

BAR STANDARDS BOARD

REGULATING BARRISTERS

Impact of Covid-19 on pupillage (September 2020)

Introduction

1. This report provides our current view of the impact that Covid-19 has had on pupillage, based on the information we have gathered so far. It also summarises the action we have taken in response and our next steps.
2. The analysis is drawn from engagement with 157 out of around 260 chambers and other organisations that provide pupillage (Authorised Education and Training Organisations or “AETOs”). This includes a survey of AETOs, which was open from 17 April to 1 May 2020. We have spoken to many of the respondents about the changes to pupillage that they highlighted in their responses, as well as to students, pupils and other AETOs that have contacted us with queries or in response to the [FAQs](#) that we published. Of the 157 with whom we have engaged, 133 currently have pupils.
3. We continue to receive information from AETOs on a weekly basis about changes they are making. Our understanding of the impact will continue to evolve as AETO decisions crystallise. Our FAQs say that AETOs must contact us if they are making changes to pupillages that are in progress or have already been offered.
4. Further data about pupillages is available on our [website](#).

Summary

5. All pupillages that had already started when lockdown began in March have been able to proceed. Considerable efforts have been made to support pupillages both by individual AETOs and by the profession. For example, AETOs devised in-house paper-based and other exercises and have made use of video conferencing to communicate with pupils; the Bar Council produced [guidance](#) and held a webinar for AETOs and pupil supervisors; the Inns of Court College of Advocacy delivered [online advocacy training](#) and produced [guidance](#) for engaging in remote advocacy; and the Inns progressed with delivery of training online, including pupil supervisors, Qualifying Sessions and advocacy training for pupils progressing to practising.
6. The biggest impact has been on pupillages that are in areas of law most affected by court closures. For example, in the East Midlands, four out of five courts were shut and the fifth was operating at very limited capacity. Deferrals of pupillage start dates reported to us have come from Family, Crime, Civil and mixed sets, with the severest financial consequences in Family and Crime specialised practices.

7. We anticipate that there is likely to be an impact on the number of future pupillages available in 2020 to 2022 as the knock-on effect of changes being made now affects future decisions. We have responded with measures to support the Bar to continue to deliver pupillages, such as a [waiver](#) to allow pupils to start their pupillages this autumn before receiving the results of their BPTC and BTT exams and other measures that are covered in our [FAQs](#). We will continue to monitor the impact and are in regular contact with the Bar Council and the Inns to decide whether other action is needed. The *potential* risks that we are alert to include the following (we stress that these risks have not materialised so far):
 - a) Whether the Bar remains an attractive career prospect to students.
 - b) The continuing viability of the range of vocational Bar training courses on offer. These have changed in response to our Bar training reforms.
 - c) The impact on the good progress that has been made to improve diversity at the Bar.
 - d) The impact on the number of junior barristers and the ability of the profession to deliver access to justice, particularly in the most affected areas of law.
 - e) Damage to the financial resilience of some chambers and other AETOs that depend on the courts to function, particularly if further lockdowns are necessary.
8. The vast majority of chambers have said that they remain committed to offering pupillage. Only one has so far said that this will trigger a decision to permanently reduce the number of pupils they take in future (because of wider concerns about the supply of sustainably funded work).
9. Further information about the medium to longer term impact on chambers and BSB entities, and whether barristers are learning the right online skills for the future, will be gathered from the [Regulatory Returns](#).

Impact on pupillages in progress when lockdown began

10. Of the 98 AETOs that responded to the survey, 74 had pupils at the time. Eight of them (nearly 11%) indicated that they were considering suspending pupillages that were in progress at that time. The early queries that we received at the BSB indicated that this was a consideration for others too. They were concerned about the impact on pupillages of court closures and barristers not working in chambers/offices. Both the BSB and the Bar Council responded promptly with [FAQs](#) encouraging AETOs to allow pupillages to progress by offering alternative training methods (such as paper-based exercises) and to communicate with their pupils by video link.
11. AETOs have shown tremendous commitment to keeping pupillages going in the face of considerable challenges, such that we are only aware of two pupillages that had to be temporarily suspended, where pupil supervisors in the employed Bar were furloughed.
12. Whilst the overall picture is very positive, it is clear that AETOs have felt that the quality of training they have been able to deliver during this time has not always been up to the quality and richness of experience that they would usually wish to provide. This is particularly the case in areas of the Bar most affected by court closures. Given that most pupillages start in September/October, most pupils were just entering the practising period of pupillage at the time of the lockdown. Consequently, 17 AETOs (13% of those we have engaged with that had current pupils) have told us that, in order to sign off their

pupil as having met the competences in the Professional Statement they are considering extending, or have already decided to extend, the practising period of pupillages.

