

**BAR
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REGULATING BARRISTERS

Consultation on fees and charges for the authorisation and supervision of Authorised Education and Training Organisations (AETOs) by the Bar Standards Board

December 2018

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Executive Summary

This consultation paper seeks views on the model we have used to determine the proposed fees we will charge Authorised Education and Training Organisations (AETOs) to consider, authorise and supervise their proposed training under the new Bar training rules and to manage the centralised examinations that form part of the qualification process for new barristers.

Subject to Legal Services Board (LSB) approval, the new Bar training rules will come into force in early 2019. The term AETOs includes organisations such as vocational training providers (currently, Bar Professional Training Course (BPTC) providers), pupillage training organisations, including chambers, and other approved training organisations.

The new Bar training rules will permit AETOs to offer training to prospective barristers under a limited number of permissible training pathways. By allowing more than one route to qualify as a barrister in England and Wales, we aim for Bar training to become more accessible, more affordable and more flexible whilst at the same time sustaining the high-standards of entry expected at the Bar.

As well as permitting more training pathways, the pathways that are enabled by the rule changes will follow a new strategy for curriculum and assessment, including the centralised examinations directly managed and controlled by the BSB. These changes include the introduction of a new civil litigation centralised examination (that incorporates dispute resolution) during the vocational component of learning as well as increasing the number of sittings every year for all centralised examinations.

In determining what fees to charge AETOs, we need to account for all the costs we expect to incur when overseeing and administering the new training rules and the centralised examinations.

Currently the BSB does not fully recover all its costs for authorising and supervising training providers and for running the centralised examinations. The new Bar training rules and the changes to centralised examinations mean that our costs will increase.

As an organisation, we are already committed to a full cost-recovery model and we consulted on specific cost recovery principles in 2015. This consultation seeks views

as to how we should apply this model in respect of the costs and fees discussed and proposed in this paper.

At the moment, we charge vocational training providers an annual per-capita fee to oversee the courses they provide. Even though there is no requirement within either the current or the new rules for training providers to pass on this fee to students, we recognise that in practice, many providers do this. This means one of the key issues considered within this consultation is the extent to which Bar training should be funded by Bar students themselves and the extent to which Bar training should be subsidised by the practising Bar via the Practising Certificate Fee (PCF). We do not believe that the whole Bar should subsidise the full costs associated with every stage of training for all prospective barristers, so the fees and charges proposed reflect this. But we want to know what you think.

This consultation paper explores these issues, explains how we have estimated our increased costs under the new rules and how we propose to manage them carefully, applies principles to how we propose to recoup the various type of costs, and sets proposed fees and charges.

The proposed fees include:

- A one-off application fee of £250 for all new prospective AETOs;
- Depending on the scale or complexity of the proposed training pathway, a “menu” of fees payable by prospective AETOs including the costs of a visit by the BSB and experts in higher education;
- A per-capita fee of £870 per student charged to AETOs once for each student when they register for their course.

In addition to these proposed fees, this paper discusses options for recouping the cost of introducing a centralised examination in Professional Ethics during the pupillage or work-based learning component of Bar training. The options include introducing a new fee of between £800 - £900 per examination charged discretely to pupils or AETOs; having this fee partially subsidised from PCF income; or having it fully subsidised from the PCF. We recommend having the examination and a single re-sit taken during the pupillage / work-based learning component fully subsidised from the PCF, but we seek your views on this please.

A summary of all the proposed fees considered within this consultation is available between pages 14 and 17 of this document.

Even at the proposed increased level, our per capita fee for vocational providers is only a small element of the cost of Bar training. As we explain, we need to recover our costs. Whilst any fee increase is regrettable, we believe that considering the other changes introduced with the new training rules, this necessary fee increase

does not jeopardise our overall aim to make Bar training more affordable. As we outline in more detail later in this paper, our research suggests that the approach we are proposing here is broadly comparable with qualification processes for other comparable professions. The research also suggests that our proposed fee of between £800 and £900 for the centralised Professional Ethics examination benchmarks favourably with costs for comparable professional examinations.

As with other aspects of the changes to Bar training, no matter what is decided after we have considered any responses to this consultation, we propose to keep the issue of our costs - and therefore our associated fees and charges - under close and regular review.

The closing date for this consultation is **5.00pm on Friday 1 March 2019**.

Introduction

1. The BSB's March 2017 [policy statement](#) on the Future Bar Training (FBT) programme of work sets out a limited number of permissible training pathways to becoming a barrister. An Authorisation Framework (AF) has been developed to give effect to these policies. Specifically, the AF will require intending Authorised Education and Training Organisations (AETOs)¹ to demonstrate how their proposals for training will both:
 - a. Offer one of the permitted training pathways underpinned by the four core Bar training principles (Flexibility, Accessibility, Affordability and High Standards); and
 - b. Enable prospective barristers to meet the requirements of the [Professional Statement](#)² appropriate to the component of training being delivered.

