practising barrister, former Principal of St. Hugh's College, Oxford
Grahame Aldous QC	Practising barrister, Vice-Chairman of the Bar Council's Equality and Diversity Committee
Alan Bates	Practising barrister, member of the BSB's Education and Training Committee and BVC Working Group
Yvonne Coen QC	Practising barrister, member of the Bar Council's Training For The Bar Committee
Colin Cook	Barristers' clerk in common law chambers
Georgina Crawford	Practising barrister, recently completed pupillage
Sue Edwards	Director of Legal Services, Department for Business, Innovation & Skills
Dr Vicki Harris	Lay Member of the BSB and various BSB Committees including the Pupillage Sub Committee
Tristan Jones	Practising barrister, member of the Bar Council's Young Barrister's Committee
Paul Kirtley	Practising barrister, member of the BVC Working Group
Peter Marcus	Practising barrister, member of the Neuberger Monitoring and Implementation Group.
Simon Monty QC	Practising barrister, member of the BSB and Chair of the Qualifications Committee
Richard Muschamp	Partner, Deloitte LLP.
Sally O'Neill QC	Practising barrister, former Chair of the Criminal Bar Association
Ingrid Simler QC	Practising barrister, Chair of the Bar Council's Equality and Diversity Committee
Sam Stein QC	Practising barrister, member of the Bar Standards Board and Chair of the Pupillage Sub Committee
Observers/attending	
Dr John Carrier	Chair, Education and Training Committee of the BSB
Dr Valerie Shrimplin	Head of Education Standards, BSB
Andrea Clerk	Pupillage Officer, BSB
Claire Pace	Assistant, BSB

Members of the Pupil Supervisor Training Working Group

John Hendy QC	Chairman
Julia Hawkins	Secretary
Karen Shuman	Lincoln's Inn
Joanna Robinson	Lincoln's Inn
Chris Monckton	Lincoln's Inn
Sarah Clarke	Inner Temple
Fiona Fulton	Inner Temple
Bernard Richmond QC	Middle Temple
Christa Richmond	Middle Temple
Ijeoma Omambala	Gray's Inn
Quinn Clarke	Gray's Inn
Rachel James	Gray's Inn
Andrew Lewis QC	North Eastern Circuit
Jason Pitter	North Eastern Circuit
Dr John Carrier	BSB (observer)
Dr Valerie Shrimplin	BSB (observer)

Annex 2: Pupillage Review Working Group: Terms of Reference

Description

The Working Group is set up to conduct the review of Pupillage (Education & Training).

Functions/ responsibilities

It is proposed that the Pupillage Review Working Group will consider whether the current methods of delivering the one-year pupillage are the most appropriate. In ascertaining this, the Working Group will take into account the work that had already been done on this subject and presented in the papers that had been considered recently.³ Specifically, the Working Group will consider and make recommendations on the following major issues:

- A. To determine whether standards for training by Pupillage Training Organisations are set at the right level and to update and define those standards;
- B. To determine whether the standards to be attained by pupils are currently set at the right level and to update and define those standards;
- C. To consider the recruitment process and whether the current selection procedures for pupillage are fair and effective in selecting the best candidates for the Bar (and if the regulatory regime relating to selection procedures is satisfactory)
- D. To consider whether the methods of assessing that pupils have attained the requisite standard are appropriate;
- E. To consider the issues related to the funding of pupillage
- F. To consider whether the appropriate regulatory framework is in place for enforcing the arrangements

In determining the above mentioned standards for training and standards to be attained by pupils, the Working Group will examine in detail:

1. whether the system of approving Pupillage Training Organisations is satisfactory
2. whether the system of first six/second six is effective and whether overall the length of pupillage (one year) should be reduced or extended and if so how
3. whether the current system of issuing pupils with provisional qualification certificates upon completion of their first six months pupillage is satisfactory
4. if the current checklists are a useful guide to trainers and pupils and/or whether the checklists should be reviewed
5. whether the current system of issuing pupils with full qualification certificate upon completion of their pupillage is satisfactory
6. part time pupillages and the facility for pupils earning other money or being in receipt of other

³ such as *Pupillage: Time for a Change?* (Pupillage Sub Committee, Sam Stein) and the *Review of Compulsory Funding in Pupillage* (January 2008).

- funds (as raised by Neuberger);
7. any special issues related to pupillages in the Employed Bar
 8. whether the periods of reduction in pupillage and external training and their purpose/status are appropriate
 9. if the selection and training of pupil supervisors is adequate
 10. if the approved pupil supervisors should be required to undertake training on a regular basis
 11. if the training for pupil supervisors should be delivered by the Inns or by other training providers
 12. whether the guidance issued to pupil supervisors needs revising and updating
 13. whether the documentation that the pupils receive from the BSB needs revising and updating
 14. whether disciplinary processes for pupils are appropriate
 15. if the monitoring system in place for Pupillage Training Organisations is rigorous enough
 16. if documentation that Pupillage Training Organisations have to have in place for their pupils is useful and followed
 17. if satisfactory arrangements are in place for collaboration with the Quality Assurance Committee which deals with overall monitoring of chambers

The Working Group will carry out extensive consultation with the Inns (COIC and Education Committees), Circuits, Bar Council Training for the Bar Committee, students, pupils and other bodies that it may consider relevant.