13. Also, some chambers have told us they are keen to protect pupils who will not have had a chance to build up their self-employed practice during this time (not just in terms of experience of advocacy in court, but also building up their reputation with solicitors etc). Extending the period of pupillage rather than launching them into practice at a time when “normality” is far from certain, will give them a chance to build their practice and continue to receive financial support from chambers.
14. The need to extend pupillages is a key driver for decisions about future recruitment, as set out in the following sections of this report.
15. A significant proportion of AETOs (41% of those surveyed that had pupils) said that they may not be able to make tenancy decisions based on the limited court experience their pupils have had.

Impact on future pupillages where offers have already been made

16. In the survey, we asked whether AETOs had decided, or were considering whether to defer the start date of pupillages. We also asked whether any intended to withdraw offers already made. Heads of Chambers, or equivalent, must [contact us](#) to tell us if they are making any changes to pupillage offers that have already been made.
17. So far, we have received no reports of offers being withdrawn. However, some have taken decisions to defer start dates, which may have the effect of reducing the overall number of pupillages being offered over the coming years.
18. Ten percent of respondents had, at the time of the survey, decided to defer start dates but around a quarter were thinking of doing so. We have contacted those who indicated that they were considering doing so and most have now taken decisions to defer or are still thinking of doing so.
19. In total, 35 AETOs (26% of the AETOs that we have engaged with that have pupils) have confirmed that they intend to delay planned start dates:
 - 15 have changed the start date by one to three months. Some of these pupillages have now started.
 - 14 have deferred the start date by four to six months, typically from September/October 2020 to March/April 2021.
 - Six have deferred the start date for a year from October 2020 to October 2021.
20. Whilst concerns in the early stages were primarily about the quality of training that could be offered with courts and chambers buildings closed, most of the deferral decisions that are longer than three months have been driven mainly by financial pressures. These include:
 - Pupillages due to start in September/October 2020 when cash flow forecasts indicated that chambers are most under pressure.

- Current practising pupils, those transitioning to tenancy and junior tenants being prioritised for limited work over a new cohort of practising pupils.
- Overlap with pupils from the previous cohort where pupillages have been extended.

Impact of the waiver allowing pupillage to commence before completing vocational training

21. Following feedback from the survey, we decided to publish a [waiver](#) allowing this year's BPTC students to progress to the non-practising period of pupillage with the agreement of their AETO pending the satisfactory completion of the BPTC or BTT. The AETO will be required to assess the risks of allowing individual pupils to commence pupillage under these circumstances, with reference to our published [guidance](#). We are encouraging AETOs to allow people to progress as planned to pupillage. The guidance sets out the factors to consider when taking that decision.
22. These pupils will not be permitted to progress to the practising period of pupillage, nor be eligible to apply for a provisional practising certificate, until they have successfully completed their vocational training and required Qualifying Sessions and been Called to the Bar. If a pupil fails to complete the BPTC or BTT satisfactorily, it will be for the AETO to determine whether they are willing to continue to fund the pupil through an extended non-practising period of pupillage. The AETO will need to consider, in line with our guidance, how long they are prepared to continue funding the pupil through an extended non-practising period and to address it in the written pupillage agreement (which is now a mandatory requirement).
23. From information gathered through our engagement with pupillage and vocational AETOs, we have identified 74 AETOs and 110 prospective pupils in this position. We are in the process of contacting all the pupillage AETOs to find out what their intentions are. So far, the indications are encouraging:
 - 44 AETOs have either confirmed in writing to us already or have verbally indicated they will use the waiver and start 60 pupillages as planned in September or October.
 - 19 AETOs have decided to defer the start dates for 33 pupils. The vast majority intend to defer by three to six months only, to enable recovery from the financial consequences of court closures and to enable the pupils to start their pupillages when they anticipate that more courts will be functioning, so there will be better conditions for training pupils. Only two of the 19 cited the rescheduling of the exams as being the reason for deferring start dates. For example, in one case a student was retaking exams and they consider it preferable to wait for the results.
 - A further two AETOs have indicated that they are considering delaying the start date for a total of four pupils.
 - No planned pupillages have been abandoned.
 - Decisions about the remaining 13 pupillages in 9 AETOs have yet to be confirmed to us. Any AETOs that have not yet been in contact with us about their decisions should [email us](#).

