

BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

## **Future Bar Training**

A programme of review and reform that will bring our training regulation up to date and assure high standards in barristers' services for the future.

**February 2015**

# Future Bar Training

## About this paper

### Who is it for?

This paper is for all members of the legal profession – but particularly for barristers, training providers and legal academics – and consumers.

### What is its purpose?

To help you to plan for the future, we want to tell you about the direction of our policies within the [Future Bar Training](#) programme.

We will set the scene for policy proposals we plan to bring forward over the coming months.

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*“ ... in a fast-moving environment  
we need to do things differently”*

### **A new perspective on training for the Bar**

In a fast-moving market for professional training, we must make sure our regulation doesn't get in the way of that training being delivered effectively – meeting the needs of the profession and the public.

Of course, the core skills barristers require for practice remain. But there is change, too. Legal services as a whole are facing unprecedented upheaval - and training for the Bar must prepare candidates for a different world.

In the face of this change, we need to make sure we have a good understanding of the standards that are to be expected of a barrister.

Understandably, you might feel nervous about all of this change and how it will affect you.

So we want to tell you about early developments in our thinking about the future of training for the Bar.

We are hoping this will shape our consultation with the profession, training providers, the academic community and others.

### **What we are trying to achieve**

As an independent regulator, we are accountable for the way we do things. And in a fast-moving environment we need to do things differently.

So we have looked hard at the way we regulate the profession – including professional competence – and the way we set out training requirements.

Our overall regulatory strategy is designed to make sure the profession remains in a strong position to deliver to its full potential amidst continuing change. There is a clear public interest in that strength being sustained.

So now we need to do the same for training for the Bar.

## What about the cost?

We are concerned by evidence of increasing costs throughout Bar training. It is worrying because it has a significant influence on the range of people who might consider a career at the Bar.

*The cost of the BPTC in London is now typically in excess of £17,500 for a one year course.*

The cost of training is inevitably high - as it is for any profession. But there is a risk our own requirements might add to that cost. We want to minimise that risk.

We can make sure our own regulations do not constrain the training market unnecessarily – so that training providers have the flexibility to innovate.

## So what does this mean for education and training?

Working with other regulators, we commissioned a major assessment of training regulation in 2013 (the Legal Education and Training Review).

It has given us a clear sense of direction:

- we need to focus on what a barrister needs to be able to do at the point when they are authorised;
- we must allow training providers to take advantage of innovations in training - for instance in the way that information is shared with the student. Modern online delivery techniques (such as webinars and e-learning) might prove valuable.
- we need to make sure that everyone who would like to train for the Bar – and has the aptitude and determination – has the opportunity to do so.

Our [Future Bar Training](#) review programme will bring our training regulation up to date and assure high standards in barristers' services for the future.

## **What about current and incoming candidates?**

Any changes must be introduced with every candidate's interest in mind. From 2017, we will carefully phase changes to make sure no-one is disadvantaged.

## **Future Bar Training - how we will regulate training**

We want to look at training regulation as a whole – we do not want to pick out each of the existing steps in the training process and look at them in isolation.

To make sure a barrister is capable at the point of authorisation, we need to look at the contribution made by each of our training requirements.

We do not want our regulation to get in the way of the developing market for training. So we must build flexibility into each of our training requirements.

Of course, we are paying particular attention to the cost and affordability of training.

*“... We need to encourage training providers to innovate ...”*

# Our Future Bar Training programme: what triggered it all?

**2008**

**The Wood Reviews of the Bar Professional Training Course (BPTC),  
Pupillage and Continuing Professional Development (CPD)**

Derek Wood QC carried out systematic reviews of each of the existing stages of training for the Bar.

**2011**

The result: sound structure and content in what is taught. We want to build on this.

**2013**

**The Legal Education and Training Review (LETR)**

Commissioned by the three largest regulators in the sector, this report set out challenges for the future of legal training regulation overall.