2. This consultation sets out the Fees and Charges Model (the Model) we are proposing, i.e. what fees the BSB will charge:
 - a. for consideration and authorisation of an AETO's proposed training pathway,
 - b. for ongoing supervision of that training pathway once authorised; and
 - c. for management of the centralised examinations.

We have tried to make the Model as transparent as possible and to base it on sound assumptions about our anticipated costs, citing clear evidence for those assumptions where we have it. The Model is designed to accommodate the differing complexity and scale of potential AETOs with flexibility to cater for different pathways and applicant types.

3. To develop the Model, we considered and aligned our own principles on fees and charges to the objectives of the new Bar training programme³ to help us decide how to recoup the costs we will incur in delivering the service: whether directly from applicants or subsidised fully or partially by the annual Practising Certificate Fee (PCF) paid by the profession. We also carried out research to understand the approach taken by other regulators and similar bodies.

4. We now invite comments on our proposed approach to charging for authorisation and supervision of AETOs and management of centralised examinations. We also welcome views on the potential impacts and effects of any part of the approach.

¹ The term AETOs includes organisations such as vocational providers, pupillage training organisations and approved training organisations.

² https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf

³ https://www.barstandardsboard.org.uk/media/1717468/bsb_fees_and_charges_consultation_-_final_pdf.pdf

The Current Process

5. The BSB's current charging model for providers of Bar Training can be split into two discrete categories:
 - i. Charges for providers of the vocational component (usually fulfilled by a Bar Professional Training Course (BPTC)), e.g. universities and law schools; and
 - ii. Charges for providers of the work-based learning component (usually fulfilled by a pupillage), i.e. pupillage training organisations (PTOs) such as chambers.

Detailed information about Bar training and qualifying as a barrister can be found on our website.⁴

Vocational component providers

6. There are currently eight providers of the BPTC across 14 centres. They are charged an annual per capita student fee of £550 which is intended to cover ongoing monitoring of training courses by the BSB (38%) and costs associated with providing the three centralised examinations (62%). The fee was last adjusted in 2014 and was based on running costs at the time and an assumed number of students. Today the £550 no longer covers our costs and the increased costs of Centralised Examinations means that the BPTC is being marginally subsidized from the PCF.
7. We are adjusting the per capita fee by 6% to £585 for the 2019/20 academic year to include a small amount of the increased costs of running the current Centralised Examinations. However, we will still not fully recover our costs.

Pupillage Training Organisations (PTOs)

8. We estimate there are approximately 350 pupillage providers in England and Wales.⁵ At the moment we charge a one-off authorisation fee of £200 to chambers and other organisations who wish to offer pupilages. There are no further charges. Provided there is no cause to withdraw it, authorisation will last indefinitely.
9. Annual supervision costs are covered from general PCF funds and the supervision of pupillage is undertaken as part of general chambers supervision.

⁴ <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/>

⁵ We are currently undertaking work to confirm the number of PTOs providing or intending to provide pupilages over the next 3 years.

Centralised Examinations

10. BPTC centralised examinations are set on behalf of the BSB by the Centralised Examinations Board (CEB) which consists of a group of senior examiners, including experienced legal practitioners and academics supported by psychometric and examinations experts. Centralised examinations were introduced to ensure consistency across course providers, and closer regulatory oversight of standards in knowledge subjects. The following subjects are currently centrally examined:
 - a. Professional Ethics;
 - b. Civil Litigation and Evidence
 - c. Criminal Litigation, Evidence and Sentencing.

11. As described above, the costs for Centralised Examinations are intended to be covered by the £550 (£585 from 2019-20) per capita student fee charged to vocational course providers. In practice this is not the case and the costs are partially subsidised by the PCF.

Approach to Proposed Fees and Charges

12. We could, if we chose to do so, fund all our services through the PCF, as all our activities relate to regulation, accreditation, education and training of barristers.⁶ However, we previously decided that in many circumstances it is good practice to charge for delivering services to users. This approach means that we can be more focussed on the expenditure relating to a particular service and the service is used wisely, thus reducing waste. The income that we receive from these charges reduces the amount of money we have to raise through the PCF.
13. We use the term “Full Cost Recovery” (FCR) to describe the way that we calculate how much revenue is needed to pay for the costs of a particular service. We add up the costs of all aspects of service delivery, both direct and indirect costs, which include:
- Development or investment costs;
 - Direct staff costs;
 - Direct non-staff costs;
 - Governance and management (indirect costs);
 - IT, HR (indirect costs);
 - Premises (indirect costs);
 - Corporate provisions and contingency (indirect costs).