Reporting to:

Education & Training Committee
(Bar Standards Board and Pupillage Sub Committee to be kept informed. Final report to BSB)

Date of approval of terms by E & T Committee:

25 June 2008: ToR approved by the E&T Committee

Date of approval of terms and membership by BSB:

17 July 2008: ToR approved in principle by the BSB

Annex 3: List of Consultees

Bar Standards Board Committees

Bar Standards Board
BVC Conference
Consumer Panel
Education and Training Committee
Pupil Event organised at Lincolns Inn

Bar Council Committees

Bar Conference
Employed Barrister's Committee
International Committee
Training for the Bar Committee
Young Barristers' Committee

Inns of Court

COIC
Gray's Inn – Education Committee
Gray's Inn – Practice Management Course
Gray's Inn – Pupil Supervisors Meeting
Inner Temple – Meeting with Chairmen of the Education and Welfare Committee
Inner Temple – Practice Management Course
Inner Temple – Pupil Supervisors Meeting
Inns' Student Officers
Lincoln's Inn – Education and Welfare Committee Members
Lincoln's Inn – Practice Management Course
Lincoln's Inn – Pupil Supervisors Meeting
Middle Temple – Practice Management Course
Middle Temple – Pupil Supervisors Meeting
Middle Temple – The Students' and Barristers' Affairs Committee/Education Committee
Middle Temple Student Association

Circuits

European Circuit
Midland Circuit Management Course
North Eastern Circuit
Northern Circuit
South Eastern Circuit
Wales and Chester Circuit
Western Circuit

Specialist Bar Associations

Administrative Law Bar Association
Chancery Bar Association
Criminal Bar Association
Family Law Bar Association
Personal Injury Bar Association
Professional Negligence Bar Association
Property Bar Association
Technology and Construction Bar Association

Others

Advocacy Training Council
Bar Association for Commerce Finance and Industry
Crown Prosecution Service
Fountain Court Chambers
Quality Assurance Agency UK Inter-Professional Group
UKCLE Conference Warwick

Individuals

John Hendy QC, Chairman of the Sub Group of the Pupillage Working Group, to look at
Supervisor training and accreditation
Judge John Aitken, Deputy Chamber President HESC
Ms Frances Burton, Former Lay Member of the Education and Training Committee and the
Pupillage Sub Committee
Michael Butcher, General Counsel and Company Secretary, Veolia Environment UK
Mr Lee Callaghan, Head of Group Legal/Group Competition Counsel, Aviva plc.
Mr Scott Donovan, Atlantic Chambers
Mr Nick Hearn, Dyers Chambers
Colonel David Hills MBE, Under Treasurer, Lincoln Inn

Annex 4: List of evidence and research underpinning the review

Key earlier consultations, papers and internal documentation

- ALBA 'Comments on review of Pupillage' (2009).
 Pupillages Handbook: Directory of Pupillages available (2009-2010), GTI.
 Bar Training Regulations (September 2009) BSB.
 BSB and its committees - structure chart.
 BSB Case studies on Disciplinary Tribunal Cases.
 BSB, Pupillage advertising requirements information.
 Chambers Monitoring Pilot Scheme: Final Report (March 2009) Quality Assurance Committee, BSB.
 Code of Conduct (2010) The General Council of the Bar of England and Wales.
 Consolidated Regulations of the Inns of Court and the General Council of the Bar (2006)
 CPS - Memorandum of Understanding 9 February 2009.
 Crowley, Daniel, (June 2009) Notes on Pupillage Offers.
Entry to the Bar Working Party Final Report [Report of Working Group chaired by Lord Neuberger] (2007) General Council of the Bar.
 Equality and Diversity Code for the Bar (2004) General Council of the Bar.
 Guidance on changes to Pupillage (24 Nov 09).
 Guidelines for Pupillage Training Organisations (current edition) BSB.
 Pupillage File (current edition) BSB.
 Pupillage Sub Committee, Duration of Pupillage (2009), BSB.
 Pupillage Sub Committee (2009) Reports of Monitoring visits to pupillage training organisations.
 Qualifications Committee, Reports on pupillage waiver applications.
 Quality Assurance Agency for Higher Education, Code of Practice.
 Collyear, *Report of the Collyear Committee, Education and Training for the Bar, Blueprint for the Future* (1999) General Council of the Bar.
 Report of the Small Chambers Working Group.
 Review of Compulsory Funding in Pupillage (April 2008) Pupillage Sub Committee BSB
 Stafford, A, 'How pupillage often works' (February 2008) Pupillage Sub Committee, BSB.
 Stein, S 'Pupillage Time for a Change' (July 2007) Pupillage Sub Committee, BSB
 Summary of the current system of Pupillage (October 2008) Pupillage Sub Committee, BSB.
 Wood, D, *Review of the Bar Vocational Course: Report of the Working Group* (July 2008) BSB.
 Zimdars, A and Sauboorah, J. 'Some observations on meritocracy and Law: the profile of pupil barrister at the Bar of England and Wales' (2004-2008), submitted for publication.

Pupillage Providers' material and information

Pupillage documentation provided by chambers
 Inns of Court pupil supervisor training requirements
 Inns of Court pupil compulsory course information

Statistical Information- BSB data on registered pupillage intake 2004-2009

Number of Pupillages by year
 Number of Pupillages by first six and second six
 Number of Pupillages by type of Organisation
 Number of Authorised Pupillage Training Organisations
 Number of Authorised Supervisors
 Academic Background of pupils analysed by degree classification and as follows:

- Russell Group University
- Non-Russell Group University
- University of Oxford
- University of Cambridge
- Location of pupillage (London / Regions)
- Gender of pupils
- Ethnicity of pupils
- Socio economic background of registered Pupils by principal wage earner in their family (as applicable)
- Degree classification of pupils compared against BVC result
- Numbers of funded/unfunded pupillages

Application rates for pupillage – ie ratio of applicants to places

- Evidence relating to equal opportunities data on BVC graduates – ie success rates in relation to socio-economic background, schooling, university, race, gender etc – and success rates of minorities in obtaining pupillage;
- Evidence relating to equal opportunities data on Practitioners at the Bar, relating to socio-economic background, schooling, university, race, gender etc. (in conjunction with data held by the Inns of Court);
- Evidence of demographic changes and likely fall in the number of those studying law at University over the next 10-20 years;
- Findings of pupillage questionnaire sent to all registered pupils

In house research topics

- Pupillage funding requirement of a minimum of £10,000 p.a. and figures adjusting for inflation
- Comparison of pupillage ethnicity data compared to the practising Bar and census data
- Investigation into the cost of delivering pupillage
- Evidence submitted in on-line pupillage forum

The Pupillage Forum (summary: background and evaluation)

The proposal for an online discussion forum was made in the second meeting of the Working Group. It was discussed whether or not an online discussion forum would be an appropriate means of obtaining information from pupils.