**2014**

**Statutory Guidance**

We are committed to delivering regulation in a different way. But we are also held to account by the Legal Services Board, which has put in place statutory guidelines for training regulation – and we will be expected to follow them.

## The way we regulate training: our principles

Our training regulation does not stand apart from the way we regulate more widely: we need to focus on areas where we can justify intervening.

To help us, we have identified three key principles:

- |                           |  |
|---------------------------|--|
| <b>High standards</b>     | We must be able to demonstrate that as a result of our changes barristers are maintaining high standards for effective practice. But we must set those standards in such a way that they keep pace with change in the legal services market; |
| <b>Essential skills</b>   | Our job as the regulator of Bar training is to focus on those things that a barrister <b>must</b> be able to do – we do not need to intrude further;   |
| <b>Access to training</b> | Regulation should not prevent candidates for the Bar from the widest range of backgrounds from training.   |

*“We must focus only on areas where we can justify intervening”.*



# How our thinking is developing

## The Professional Statement

An essential component of our [Future Bar Training](#) programme, the Professional Statement will provide us with a clear, objective point of reference for regulating Bar training.

The 2013 Legal Education & Training Review recommended that competency at the point of authorisation should be set out for each of the regulated professions.

### How we are creating the Professional Statement

The Professional Statement will tell us what a barrister needs to be able to do at the point of authorisation - when a barrister is qualified to apply for their own practising certificate for the first time.

Of course, the statement will not encompass everything barristers need to be able to do throughout the course of their careers. It will not replace the requirements for competent practice set out in the BSB Handbook, for example. But it will provide a clear point of reference for the capabilities a barrister must be able to demonstrate before we first authorise them.

A vital tool for anyone wishing to become a barrister (and for trainers, too), a robust Professional Statement will provide a clear point of reference for anyone designing the training.

Building the Professional Statement from scratch, we are determined to work closely with the profession to create a statement that reflects what barristers really do. And now we need to gain the widest range of views - so we are drafting our first consultation.

In summary, our training requirements will be largely defined by the Professional Statement.

## The steps we are taking ...

**2014:** We ran workshops for barristers and legal academics in London, Manchester, Birmingham and Bristol, forming the basis of evidence for initial drafting of the Professional Statement.

**2015:** We will be consulting on the draft statement this spring.  
Drawing on input throughout the consultation, we expect to publish the Professional Statement later in the summer. This provides the basis for planning pathways for future training.

We are reviewing a first draft of the Professional Statement, identifying at a high level what a barrister should know and be able to do to provide a professional service.

Once the Professional Statement has been agreed, we will develop threshold standards (detailed descriptions of what must be achieved) upon which trainers, assessors and candidates will rely.

## Academic requirements

Currently, we set academic requirements jointly with the Solicitors Regulation Authority. We are both assessing the need for the degree of prescription currently set.

Our early work on the Professional Statement indicates that certain capabilities of a barrister reliably demonstrated at a high level by degree qualification are important in underpinning their skills in practice. But we need to be clear what those capabilities are - and to see if there are alternative means of acquiring them.

We will continue to require candidates for the Bar to have knowledge of law - but we expect to place more emphasis on principles, concepts, the ability to think and research independently, and on the other skills of a lawyer.

### What progress have we made?

Working with the legal academic community, we have been assessing the relationship between the knowledge and skills that are associated with graduate qualification and the capabilities required to practise at the Bar.

Undoubtedly, a degree can provide important knowledge and skills that are a foundation for practice. We aim to reflect those capabilities in the Professional Statement. This will help us to:

- identify the best way to set the requirements;
- assess alternatives to the existing graduate route.

### Who are we consulting with?

We are working closely with barristers, chambers, employers, providers of pupillage and providers of vocational training. And of course, we will be working closely with the academic law community and providers of the current Qualifying Law Degree and Graduate Diploma in Law.

### What is the next step?

We are finalising the range of options on which we expect to consult, and we will publish the consultation this spring.