The fee in question is then set in relation to all these costs, typically by dividing the costs by the anticipated number of users.

14. We can choose not to charge at a FCR level for services. When we design a service – and in this consultation paper, we are considering the services we need to provide to implement the new Bar training rules - we consider seven cost recovery principles to help us decide whether it should be funded by the profession as a whole via the PCF, by individual service users via non-PCF fees and charges, or by a blend of the two. We consider each principle in turn to determine the impact and effect of the fee. We then make a judgment as to what percentage of costs should be recouped from direct charges and what percentage should be underpinned by PCF funds. This could be viewed as a “sliding scale”.
15. The cost recovery principles, a number of which relate to the statutory Regulatory Objectives, are:
- i. Regulatory Objectives;
 - Protecting and promoting the public interest
 - Protecting and promoting the interests of consumers

⁶ As detailed in section 51 of the Legal Services Act 2007

- ii. Strategic Objectives and Values;
 - Value for Money
- iii. Beneficiaries
- iv. Market
- v. Regulatory Risks
- vi. Barriers to the Profession
- vii. Equality Objectives;
 - Encourage an independent, strong, diverse and effective legal profession.

In Annex 1 we describe how we have applied these principles in the context of the proposed fee model for the authorisation and supervision of AETOs.

16. When we considered these principles, we concluded that there are competing arguments for either recovery from prospective AETOs or subsidising from PCF funds. To inform our approach we therefore had regard to some additional factors. We set out our proposals in relation to each below.

Additional Factors

17. The additional factors we considered to help us develop the Model are:
- a. Investment Costs
 - b. Indirect Costs / Overheads
 - c. Initial Year Costs
 - d. Pupillage Factors
 - e. Contingency Papers for Centralised Examinations

a. Investment Costs

18. In previous cost recovery models, we adopted a FCR model which included recovery of investment costs. For example, the fee model for Entity Regulation aimed to recover investment costs over five years. Given the investment costs of developing and introducing the new Bar training rules are estimated to be £1.5m (not including the cost of evaluation which will continue for several years), recovery of investment costs over five years would amount to £300k per year. Clearly, it would be even greater if we sought to recover these costs over a shorter timeframe.
19. On balance, we believe that recovery of investment costs over any period would raise the fees for AETOs so significantly that they would create market disincentives and potential barriers to entry for new providers entering the market, existing providers considering whether to remain in the market and / or the creation of new pathways.

20. We therefore propose excluding investment costs from the fees charged to prospective AETOs.

b. Indirect Costs / Overheads

21. Indirect costs, also called overheads, are the costs we incur to run the BSB and include administrative staff, rent and utilities. Given the amount of resources dedicated to the oversight and assessment of Bar training, we believe that it is proportionate to include a percentage of these costs in the Model. It is also consistent with our previous approaches to cost recovery.
22. We therefore propose including overhead costs in the fee charged to prospective AETOs.

c. Initial Year Costs

23. For a number of years, Centralised Examinations for existing BPTCs and new Bar training pathways will need to run concurrently. Whilst some costs vary according to the number of students (e.g. marking), the minimum cost of preparing examinations to the required standard cannot be reduced if there are fewer students sitting them. This means that the provision of the service over the first two years is likely to be “loss-making” for the BSB (depending on the number of students) as both the existing and new Bar training pathways will operate in parallel. Thereafter the existing BPTC will be phased out and all students will be trained through one of the new pathways.
24. We propose “smoothing” the fees over a five-year period by spreading the initial costs of introducing new Bar training over all providers and students rather than creating barriers to entry or market disincentives for providers or prospective barristers by having substantially larger fees at the outset.

d. Pupillage Factors

Applicable Fees

25. Currently, organisations that wish to offer pupillages (PTOs) must be authorised with a one-off authorisation fee of £200. All other costs related to this component of training are met from the PCF, e.g. supervision, registration of pupillages. The Board decided in May 2018 that all existing PTOs should be authorised under the new Bar training rules to satisfy us that they meet the requirements of accessibility, affordability, flexibility and sustaining standards. We do not propose charging existing PTOs for this process.

26. We do however propose charging new organisations that apply to us for authorisation to provide pupillages or new work-based learning training pathways (including existing PTOs) a one-off application fee of £250 to cover the cost of their application. No further charges will be levied on these AETOs, i.e. there will be no authorisation fees, intake fees or renewal process / fee.⁷
27. We propose continuing to pay for the supervision of pupillages / work-based-learning from PCF funds.