The main problem that arose was that pupils would not be likely to express themselves freely if they had to identify themselves. Discussion themes were identified and pupils were granted anonymity. The central question that emerged was whether the site should be open to prospective, current and recent pupils to post comments or whether it should be restricted to the current year's pupils only.

After a discussion, it was agreed that the site would be restricted to the current year's pupils (ie 2008-09), who would have to register before they post their comments. It was hoped that if the forum proved a good means of communication then another forum might be set up for ex-pupils and for those who had failed to obtain (or had not yet obtained) pupillage. It was thought that these groups, as well as pupil supervisors, might be better targeted through a focus group meeting in order to seek their views.

The online forum went 'live' in February 2009 and remained open until that summer so that current pupils could participate. Pupils were all written to by letter and email in an effort to encourage participation but the forum only fielded around 35 comments and had 10 registered pupils who participated. Lack of participation by pupils may be significant as pupils are often hesitant to express their views whilst in pupillage for fear of reprisal.

In addition to the online discussion, all registered pupils were invited (individually by both letter and email) to an open discussion group, held at Lincoln's Inn in July 2009. Attendance was very poor (c 15 out of over 500 pupils). The main themes to be discussed centred on the process of assessment and certification, recruitment of pupils, numbers and funding, progression to tenancy and complaints and grievances

Academic publications

- Hewson, B. (2009) 'Is the Bar 'fit for purpose' in the twenty-first century?' *The Barrister* (30).
- Higher Education Funding Council for England (2005) 'Young participation in higher education', Bristol.
- Judicial Appointments Commission (2009), Selection Policy, viewed on 20 August 2009, <http://www.judicialappointments.gov.uk/about-jac/9.htm>.
- Office for National Statistics (2005) 'All people aged 16 - 74 Part 1: Census 2001, National Report for England and Wales - Part 2. C3302 '.
- Saunders, P. (1995) 'Might Britain be a Meritocracy?' *Sociology*, 29, (1).
- Schwartz Commission Report (2004) 'Fair Admissions to Higher Education: Draft Recommendations for Consultation': Schwartz Commission.
- Shapland, Joanna and Angela Sorsby (1998), 'Good Practice in Pupillage', The General Council of the Bar.
- Shapland, Joanna and Angela Sorsby (2000) 'The Junior Bar in 1997', University of Sheffield Institute for the Study of the Legal Profession.
- Shapland, Joanna and Angela Sorsby (2001) 'Alternative Pupillage', University of Sheffield Institute for the Study of the Legal Profession.
- Shapland, Joanna and Angela Sorsby (2002) 'The Junior Bar in 2002', University of Sheffield, Faculty of Law, Centre for Socio-Legal Studies.
- Sommerlad, H. (2002) 'Women solicitors in a fractured profession: intersections of gender and professionalism in England and Wales', *International Journal of the Legal Profession* 9 (3): 213 - 234.
- Sutton Trust (2009) 'The Educational Backgrounds of Leading Lawyers, Journalists, Vice Chancellors, Politicians, Medics and Chief Executives - The Sutton Trust submission to the Milburn Commission on access to the professions', London: Sutton Trust.
- The Panel on Fair Access to the Professions (2009) 'Unleashing Aspiration: The Final Report of the Panel on Fair Access to the Professions', London: Cabinet Office.
- N.B. The social class categories were modelled on Heath, A. F., J. Martin and Beerten (1998) 'A comparison of Registrar General's Social Class with an approximation derived from the long version of the new National Statistics socio-economic classification and the 8 categories derived from The National Statistics and Socio-Economic Classification (NS-SEC).' Workshop of Validation, Essex University.

Annex 5: Statistical Analysis

Executive summary

Background

1. The BSB administers an annual Pupillage Registration Survey, upon registration of pupillage. This was central to informing the pupillage review process. These data confirmed evidence gathered from a variety of other areas such as debates, discussions, forums and various written materials (which can be found listed in Annex 4).
2. The Working Group sought to engage with pupils in order to consider their views on pupillage through a number of meetings and events (listed in Annexes 1-3 of the report).
3. In addition to the survey, an on-line forum (which was designed to protect pupils from having to publically state their identity) was also launched through the BSB's website. Current pupils were invited on a number of occasions to express their opinions concerning pupillage and the issues being addressed by the review. Pupils were written to and provided with details so that they could log into access the forum (see Annex 4 for details).

Methodology

4. The Pupillage Registration Survey typically enjoys an extremely high response rate; during the years 2004-2009 the survey commanded responses in excess of 90%.
5. It is, however important to remember that pupils completed this survey at the point of registration of their pupillage and that they bear sole responsibility for answers given; the data submitted by pupils are taken to be truthful. For example, responses are not verified by the BSB i.e. information stated by the pupil regarding their age and ethnicity is recorded as accurate. Information that is confirmed and checked thoroughly are all data contained within the actual registration documents e.g. name and address, (BVC pass date, date of call to the Bar etc.).
6. It is also important to note that pupils were not asked about aspects of the pupillage itself as the survey is returned upon registration, before the commencement of the pupillage.

Overview of results (as discussed in Chapter Three)

7. Members of ethnic minorities and pupils from a range of different socio-economic backgrounds reflect a greater diversity among today's body of pupils than many might expect or perceive. In particular, black and ethnic minority group pupils are very well represented in pupillage especially when compared with the population in the UK as a whole.
8. The distribution of pupillages between genders has been relatively even over the last five years.
9. On average over one third of pupils hold an undergraduate degree from the Universities of either Oxford or Cambridge and also an Outstanding or Very Competent grade at BVC level.