## Vocational training requirements

We want to change our approach to overseeing vocational training - and we expect to focus on two areas:

- strengthening assessment of candidates' knowledge and understanding, so we can be less involved in these aspects of training delivery;
- but in contrast, focusing more on standards of skills training, including advocacy.

Taken together, we see the opportunity for these requirements to be set in a way that gives freedom and flexibility for both candidates and training providers.

### The purpose of vocational training

Vocational training equips the lawyer with the general capabilities required for professional practice as a barrister.

We currently administer the Bar Professional Training Course (BPTC) as a single course. It is delivered by a number of universities according to our detailed set of requirements.

The BPTC provides the knowledge and understanding of rules relating to procedure and evidence that barristers require. The course also trains candidates in the core skills for practice, including the foundations of effective oral and written advocacy.

Alongside the essential knowledge and skills, the course makes sure prospective barristers are able to meet the necessary standard of professional conduct, judgement and ethics.

## How effective is the BPTC?

For candidates who progress into the profession, the BPTC has proven to be generally effective preparation. However, we are concerned that our current requirements are unnecessarily prescriptive. The success of the course today is no assurance that it will meet the needs of tomorrow.

We do not think a regulator should determine the course's delivery to quite such an extent, when others are better placed to anticipate what is needed. The Professional Statement will direct our focus where it is needed – on setting the standards to be achieved.

There are many reasons why the cost of training continues to escalate across all professional disciplines. The problem is particularly acute for smaller professions such as the Bar, which recruits less than 500 new practitioners each year.

New approaches to training are being developed that can help offset the problem. But our own requirements risk imposing further cost unnecessarily, and we think this gives added impetus for us to create flexibility in the requirements.

*“... the Bar recruits less than 500 new practitioners a year ...”*

## What sort of changes do we anticipate?

Building on what we have learned from running centralised assessments for the BPTC, we are investigating the potential to focus more on the final assessment of a candidate's knowledge, rather than defining how knowledge should be taught.

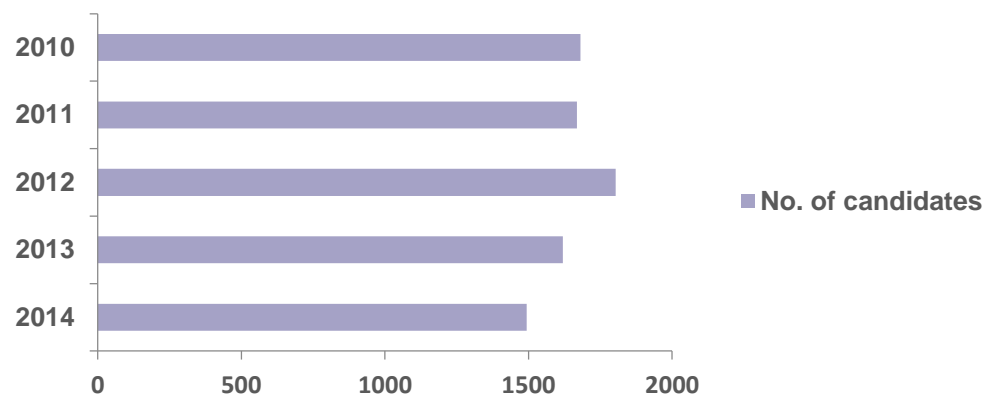
A separate review is examining the effectiveness of our exam board, with an eye on its future in supporting future regulation.

Assessment might be the focus for assuring standards of knowledge, but we believe there is a strong case for closer involvement in skills training, including advocacy.

We believe there is a need to make sure candidates develop skills systematically, strengthening a barrister's ability to deliver a consistent and professional service and fulfil their responsibilities to the court.

Taken together, these changes might result in opportunities for course providers to explore other ways to deliver the components of the BPTC. Indeed, the training need not be delivered in one, integrated course. Here lies the opportunity for us to introduce flexibility - and perhaps we can exert some control over cost.