Professional Ethics

28. From December 2021, the Professional Ethics examination will be taken during pupillage or other form of work-based learning. Given the costs of setting and marking the examinations, it is conceivable that a discrete charge could be levied. This approach correlates with that adopted by other bodies. However, given the number of pupils likely to be taking the exam per year (400-500) and the cost, the fee would be approximately £800-£900.⁸ We believe this could create disincentives and possibly reduce the number of pupillages offered in some areas of the Bar and/or have significant equality impacts. It is therefore our view that some level of subsidy from PCF funds should be considered for this cost.⁹
29. We suggest the following funding options for taking the examination and a single-re-sit during the pupillage / work-based learning component:
 - No subsidisation and a £800 - £900 fee charged discretely to pupils / AETOs;
 - Partial subsidisation from the PCF; or
 - Full subsidisation from the PCF.
30. On balance we propose full subsidisation as it promotes accessibility and supports new entrants to the profession as they train and develop. High ethical standards and their maintenance bring benefits to the profession as a whole.
31. Additional re-sits would be charged to pupils / AETOs at a cost of £800 - £900 per resit.
32. Transferring qualified lawyers would continue to pay to sit the Professional Ethics examination. We propose a discrete charge of £800 - £900 for the examination and a fee of £800 - £900 for each resit.

⁷ Should the application be complex there may be a requirement for us to visit the prospective AETO or carry out extra steps to satisfy ourselves that it meets the key principles. We may seek to recover the associated costs.

⁸ The fee is on the assumption that the format of the examination remains the same.

⁹ There will be a discrete charge of £800 - £900 for students taking the Professional Ethics examination as part of the Bar Transfer Test.

e. Contingency Papers for Centralised Examinations

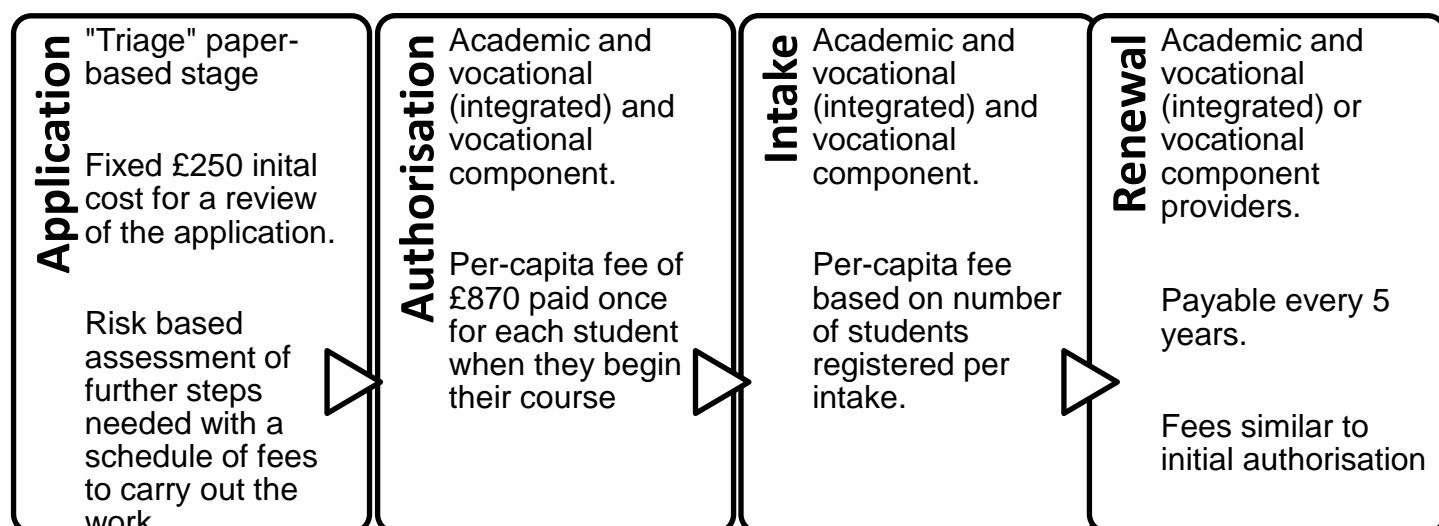
33. Good practice in examinations is to have a contingency paper should it be required. The BSB typically operates a one-in-hand model, i.e. we always have an additional exam paper for each of the examinations we offer.
34. We therefore propose including a provision for contingency examination papers in the fees in keeping with good practice for examinations, spreading it over several years.