10. Pupils in the period 2004-09 were awarded their first degrees from one of more than 110 different universities both in the UK and world-wide.
11. The vast majority of pupillages are offered by the self-employed bar with the employed bar annually registering some 10% of pupils.
12. Over 66% of pupils originate from families of a high socio-economic class.

Conclusions and further remarks

13. Academic excellence emerges as the most significant determinant of prospects for successfully gaining pupillage regardless of gender or ethnic or social background and origin; almost 75% of pupils who responded to the survey in 2008-09 classified themselves as White British.
14. Those pupils who have attained a first class degree and an outstanding grade on the BVC appear to secure the greatest financial and prestigious pupillage awards.
15. Pupils who have achieved low grades both at BVC and degree level have tended to commence pupillages offering less financial compensation.
16. Pupillage may be secured by more mature pupils (over the age of 35 years) but they formed a small minority of 10% in 2008-09; 90% of pupils were under 35.
17. Successfully completing a Qualifying Law Degree (QLD) remains the most popular route chosen by pupils with over 60% reading law as an undergraduate as opposed to completing a non-law degree and the Graduate Diploma in Law (GDL).
18. The BSB is the locus for all registration information held for pupils. Capturing data at this early stage in professional training has proved to be the best time in which to optimise response rates relating particularly to obtaining personal data from pupils for the purposes of monitoring and regulating the profession.
19. The BSB will continue to ensure that response rates to the annual pupillage survey remain high and will endeavour to encourage actively more pupils to respond.
20. The pupillage survey will further develop the questions posed to pupils to build an even more comprehensive picture of the background and circumstances of pupils than currently exists.
21. The survey will continue to be non-compulsory; the implications of this mean that some questions are not answered in their entirety.
22. Plans are being considered to publish the survey on-line to enable more efficient collection of data and to streamline the analysis.

Annex 6: Annual Pupillage Survey (Summary data collected from 2004-2009)

A pupil must register pupillage as soon as it is arranged. The tables below show the type of data that is collected from pupils via an annual pupillage survey sent to all pupils to complete when they register their pupillage with the Bar Standards Board. Pupils are strongly encouraged to respond to the survey.

The purpose of the pupillage survey is to obtain information relating to the socio-economic, educational and ethnic background of pupils. This assists in the on-going monitoring and regulation of various aspects of pupillage such as the socio-economic background and ethnicity of pupils. The completion rate is in excess of 90%.

Question Category	Sub-categories
Period of pupillage	Non-practising only Practising only Both
Location of pupillage	London Outside London
Pupillage	Chambers Employment
Sex	Male Female Is your gender the same as your gender at birth? What is your sexual orientation?
Age	Under 25 25-34 45-54 55-64
Ethnicity	White British White Irish White Other White & Black Caribbean White & Black African White and Asian Any Other Mixed Background Indian Pakistani Bangladeshi Any Other Asian Background Black African Black Caribbean Black Other Chinese Any Other Ethnic Group
Disability	Yes No
Do you have children?	Yes No

Question Category	Sub-categories
Social Economic Status of Parents of Pupil if appropriate	Class 1: Higher Managerial and Professional Occupations Class 2: Lower Managerial and Professional Occupations Class 3: Intermediate Occupations Class 4: Small employers and own account workers Class 5: Lower supervisory and technical occupations Class 6: Semi-routine occupations Class 7: Routine Occupations
If you studied the BVC where you:	Home student EU student International student
Undergraduate University	Which university did you attend as an undergraduate?
Russell Group Status	Attended a Russell Group University Did not attend a Russell Group University
Qualifying law degree	Yes No
Class of degree	First Upper Second Lower Second Third Other
CPE grade	Distinction Commendation Pass
BVC graduate	Yes No
Route into Pupillage	Transferring solicitor Overseas Lawyer Legal Academic
BVC Institute	BPP Law School London BPP Law School Leeds Cardiff Law School City Law School College of Law Birmingham College of Law London Manchester Metropolitan University Northumbria University Nottingham Law School University of the West of England Bristol (UWE)

Question Category	Sub-categories
BVC grade	Outstanding Very Competent Competent
Year of graduation	1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009
OLPAS	Yes No

Annex 7: List and assembly of tables used in the report

Table 1:	Gender of pupils (all)
Table 2:	Ethnicity of pupils (all)
Table 3:	Socio-economic background of pupils by principal wage earner (all)
Table 4:	Academic background of pupils (all)
Table 5a:	Degree results of pupils (all)
Table 5b:	Academic background of pupils (London)
Table 5c:	Academic background of pupils (Regions)
Table 6a:	Degree results of pupils (London)
Table 6b:	Degree results of pupils (Regions)
Table 7a:	Gender of pupils (London)
Table 7b:	Gender of pupils (Regions)
Table 8a:	Ethnicity of pupils (London)
Table 8b:	Ethnicity of pupils (Regions)
Table 9a:	Socio-economic background of pupils by principal wage earner (London)
Table 9b:	Socio-economic background of pupils by principal wage earner (Regions)
Table 10:	The number of tenancies and positions taken up at the self employed and employed Bar
Table 11:	Number of pupillages by 1st six and 2nd six (all)
Table 12:	Number of pupillages by 1st six
Table 13:	Number of pupillages by organisation (all)
Table 14:	Number of authorised pupillage training organisations (all)
Table 15:	Number of authorised supervisors (all)
Table 16a:	Funding and Advertising Applications 2007-2009
Table 16b:	Reasons why waivers were granted
Table 16c:	Reasons why waivers were refused
Table 17:	Number of registered pupillages
Table 18:	Information on complaints
Table 19:	Disability status of pupils
Table 20:	Age of pupils

Table 1: Gender of pupils (all)