## Number of enrolled BPTC candidates, 2010 to 2014



## What is the next step?

With a view to introducing first changes from September 2017, we will consult on future options for the BPTC early this summer. Before then, we will be talking to students, pupils, course providers and the profession about the important attributes of vocational training, and what needs to improve.

# Pupillage

It is a vital preparation for practise at the Bar - and we expect the essential characteristics of pupillage to continue.

But we think there is a good case for us to place less emphasis on prescribing its structure.

By referring to the Professional Statement, we expect to place more emphasis on a barrister's knowledge and skills upon authorisation.

To safeguard high standards, we anticipate developing a clearer role for pupillage training organisations.

## Pupillages registered January to December 2014:

Non-practising pupillages

422

Practising pupillages

455

## Our perspective on pupillage

We think it remains essential for aspiring barristers to experience the real world of practice under careful supervision - and pupillage serves this purpose well.

We find it hard to envisage that the evidence we need of professional competence could be demonstrated properly in anything other than the working environment.

But we are not convinced there is only one way to organise pupillage. Chambers or the employer (operating as a pupillage training organisation) should be best placed to decide how the objectives of pupillage are best achieved. Our own focus must be to make sure barristers attain appropriate standards at the end of the process.

Pupils bring many benefits to chambers and employers: a valued investment for the future. But hosting pupillage is a significant commitment for an organisation, and we want to make sure that any changes in regulation do not get in the way unnecessarily.

*“... Most pupils are self-employed ...  
and their lack of independence  
can put them in a vulnerable position ...”*

### **The current situation**

Reflecting the traditions of practice of the independent Bar, we prescribe a structure for pupillage that has served the needs of many chambers and their clients well to date.

Anything other than the standard format for pupillage currently requires separate approval by the BSB. Understandably, it can be difficult for the training organisation to anticipate what might be permissible, and why.

We believe the criteria could be clearer for both sides. There is a degree of flexibility in the system, but it is not immediately apparent to all.

Once approved, a training organisation retains the right to engage pupils thereafter; however, businesses change. As a consequence, there is a lack of clarity concerning the expectations of a training organisation from a regulatory point of view, with unpredictable consequences for the accommodation of pupils.

Most pupils are self-employed. Their interests are not protected in the same way as employees or other trainees, and their lack of independence can put them in a vulnerable position. We believe there may be better ways to prevent things going wrong.



## **How might we regulate in future?**

We are not convinced there is a need for us to prescribe the structure of pupillage.

A Professional Statement will establish the standards to be achieved on completing pupillage. We think we could work differently with training organisations to make sure those standards are met.

Modern pupillage must keep pace, and we are not best placed to anticipate what will work – but prospective training organisations are.

Adaptability is essential in other ways too. We believe pupillage must equip all barristers with a wide range of skills. So we want to make sure pupillage continues to provide a good grounding across the core aspects of practice - and this will be reflected in our professional statement.

We also want pupillage to provide a way of requiring aspiring barristers to demonstrate their understanding and knowledge of the law and the other elements they need to master to become successful in practice (and, if they fall short in any respects, to be helped to bring themselves up to the right standards).

If a training organisation is not well equipped to provide some aspects of that training itself, we want to make it easier for the organisation to make alternative arrangements – such as secondments.

## **What is the next step?**

With a view to introducing changes from 2017, we will consult on future options for pupillage early this summer.

Before then, we will talk to pupils, pupil supervisors, training organisations and the wider profession about the important attributes of pupillage, what needs to improve and what works in practice.

## Equality and diversity

We anticipate that reform of our approach to training regulation will provide:

- flexible requirements - reducing barriers for people who want to train to be a barrister;
- better evidence relating to diversity – to support us in purposeful regulatory decision-making;
- a more sophisticated form of regulatory intervention when risks to the regulatory objective arise.

Equality and diversity amongst candidates are important considerations throughout training for the Bar: in recruitment, retention and their successful completion of each step.