Research on other professions

35. In considering our approach to the Model we looked at what other professional bodies charge. Whilst we acknowledge there are important differences – such as the numbers of practising members – we believe it is useful to see how our proposed charges for specialist professional examinations compare.
36. One helpful example comes from the Academy of Medical Royal Colleges which in 2017 published a report collating the costs of mandatory training for the various medical specialities. Fees start from the low hundreds to £4,000 for compulsory examination in very narrow specialisms. Our proposed £800 - £900 fee for the Centralised Professional Ethics examination falls within this range.
37. We note the Solicitors Regulation Authority's recent communication about the indicative fee range for its new Solicitors' Qualifying Examination (SQE). The proposed range for SQE 2 is £1,900 - £2,850. Intending solicitors will also have had to meet a similar fee for SQE1, indicating the total cost of examination fees for becoming a solicitor to be in the region of £4,000. Whilst we caution against direct like-for-like comparisons we believe our £870 per capita fee (or indeed £1,770 if the Pupillage Professional Ethics exam fee were also included) compares favourably.

Proposed Fee Model

38. The following diagram shows the proposed fees for AETOs, when they would be payable and the points at which an application can be withdrawn or suspended.



In developing the Model, we considered:

- The existing charging model for AETOs described at paragraphs 5 – 11 above;
- The current Entity Regulation fee model;¹⁰ and
- Cost recovery models used by other regulators and similar organisations.

Application Fee (Vocational Providers and New Work-Based Learning Providers)

39. As the new Bar training rules will allow an AETO to offer different training pathways, we propose charging per pathway at the application and authorisation stages, regardless of over how many training centres the pathway will be offered.

40. When we receive an application from a prospective AETO, we will charge a flat fee of £250 to cover a "triage" half-day paper-based exercise to review the application. We believe keeping costs low at this point will avoid creating barriers to entry for smaller organisations.

41. The output of our initial review will be an estimate indicating what further steps we will need to take to be satisfied that the application meets the requirements as set out in the AF. We anticipate that in many cases, especially with

¹⁰ <https://www.barstandardsboard.org.uk/regulatory-requirements/entities,-including-alternative-business-structures/fees-and-charges/>

applications from prospective pupillage AETOs, the application itself will suffice with no further steps (or assessment costs) required. However, should we need to visit a centre or get external expert advice, we will advise the applicant of the cost of these activities.

42. We believe our proposal reflects our risk and evidence-based approach to regulation where we focus our efforts on the more complex, higher risk applications. Further it allows an applicant to withdraw or suspend their application without incurring significant up-front fees.

Authorisation Fee (AETOs providing academic and vocational (integrated) training or vocational training)

43. Once satisfied that an AETO meets the requirements and is suitable to authorise we will charge a per capita fee of £870 multiplied by the number of registered students to cover supervision and monitoring. For example, an AETO with 100 students would pay an authorisation fee of £87,000 (£870 x 100) whilst an AETO with 2 students would pay £1,740.
44. The fee will be payable based on the initial intake of students registered on the pathway as soon as it is known. We believe adopting this approach affords consistency whilst not deterring smaller organisations from providing training or an AETO from offering multiple (and potentially innovative) training pathways.
45. The £870 figure represents a 49% increase on the 2019/20 per capita fee of £585 and is based on an estimated average number of 1,550 students each year for the next six years. This estimate may be conservative as there are no guarantees about the number of students who will register. Recent years have seen higher number of registrations onto the BPTC (1,758 registered in 2018-19) but we do not have evidence which indicates whether this is a trend or a response to the uncertainty caused by the changing training rules.¹¹

Intake Fee (AETOs providing academic and vocational (integrated) training or vocational training)

46. The intake fee will cover the BSB's costs of ongoing supervision and monitoring of the AETO. As with the authorisation fee it will be charged on a per capita basis using the £870 figure and registered numbers of students. The fee will apply to providers of the academic and vocational (integrated) or vocational components of training, wherever that is integrated in a training pathway.
47. As part of the process we will ask each AETO to confirm whether there have been any significant or material changes to the training pathway we initially

¹¹ The BSB has no control over the fees charged by vocational course providers nor any powers to limit the number of students studying for the Bar provided they meet our admission requirements.

authorised. If there have been we will decide whether it is appropriate for us to charge a fee from the schedule set out in more detail below to cover the costs of assessing the changes.

48. We are aware that prospective AETOs may have more than one intake of students in a single academic year. The per-capita fee will be payable for each intake and will be based on the number of students registered. For example, if an AETO has one intake per year, they will pay once annually when they know the number of students registered. However, should they have two intakes of students per year they will pay twice, i.e. as soon as the numbers of students registered on each intake is known.