	2004-05	2005-06	2006-07	2007-08	2008-09
Male	276 (52.4%)	250 (48.5%)	238 (45.2%)	261 (46.4%)	280 (54.4%)
Female	251 (47.6%)	261 (50.7%)	264 (50.1%)	249 (44.3%)	210 (40.8%)
Missing data	29 (5.2%)	4 (0.8%)	25 (4.7%)	52 (9.2%)	25 (4.9%)
Total	556 (100%)	515 (100%)	527 (100%)	562 (100%)	515 (100%)

Table 2: Ethnicity of pupils (all)

Ethnicity	2004-05	2005-06	2006-07	2007-08	2008-09
White-British	399 (71.8%)	396 (76.9%)	361 (68.5%)	376 (66.9%)	383 (74.4%)
White-Irish	17 (3.1%)	7 (1.4%)	14 (2.7%)	17 (3%)	20 (3.9%)
White Other	18 (3.2%)	20 (3.9%)	19 (3.6%)	9 (1.6%)	17 (3.3%)
White & Black Caribbean	4 (0.7%)	5 (1%)	18 (3.4%)	12 (2.1%)	9 (1.7%)
White & Black African	1 (0.2%)	0	3 (0.6%)	2 (0.4%)	1 (0.2%)
White and Asian	7(1.3%)	3 (0.6%)	16 (3%)	3 (0.5%)	5 (1%)
Other Mixed	5(0.9%)	9(1.7%)	13 (2.5%)	7 (1.2%)	9 (1.7%)
Asian-Indian	27(4.9%)	19 (3.7%)	18 (3.4%)	19 (3.4%)	8 (1.6%)
Asian-Pakistani	10 (1.8%)	11 (2.1%)	8 (1.5%)	7 (1.2%)	5 (1%)
Asian-Bangladeshi	2 (0.4%)	4 (0.8%)	3 (0.6%)	6 (1.1%)	4 (0.8%)
Asian-Other	4 (0.7%)	6 (1.2%)	5 (0.9%)	16 (2.8%)	6 (1.2%)
Black-African	8 (1.4%)	5 (1%)	3 (0.6%)	6 (1.1%)	6 (1.2%)
Black-Caribbean	5 (0.9%)	3 (0.6%)	6 (1.1%)	2 (0.4%)	7 (1.4%)
Black-Other	2 (0.4%)	3 (0.6%)	0	0	1 (0.2%)
Chinese	4 (0.7%)	3 (0.6%)	0	13 (2.3%)	4 (0.8%)
Other	9 (1.6%)	14 (2.7%)	14 (2.7%)	12 (2.1%)	3 (0.6%)
Unknown (not disclosed)	34 (6.1%)	7 (1.4%)	26 (4.9%)	55 (9.8%)	27 (5.2%)
Total	556 (100)%	515 (100%)	527 (100%)	562 (100%)	515 (100%)

Table 3: Socio-economic background of pupils by principal wage earner (all)

	2004-05	2005-06	2006-07	2007-08	2008-09
Higher managerial & profs	251 (45.1%)	331 (64.3%)	159 (30.2%)	196 (34.9%)	291 (56.5%)
Lower managerial & profs	139 (25%)	91 (17.7%)	102 (19.4%)	116 (20.6%)	79 (15.3%)
Intermediate occupations	35 (6.2%)	35 (6.8%)	88 (16.7%)	81 (14.4%)	50 (9.7%)
Small employers & own account works	36 (6.4%)	2 (0.4%)	63 (12%)	27 (4.8%)	10 (1.9%)
Lower supervisory & technical occupations	5 (0.9%)	4 (0.8%)	28 (5.3%)	64 (11.4%)	12 (2.3%)
Routine and Semi-routine occupations	9 (1.6%)	5 (1%)	43 (8.2%)	11 (2%)	14 (2.7%)
Unknown / missing	81 (14.5%)	47 (9.1%)	44 (8.3%)	67 (11.9%)	55 (11.5%)
Total	556 (100%)	515 (100%)	527 (100%)	562 (100%)	515(100%)

Table 4: Academic background of pupils (all)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
Russell Group (with Oxbridge)	326 (61.9%)	324 (63.3%)	335 (67.4%)	350 (68.8%)	321 (65.5%)
Non-Russell Group	197 (37.5%)	185 (36.1%)	162 (32.5%)	158 (31.1%)	164 (33.5%)
Russell Group without Oxbridge	165 (31.4%)	177 (34.7%)	174 (35%)	189 (37.2%)	164 (33.4%)
Oxford/Cambridge	161 (30.7%)	147 (28.7%)	161 (32.3%)	161 (31.6%)	157 (32%)

Table 5a: Degree results of pupils (all)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
1 st	127 (21.4%)	108 (21.1%)	149 (29.6%)	147 (28.8%)	160 (32.7%)
2:1	310 (58.8%)	329 (64.3%)	296 (58.8%)	320 (62.7%)	273 (55.7%)
2:2	73 (13.9%)	68 (13.3%)	48 (9.5%)	29 (5.7%)	42 (8.6%)
3rd	6 (1.1%)	2 (0.4%)	1 (0.2%)	4 (0.8%)	11 (2.2%)
Other	8 (1.5%)	1 (0.2%)	2 (0.4%)	8 (1.6%)	4 (0.8%)

Table 5b: Academic background of pupils (London)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
Russell Group (with Oxbridge)	231(43.8%)	228 (44.5%)	254 (50.4%)	240 (47%)	239 (48.7%)
Non-Russell Group	110 (20.8%)	103 (20.1%)	83 (16.5%)	93 (18.2%)	100 (20.4%)
Russell Group without Oxbridge	91 (17.2%)	104 (20.3%)	117 (23.2%)	113 (22.1%)	102 (20.8%)
Oxford/Cambridge	140 (26.5%)	124 (24.2%)	137 (27.2%)	127 (24.9%)	137 (27.9%)