Recruitment plans and implications for our decision on mandating the timetable from November 2020

24. An encouraging proportion of AETOs are pressing on with recruitment plans but the knock-on effect of the next intake of pupillages being deferred could affect plans for pupillages in future years up to 2022. We will continue to monitor this and to communicate with the Bar Council, the Inns and AETOs to consider whether there is other action we can take as a regulator to support AETOs to continue to offer pupillages.
25. Whilst three quarters of AETOs that responded to the survey were continuing with recruitment that was then in progress, 13% had cancelled interviews and 5% were considering doing so. Some AETOs said that those who were already interviewed or selected for interview will be guaranteed an interview when recruitment resumes. Only a small minority have now decided to resume interviews this year. The remainder have either taken a decision not to recruit, are still undecided or have not provided any further information. During discussion with AETOs, it is evident that this is a period of considerable uncertainty about when work will resume and the extent to which finances will be impacted, so definite decisions are not being made yet. The data we have changes from week to week as decisions crystallise.
26. The Bar Council's statistics from AETOs that recruited via the Pupillage Gateway in the November 2019 to May 2020 recruitment period, indicates that the number of pupils recruited through the Gateway this year has fallen (which accounts for about half of AETOs).
27. In engaging with AETOs about the deferral of start dates of imminent pupillages, 17 (13% of those we have engaged with that have pupils) have indicated that deferral decisions taken now will, or are likely to, impact the number of pupils recruited in 2021 and 2022.
28. The impact will only become clear when pupillages are registered. However, taken in total, the above data indicates potential for a decline in pupillage numbers.
29. We have considered all this information when deciding whether it is right to proceed with mandating the recruitment timetable this November, in line with our [announcement](#) earlier this year. In particular, we considered whether introducing a fixed timetable might create a barrier to recruitment given that uncertainty about the future is likely to remain at the time the mandated timetable will come into effect (November 2020 to May 2021). We discussed this with the Bar Council and the Inns. There was a strong view that we should go ahead with introducing the mandatory timetable for the original reasons we took the decision to do so – in support of the accessibility principle for Bar training, making pupillage recruitment fairer and more consistent. It will also establish more certainty. However, this year we will provide more flexibility by allowing those who do not feel confident enough to advertise for pupils between November and January to advertise subsequently, provided they complete their recruitment by the end of August and do not make any offers before the mandatory 7-day offer period in May. We will be publishing the mandatory timetable shortly. Regardless of Covid 19, it will be possible to apply for a waiver from the mandated timetable in exceptional circumstances; we will be publishing further guidance on this shortly.

Diversity impact

30. There is clear evidence that diversity at entry to the Bar is improving. For the fourth year in a row, there is a greater proportion of female pupils than male pupils. The ethnic diversity of pupils slightly exceeds that of the working age population of England and Wales (see our report on [Diversity at the Bar 2019](#)). These groups are, however, significantly less well represented in the senior ranks of the profession, where progress is slower. Some chambers have highlighted that where there is a reduced amount of work currently, it is likely to be prioritised for more senior barristers. This may mean less work for practising pupils and junior tenants. If this affects some areas of the Bar that recruit more diverse pupillages, there is a risk that the progress made may stall.
31. The latest [BPTC key statistics report](#) shows a significant drop-off between the proportion of UK/EU students identifying as BAME that enrol on BPTC courses, compared with those that start pupillage.
32. Our data suggest that BAME candidates are more likely than white candidates to get taken on by smaller AETOs, which could be less able to withstand the financial impact of Covid-19. Further evidence about this will be gathered via the Regulatory Returns.
33. The impact in publicly funded areas of law is likely to be greater, because they are typically court-based and have been most negatively impacted financially by the closure of courts during lockdown. They are also the most diverse areas of practice:
 - BAME and/or state educated barristers are more likely to be in publicly funded areas. 55 per cent of BAME barristers earn more than half of their income from legal aid work, compared to 47 per cent of white barristers ([Bar Council Covid-19 Survey](#)).
 - Women are still significantly over-represented in family law in particular (also public law), and notably under-represented in personal injury and commercial/financial law.
 - Income data currently also indicates that the loss of earnings is likely to have a disproportionate effect for those under 15 years of Call:
 - 44.4% of BAME barristers declared earnings of £60k or less, compared to 29.6% of white barristers.
 - 38.1% of female barristers declared earnings of £60k or less compared to 26.3% of male barristers.

This partly reflects the area of law they work in, but further reinforces the point that anything that impacts on income is going to have a disproportionate impact on female and BAME barristers in particular.
34. We will continue to monitor diversity data as future pupillages are registered.

Viability of chambers and BSB entities

35. Whilst our engagement in this period has focussed on AETOs, we gathered a considerable amount of information about the actions being taken to protect the viability of chambers through careful financial management and taking advantage of government schemes offered in response to Covid-19.
36. Since lockdown, only two chambers have closed. In one case, the plans to do this were already in motion before. We will gather further information about the resilience of

chambers and BSB entities through the [Regulatory Returns](#) that we plan to issue this autumn.

Next steps

37. In addition to the Regulatory Returns, we will continue to engage with the profession, through responding to questions and reports of pupillage changes, regular communication with the Bar Council, Inns of Court and Circuits and monitoring data on pupillage numbers and composition. AETOs should [contact us](#) in line with our [FAQs](#).

8 September 2020