Authorisation Renewal Fee (AETOs providing academic and vocational (integrated) or vocational training)

49. AETOs providing training on the academic and vocational (integrated) or vocational components will be subject to a renewal process every 5 years. We will adopt a risk-based approach to determine what steps we need to take to assure ourselves that the training pathway continues to meet the Bar training principles. The fees charged will mirror those for initial authorisation.

Summary of Proposed Fees

50. In summary we propose as follows:

- a. All new prospective AETOs will be charged an application fee of £250.
- b. Existing pupillage or work-based learning providers will not be charged an application fee to be assessed under the new Bar training rules.
- c. Should we require more information from a new prospective AETO due to the complexity or scale of its proposed training pathway, indicative costs for the steps we will need to take to help us assess the proposal include:
 - Staff Time @ up to £500 per day;
 - Expert Advisor @ up to £400 per day;
 - Travel and other costs actually incurred.
- d. AETOs providing training for the academic and vocational (integrated) or vocational components will be charged a per-capita fee of £870 for initial authorisation and a per-capita charge for each intake of students for authorisation to deliver the vocational component of training to cover our operational and ongoing costs.

- e. Pupillage and work-based learning providers (existing and new), such as chambers, will not be charged for authorisation or an intake fee.¹²
 - f. AETOs providing training on the academic and vocational (integrated) or vocational components will be subject to a renewal process on a 5-year cyclical basis. Our approach, the process and the applicable charges will mirror that for initial authorisation.
 - g. Pupillage or work-based learning component providers, including chambers, will not be subject to a renewal process as the majority of those providing the training will be paying a PCF which already covers the associated costs of supervision.
 - h. The cost of the Professional Ethics Examinations to include a single re-sit at the pupillage or work-based learning component will be subsidised in full by the PCF. Additional re-sits will be charged to the pupil / AETO at a cost of £800 - £900 per re-sit.¹³
 - i. Transferring qualified lawyers will pay discrete charges for each examination they are required to take. Fees for the Centralised Examinations will be set by the BSB. Fees for the provider set assessments will be determined by individual AETOs.
 - j. AETOs providing training on the academic and vocational (integrated) or vocational components will pay discrete fees for students taking resits of the centralised examinations where the students are not registered with the AETO and so have not been charged via the intake fee process.¹⁴
 - k. We will review our fees at least every two years and take mitigating action should we over / under recover our costs.
51. We welcome the opportunity to speak with prospective AETOs about their applications. However, we will be keeping a close eye on how much of our resources we are spending on this activity as it is being paid for by the PCF. We may decide at a later stage to charge for this level of support and apply the schedule of fees described at paragraph 49(c) above.

¹² Subject to the caveat that new AETOs may be charged to cover the costs of assessing complex proposals.

¹³ In some circumstances an AETO may choose to cover this cost for its pupil(s) but otherwise it is payable by the candidate.

¹⁴ Each AETO will be required to submit a return for resit numbers for each sitting and we charge the AETO for that number of resitters. It is a matter for individual AETOs whether they pass any cost on to the student / candidate.

Summary of Proposed Fees for Prospective AETOs

Type of AETO	Application Fee (£) (one-off fee paid upon authorisation application)	Schedule of Assessment Fees (£) (one-off fee paid upon authorisation application)	Authorisation Fee / Intake Fee (£) (payable as a one-off fee after initial authorisation and with each new intake of students)	Renewal Fee (£) (payable every five years)
Existing Pupillage / Work Based Learning Component provider, e.g. chambers	0	N/A	N/A	N/A
New Pupillage / Work Based Learning Component provider¹⁵	250	Variable; Depends on Application	N/A	N/A
Existing Academic / Vocational Component training provider	250	Variable; Depends on Application	870 x number of students registered (payable when the intake is confirmed)	Variable; Depends on Application
New Academic / Vocational Component	250	Variable; Depends on Application	870 x number of students registered (payable when the intake is confirmed)	Variable; Depends on Application

¹⁵ As we say at paragraph 25 there will be no charges to existing pupillage organisations for authorisation under the new Bar training rules. However, should a pupillage organisation decide at a later stage to apply for authorisation for a new pathway it will be charged the £250 fee applicable to new pupillage providers to cover the BSB's costs.