Table 5c: Academic background of pupils (Regions)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
Russell Group (with Oxbridge)	95 (18%)	96 (18.7%)	81 (16.1%)	109 (21.3%)	82 (16.7%)
Non-Russell Group	87 (16.5%)	79 (15.4%)	79 (15.7%)	65 (12.7)	62 (12.6%)
Russell Group without Oxbridge	74 (14%)	73 (14.2%)	57 (11.3%)	75 (14.7%)	62 (12.6%)
Oxford/Cambridge	21 (3.9%)	23 (4.4%)	24 (4.7%)	34 (6.6%)	20 (4.1%)

Table 6a: Degree results of pupils (London)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
1 st	114 (21.6%)	88 (17.1%)	121 (24%)	111 (21.7%)	122 (24.8%)
2:1	180 (34.1%)	202 (39.4%)	181 (35.9%)	199 (39%)	188 (38.3%)
2:2	37 (7%)	40 (7.8%)	31 (6.1%)	15 (2.9%)	23 (4.6%)
3rd	4 (0.7%)	1 (0.1%)	1(0.1%)	4 (0.7%)	7 (1.4%)
Other	6 (1.1%)	1 (0.1%)	2 (0.3%)	3 (0.5%)	3 (0.6%)

Table 6b: Degree results of pupils (Regions)

First degree	2004-05	2005-06	2006-07	2007-08	2008-09
1 st	13 (2.4%)	20 (3.9%)	28 (5.5%)	36 (7%)	37 (7.5%)
2:1	130 (24.6%)	124 (24.2%)	115 (22.8%)	120 (23.5%)	84 (17.1%)
2:2	36 (6.8%)	28 (54.9%)	17 (3.3%)	14 (2.7%)	19 (3.8%)
3rd	2 (0.3%)	1 (0.1%)	0	0	4 (0.8%)
Other	2 (0.3%)	0	0	5 (0.9%)	0

Table 7a: Gender of pupils (London)

	2004-05	2005-06	2006-07	2007-08	2008-09
Male	190 (36.4)	172 (33.5%)	155 (30.8%)	170 (33.3%)	197 (40.2%)
Female	153 (29%)	159 (31%)	187 (36.3%)	164 (32.1%)	146 (29.7%)
Total	343 (65.4%)	333 (65%)	342 (67.1%)	334 (65.4%)	280 (70.3%)

Table 7b: Gender of pupils (Regions)

	2004-05	2005-06	2006-07	2007-08	2008-09
Male	86 (16.3%)	75 (14.6%)	83 (16.5%)	91 (17.8%)	82 (16.7%)
Female	98 (18.5%)	102 (19.9%)	77 (15.3%)	85 (16.6%)	63 (12.8%)
Total	184 (34.8%)	179 (34.3%)	161 31.9%	176 (34.5%)	147 (30%)

Table 8a: Ethnicity of pupils (London)

Ethnicity	2004-05	2005-06	2006-07	2007-08	2008-09
White-British	248 (69.7%)	247 (74.0%)	228 (66.7%)	234 (62.2%)	252 (73.5%)
White-Irish	14 (3.9%)	5 (1.5%)	13 (3.8%)	10 (2.7%)	16 (4.7%)
White Other	13 (3.7%)	18 (5.4%)	19 (5.6%)	9 (2.6%)	13 (3.8%)
White & Black Caribbean	3 (0.8%)	4 (1.2%)	14 (4.1%)	10 (2.7%)	8 (2.3%)
White & Black African	1 (0.3)	0	3 (0.9%)	2 (0.6%)	1 (0.3%)
White and Asian	5 (1.4%)	3 (0.9%)	10 (2.9%)	0	5 (1.5%)
Other Mixed	4 (0.1%)	8 (2.4%)	7 (2.0%)	3 (0.8%)	8 (2.3%)
Asian-Indian	19 (5.3%)	11 (3.3%)	11 (3.2%)	15 (4%)	7 (2%)
Asian-Pakistani	6 (1.7%)	6 (1.8%)	6 (1.8%)	4 (1.1%)	3 (0.9%)
Asian- Bangladeshi	1 (0.3%)	3 (0.9%)	3 (0.9%)	6 (1.6%)	4 (1.2%)
Asian-Other	2 (0.6%)	5 (1.5%)	5 (1.5%)	16 (4.3 %)	5 (1.5%)
Black-African	7 (2%)	5 (1.5%)	3 (0.9%)	4 (1.1%)	5 (1.5%)
Black-Caribbean	4 (1.1%)	1 (0.3%)	6 (1.8%)	1 (0.3%)	7 (2%)
Black-Other	2 (0.6%)	2 (0.6%)	0 (0.0%)	0	1 (0.3%)
Chinese	3 (0.8%)	2 (0.6%)	0 (0.0%)	9 (2.4%)	4 (1.2%)
Other	7 (2%)	9 (2.7%)	13 (3.8%)	10 (2.7%)	2 (0.6%)
Unknown (not disclosed)	17 (4.8%)	5 (1.5%)	1 (0.3%)	43 (11.4%)	2 (0.6%)
Total	356 (100%)	334 (100%)	342 (100%)	376 (100%)	343 (100%)

Table 8b: Ethnicity of pupils (Regions)