We have made considerable progress in opening opportunity at the Bar. Certain fields of practice have a higher proportion of BME and female practitioners, and reflect more diverse socio-economic backgrounds. But our changes to regulation and delivery of future training must build on that progress.

We expect to continue working closely with vocational training providers to make sure their admissions processes are fair and open.

In 2014, we stopped running the BPTC admissions system - but our objectives remain the same. We are building a clearer picture of how different groups progress towards qualification.

We see a continuing need for minimum funding requirements for pupillage, protecting fair access.

Our changes to training regulation must accommodate the aspirations of the full range of candidates.

### How might we regulate in the future?

In reforming the way we regulate training, we must promote diversity amongst entrants to the Bar.

By building flexibility into our requirements, we can reduce barriers for people seeking to enter the profession.

We can also improve the evidence we gather relating to diversity – helping us to attune requirements to the broadest range of candidates.

Alongside our review of vocational training and pupillage, we are considering how we can meet our equality and diversity objectives.

In a rapidly evolving training market, we know we will need to monitor trends in diversity more closely – working in new and different ways to guarantee fairness and diversity in recruitment for training and retention of students.

And already we have made a start. We have gathered greatly enhanced data on candidates entering pupillage (from August 2014) – and this has set an important benchmark for monitoring the impact of changes in our regulatory system.

## Revising the Qualification Rules

Overall, we expect to establish revised Qualification Rules that continue to assure the standards of the profession and:

- focus on what a barrister **must** be able to do at the point of qualification;
- are supported by evidence to justify our involvement;
- allow greater flexibility in pathways to qualification;
- sustain a dynamic market for training, and
- protect the interests of a diverse range of candidates.

The Qualification Rules set the basis for training. Currently the rules define three stages (academic, vocational and professional) - each of which must be completed by the candidate before progressing to the next, or to full qualification as a barrister, ready to be authorised.

The rules include other requirements, too. Candidates who have acquired the necessary knowledge, skills and experience by any other means must apply for a waiver from the requirements and demonstrate the equivalence of their qualifications.

We expect the revised rules will retain academic, vocational and professional capability requirements. The Professional Statement will be an important point of reference in setting these requirements.

To make sure our Qualification Rules are fit for purpose, we must:

- assess evidence of the necessity and effectiveness of each of the current requirements;
- establish principles - consistent with the BSB Handbook - for the way we will set future requirements;
- make sure the new rules fit in with our new approach to training.

### Who are we consulting with?

The Inns have a statutory responsibility for implementing important elements of the regulatory scheme - such as the application of a fitness to practise test - and will be closely involved in further review processes.

In 2016, we will consult more widely on proposed changes.

## Continuing Professional Development (CPD)

We are giving barristers greater responsibility for their own professional development.

We aim to introduce a new CPD scheme in 2017. Barristers will be required to assess their own development needs, across all aspects of their practice.

### What needs to change?

The current CPD rules do not measure up to the regulatory standards we have now adopted. They are too prescriptive, because we concentrate on the requirement for barristers to carry out a fixed number of hours.

The rules do not help us to address the risks that are relevant to a barrister's practice.

Our new approach to CPD will emphasise barristers' individual responsibility for identifying their own training and development needs:

- we will emphasise a barrister's individual responsibility for achieving specific learning outcomes, rather than simply measuring the effort involved;
- the requirement that barristers need to carry out a certain number of CPD hours is not expected to be necessary;
- if we believe barristers are not complying with their CPD requirements - and putting their ability to practise competently at risk – we will monitor and supervise them.

### The next steps ...

We have started a pilot scheme with barristers to test our new rules - the pilot will continue through 2015.

Later in the spring, we plan to open a consultation on the new rules.

The scheme is planned for full introduction in January 2017.

*“... This is your opportunity to shape the future of legal education and training for the Bar ...”*

## Get involved

Help us to shape the future of legal education and training for the Bar.

Safeguarding standards, encouraging innovation and welcoming possibilities for improvement – we want to talk to you.

Find out more by visiting the [Get involved](#) section of our website.

## Contact us

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