Summary of Proposed Fees payable by a Candidate / AETO for the Centralised Professional Ethics Examination

Training Component	Who Pays?	Cost to the Candidate / AETO (£)
Pupillage / Work Based Learning Component Examination (including one re-sit)	Subsidised by the PCF	0
Additional Resits for Examinations during Pupillage / Work Based Learning Component	Candidate or AETO depending on AETO's policy	800 – 900 per resit
Transferring Qualified Lawyers	Candidate	800 - 900
Academic / Vocational Component training provider (resit only) ¹⁶	Candidate or AETO depending on AETO's policy	800 - 900

Summary of Proposed Fees for Centralised Examinations for Transferring Qualified Lawyers

Training Component	Cost to the Candidate (£)
Civil Litigation Paper 1 (no resit)	150 – 200
Civil Litigation Paper 2 (no resit)	150 – 200
Criminal Litigation (no resit)	150 – 200
Resits	150 – 200 per resit

¹⁶ If a student / candidate is allowed a resit at their AETO for any centralised examination but is not otherwise registered there and so not being charged via the intake fee, there will be a charge payable by the student / AETO for each resit. Each AETO would be required to submit a return for resit numbers for each sitting and we charge the AETO for that number of resitters. It is a matter for individual AETOs whether they pass any cost on to the student / candidate.

Equality Impact Assessment (EIA)

52. We undertake equality analyses on all our projects and programmes to reduce the risk of discrimination occurring and to explore ways of advancing equality and diversity. We carried out an initial EIA when we started to develop the Model to understand the impacts (positive and negative) of our proposed approach to charging fees. We will keep this under review.
53. One of the main impacts highlighted was the potential for adverse impacts of new or significantly increased fees on socio-economic status and disability. A particular concern was that there is a marked difference between the economic capital available to commercial training providers which train hundreds of students annually and smaller organisations which take on a single pupil.
54. Bearing this in mind we propose not to charge existing providers of the pupillage component any fees. New providers of pupillages or existing providers who propose new training pathways will be charged a one-off fee of £250. They will not be charged authorisation or intake fees. We believe this will not result in existing providers pulling out of the market, act as a barrier to entry or deter new providers. We believe this approach is fair, proportionate and flexible.
55. We are specifically seeking your comments on the impacts of the Model on equality and will undertake equality analyses on the outcomes of the consultation.

Consultation questions

We would invite you to answer the following specific questions:

- Do you have any comments on the BSB's proposed approach to fees, including the application of the charging principles and other factors? Do you think we should consider any other factors?
- Do you agree with the proposed fees?
- Do you think the cost of the Professional Ethics Examination during pupillage/work-based learning should be charged discretely to pupils / AETOs as part of the pupillage or work-based learning component of Bar training, borne by the profession through the PCF or be funded by a combination of the two funding options?
- Have you identified any adverse or positive equality impacts as a result of the fee model we are proposing?

About this consultation

How we will use this consultation

56. This consultation will be used to help us explore the impacts of the proposed fees and charges and ultimately decide how to charge providers of both vocational and work-based learning components of Bar training.

Who should respond to this consultation?

57. We are particularly interested in hearing from:

- Barristers who pay practising certificate fees;
- Pupils;
- Prospective barristers and those considering membership of the profession;
- Those with an interest in the future of the Bar;
- Prospective AETOs including existing PTOs and BPTC providers.

Part V: How to respond to this consultation

58. The deadline for this consultation is **5.00pm on Friday 1 March 2019**.
59. A response does not need to be a comprehensive written document. It can also be short form answers to the questions we have posed. It is however far more useful to us (and we are better able to take your views into account) if you are able to address specifically the questions we have posed, rather than, for example, simply stating your general view. We will of course never exclude consideration of a response, whatever its form or content.
60. We want to hear your views on all the questions posed and will take into account all responses.
61. You do not have to respond to this consultation in writing. If you would like someone from the BSB to meet you or the organisation you represent, to listen to and accurately record your views, then as far as possible we will try to accommodate this request. Please contact us either by email, telephone or post as soon as possible if you would like to do this.
62. Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation and publish a list of respondents. If you do not want to be named as a respondent to this consultation, please set this out in your response.
63. Please send your response, or otherwise get in touch, as follows:

Email: Authorisations@BarStandardsBoard.org.uk

Tel:

Authorisations Team, The Bar Standards Board, 289-293 High
Holborn, London WC1V 7HZ.

Next steps following the end of the consultation

The consultation will close on **5.00pm on Friday 1 March 2019**. Once the consultation has closed we will collate and analyse the responses and use them to determine our approach to fees and charges for the authorisation and supervision of AETOs. Final approval of the fees lies with the BSB Board.

Annex 1 - Cost Recovery Principles¹⁷

Below, we consider each charging principle and set out our opinion (shaded in purple) as to how we should approach the recovery of fees for the authorisation and supervision of AETOs.