Ethnicity	2004-05	2005-06	2006-07	2007-08	2008-09
White-British	151 (75.5%)	147 (81.2%)	133 (71.9%)	142 (76.3%)	129 (75%)
White-Irish	3 (1.5%)	2 (1.1%)	1 (0.5%)	7 (3.8%)	4 (2.3%)
White Other	5 (2.5%)	2 (1.1%)	0	0	4 (2.3%)
White & Black Caribbean	1 (0.5%)	1 (0.6%)	4 (2%)	2 (1.1%)	4 (2.3%)
White & Black African	0	0 (0.0%)	0	0	0
White and Asian	2 (1%)	0 (0.0%)	6 (3.2%)	3 (1.6%)	0
Other Mixed	1 (0.5%)	1 (0.6%)	6 (3.2%)	4 (2.2%)	1 (0.6%)
Asian-Indian	8 (4%)	8 (4.4%)	7 (3.8%)	4 (2.2%)	1 (0.6%)
Asian-Pakistani	4 (2%)	4 (2.2%)	2 (1.1%)	3 (1.6%)	2 (1.2%)
Asian- Bangladeshi	1 (0.5%)	1 (0.6%)	0	0	0
Asian-Other	2 (1%)	1 (0.6%)	0	0	1 (0.6%)
Black-African	1 (0.5%)	0 (0.0%)	0	2 (1.1%)	1 (0.6%)
Black-Caribbean	1 (0.5%)	2 (1.1%)	0	1 (0.5%)	0
Black-Other	0	1 (0.6%)	0	0	0
Chinese	1 (0.5%)	1 (0.6%)	0	4 (2.2%)	0
Other	2 (1%)	5 (2.8%)	1 (0.5%)	2 (1.1%)	0
Unknown (not disclosed)	17 (8.5%)	5 (2.8%)	25 (13.5%)	12 (6.5%)	25 (14.5%)
Total	200 (100%)	181 (100%)	185 (100%)	186 (100%)	172 (100%)

Table 9a: Socio-economic background of pupils by principal wage earner (London)

	2004-05	2005-06	2006-07	2007-08	2008-09
Higher managerial & profs	182 (52%)	225 (67.6%)	109 (29.9%)	134 (37.1%)	194 (55.4%)
Lower managerial & profs	89 (25.4%)	49 (14.7%)	69 (18.9%)	79 (21.9%)	62 (18.1%)
Intermediate occupations	20 (5.7%)	26 (7.8%)	71 (19.5%)	53 (14.7%)	34 (9.7%)
Small employers & own account works	22 (6.3%)	2 (0.6%)	36 (9.9%)	14 (3.9%)	7 (2%)
Lower supervisory & technical occupations	0	4 (1.2%)	17 (4.7%)	37 (10.2%)	11 (3.1%)
Routine and Semi-routine occupations	2 (0.6%)	2 (0.6%)	32 (8.8%)	8 (2.2%)	9 (2.6%)
Unknown / missing	35 (10%)	22 (17.5%)	10 (8.5%)	36 (10%)	33 (9.4%)
Total	350 (100%)	333 (100%)	365 (100%)	361 (100%)	350 (100%)

Table 9b: Socio-economic background of pupils by principal wage earner (Regions)

	2004-05	2005-06	2006-07	2007-08	2008-09
Higher managerial & profs	69 (33.5%)	106 (58.2%)	50 (30.9%)	62 (30.8%)	97 (58.8%)
Lower managerial & profs	50 (24.3%)	42 (23.1%)	33 (20.4%)	37 (18.4%)	17 (10.3%)
Intermediate occupations	15 (7.3%)	9 (4.9%)	17 (10.5%)	28 (13.9%)	16 (9.7%)
Small employers & own account works	14 (6.8%)	0 (0%)	27 (16.7%)	13 (6.5%)	3 (1.8%)
Lower supervisory & technical occupations	5 (2.4%)	0 (0%)	11 (6.8%)	27 (13.4%)	1 (0.6%)
Routine occupations	7 (3.4%)	3 (1.6%)	11 (6.8%)	3 (1.5%)	5 (3%)
Unknown / missing	46 (22.3%)	22 (12.1%)	13 (8%)	31 (15.4%)	26 (15.8%)
Total	206 (100%)	182 (100%)	162 (100%)	201 (100%)	165 (100%)

Table 10: The number of tenancies and positions taken up at the self employed and employed bar

Year	Pupillage 1 st 6 registrations	Pupillage 2 nd 6 registrations	Tenancies at self-employed bar	Positions at employed bar
2003/2004	518	557	601	182
2004/2005	556	598	544	156
2005/2006	515	567	531	191
2006/2007	527	563	499	228
2007/2008	562	555	494	239
2008/2009	463	518	497	213

Table 11 Number of pupillages by 1st six and 2nd six (all)

	2004-05	2005-06	2006-07	2007-08	2008-09
1st Six	556	515	527	561	462
2nd Six	598	567	563	554	515

Table 12 Number of pupillages by 1st six

	2004-05	2005-06	2006-07	2007-08	2008-09
London	343	332	342	334	343
Regions	184	177	161	176	145
% Survey Response rate	94.8	99.4	95.4	90.9	95%

Table 13 Number of pupillages by organisation (all)

	2004-05	2005-06	2006-07	2007-08	2008-09
Chambers	497 (94.3%)	490 (95.9%)	471 (93.6%)	470 (92.3%)	438 (89.4%)
Employed Bar	30 (5.7%)	21 4.(1%)	32 (6.4%)	39 (7.7%)	50 (10.2%)

Table 14 Number of authorised pupillage training organisations (all)

2008-09
362

Table 15 Number of authorised supervisors (all)

	2004-05	2005-06	2006-07	2007-08	2008-09
Supervisors Authorised by Year	194	213	155	163	90 (as of 03/03/09)
Annual Running Total	3,267	3,3480	3,635	3,798	3,888 (as of 20/03/09)

Table 16a

16a: Breakdown of the number of applications considered per year by Panel 5 of the Qualifications Committee

Type of Waiver Application	Year of Application					
	2006 Number of Waivers Granted	2007 Number of Waivers Refused	2008 Number of Waivers Granted	2008 Number of Waivers Refused	2009 Number of Waivers Granted	2009 Number of Waivers Refused
Advertising Waiver Applications	15	4	0	2	9	7
Funding Waiver Applications	0	4	1	4	1	1
Advertising and Funding Waiver Applications	6	7	17	4	11	3
Sub Total	21	14	18	10	21	11
Grand Total	35		28		32	

Table 16b: Reasons why waivers were granted

Description of Reason for application	Year of Application		
	2007	2008	2009
Original PTO unable to continue to support pupil	9	1	3
After training pupil will return to previous employer	3	5	3
After training pupil wishes to practise in another country	2	7	7
PTO wishes to offer a pupillage to an experienced individual, in most cases a reduced pupillage would have also been granted.	0	2	2
PTO made an administrative error during the application process	3	1	1
PTO wishing to expand and take on a pupil but cannot fund pupillage	0	1	3
PTO are now in a position to offer a further pupillage	4	1	1
Pupillage can commence earlier than advertised	0	0	1
Total	21	18	21

Table 16c: Reasons why waivers were refused

Description of Reason for refusal of application	Year of Application		
	2007	2008	2009
Chambers no longer wishes to fund pupil. Waiver refused on the grounds of concern for the pupil in these circumstances.	1	1	1
Individual will complete pupillage at another PTO. Waiver no longer required	1	0	0
Information supplied in evidence for application does not support PTO Pupillage Policy Document	1	0	0
PTO not in a province and no other reason provided as to why funding cannot be offered.	1	0	1
Clear breach of the advertising rules.	1	0	0
Contrary to application, there was no evidence produced to prove that the applicant intends to practise in another country.	0	2	0
No exceptional circumstances, pupillage place should be obtained in a fair and open competition.	9	7	9
Total	14	10	11

Table 17: Number of Registered pupillages 1988-2009

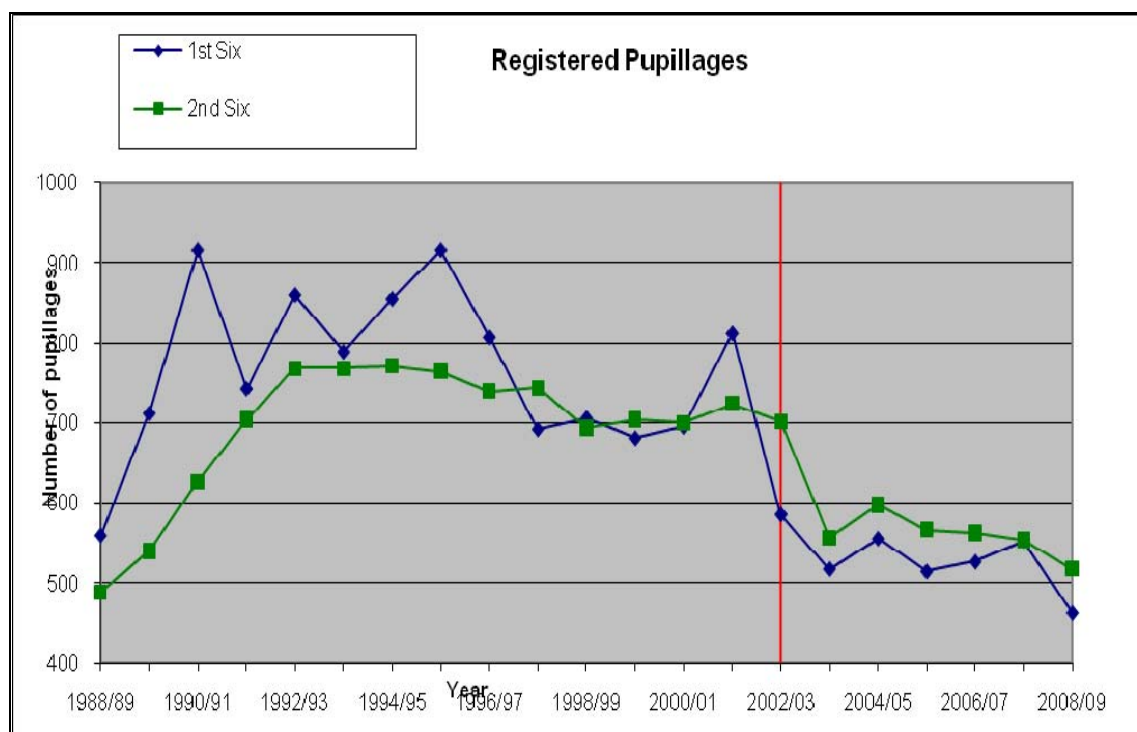


Table 18: Information on complaints

Nature of complaint	Comment
Complaints by barristers against pupils	2 per year over last 5 years (often as a counter-complaint where the pupil has first initiated a complaint)
Complaints by clients against pupils	None in the last 5 years
Complaints by judges or other tribunals against pupils	None in the last 5 years
Complaints made as own motion complaints by the BSB against pupils	No more than 1 or 2 a year over last 5 years

Table 19: Disability status of pupils

Pupils who considered themselves to have a disability	2004-05	2005-06	2006-07	2007-08	2008-09
Yes	12 (2.2%)	13 (2.5%)	17 (3.2%)	12 (2.1%)	9 (1.7%)
No	513 (92.3%)	495 (96.1%)	482 (91.5%)	498 (88.6%)	465 (90.3%)
Missing	31 (5.6%)	7 (1.4%)	28 (5.3%)	52 (9.3%)	41 (8%)
Total	556 (100%)	515 (100%)	527 (100%)	562 (100%)	515 (100%)

Table 20: Age of pupils

Age of pupils	2004-05	2005-06	2006-07	2007-08	2008-09
Under 25 years	227 (40.8%)	203 (39.4%)	208 (39.5%)	207 (36.8%)	218 (42.3%)
25 -34 years	223 (40.1%)	254 (49.3%)	235 (44.6%)	244 (43.4%)	215 (41.7%)
35-44 years	57 (10.3%)	40 (7.8%)	41 (7.8%)	39 (6.9%)	36 (7%)
45-54 years	19 (3.4%)	10 (1.9%)	17 (3.2%)	20 (3.6%)	14 (2.7%)
55-64 years	1 (0.2%)	2 (0.4%)	2 (0.4%)	0	5 (1%)
65+ years	0	0	0	0	2 (0.4%)
Missing	29 (5.2%)	6 (1.2%)	24 (4.6%)	52 (9.3%)	25 (4.9%)
Total	556 (100%)	515 (100%)	527 (100%)	562 (100%)	515 (100%)