Principle 1 – Regulatory Objectives

Principles	Steer towards 100% Full Cost Recovery from non-PCF fees	Steer towards fully funded by the PCF (from the profession as a whole)
<ul style="list-style-type: none"> Protecting and promoting the public interest. Protecting and promoting the interests of consumers. 	<ul style="list-style-type: none"> The service being provided <u>indirectly</u> promotes the public interest. The service being provided <u>indirectly</u> promotes consumer interests 	<ul style="list-style-type: none"> The service directly protects the public interest. The service directly protects consumer interests.

One of the stated objectives of the Future Bar Training (FBT) programme is to encourage greater accessibility to Bar training, including a commitment to increasing social mobility in the profession and enhancing diversity. This links directly to the regulatory objective “Encouraging an independent, strong, diverse and effective legal profession”. We believe a profession that is representative of the society it serves is in the public interest and a profession that has a sustainable stream of new practitioners is in the interests of consumer and the wider interests of justice.

A consideration of this principle indicates therefore that it is appropriate for the profession to subsidise, at least in part, the fees we will incur to provide the service.

¹⁷ https://www.barstandardsboard.org.uk/media/1717468/bsb_fees_and_charges_consultation_-_final_pdf.pdf

Principle 2 – Strategic Objectives and Values

Principles	Steer towards 100% Full Cost Recovery from non-PCF fees	Steer towards fully funded by the PCF (from the profession as a whole)
<ul style="list-style-type: none"> Value for Money 	<ul style="list-style-type: none"> The service is expensive to run and draws upon significant staff and financial resource. 	<ul style="list-style-type: none"> The service runs at a low cost, and resources used are negligible. Costs associated with fee collection outweigh service delivery.

Centralised Examinations, supervision at vocational and pupillage or work-based-learning components are substantially more expensive to provide than other fee-charging services we operate. Apart from the costs we have incurred to date to develop new Bar training, the ongoing costs to deliver and operate the service will be significant. Some of these costs (Supervision) are scalable to a degree, though others (Centralised Examinations) have an irreducible minimum cost. We propose the users of the service, i.e. the AETOs, should cover these costs.

Principle 3 – Beneficiaries

Principles	Steer towards 100% Full Cost Recovery from non-PCF fees	Steer towards fully funded by the PCF (from the profession as a whole)
Beneficiaries	<p>The main beneficiaries are:</p> <ul style="list-style-type: none"> Individuals; Private companies; Niche service users (e.g. barristers from a particular Specialist Bar Association) 	<p>The main beneficiaries are:</p> <ul style="list-style-type: none"> The profession as a whole; Large groups of prospective barristers.

The direct beneficiaries of the service are all prospective barristers and pupil barristers who will study under the new rules. Our assumptions are that there will be (at least initially) 1,550 students per year on the vocational component

and 400 barristers per year undertaking pupillage. The percentage of overseas students on the BPTC has been going up every year since 2013 and has increased from around a third in 2011 to 43% in 2016. Figures from the same year indicate that 22% of all students went on to pupillage (although only 1% of overseas students).

There is a wider benefit to the profession and the public interest in maintaining a steady stream of new barristers so funding by the PCF is recommended.

Principle 4 – Market

Principles	Steer towards 100% Full Cost Recovery from non-PCF fees	Steer towards fully funded by the PCF (from the profession as a whole)
Market	<ul style="list-style-type: none"> Fees for a particular service would have a negligible effect on market behaviour. 	<ul style="list-style-type: none"> The BSB wants the service to heavily influence market behaviour.

The BSB sets the rules for Bar Training and thus has a wide degree of control over this part of the legal education marketplace. The new rules are a considerable change to our regulatory approach and the intention is to widen access and affordability, increase flexibility and sustain high-standards of entry.

On the other hand, the provision of Bar training is likely to remain commercially attractive, at least in the medium term, for vocational providers. Whilst there is no requirement for training providers to pass on the per capita fee to students, we recognise that in practice, many providers do (and will continue to do) this. It is therefore unlikely that any increase in the BSB per-capita costs will overly impact current providers' decisions to offer Bar Training.

We believe consideration of this principle offers no clear argument for either funding option.

Principle 5 – Regulatory Risks

Principles	Steer towards 100% Full Cost Recovery from non-PCF fees	Steer towards fully funded by the PCF (from the profession as a whole)
Regulatory Risks	<ul style="list-style-type: none"> The service relates to <u>low</u> “likelihood” and <u>low</u> “impact” regulatory risks 	<ul style="list-style-type: none"> The service relates to “<u>highly likely</u>”, “<u>high impact</u>” regulatory risks

We believe changes to Bar Training rules will help address concerns about the lack of diversity in the profession and in this regard, it would be appropriate for the costs to provide the service to be supported by the profession.

Principle 6 – Barriers to the Profession

Principles	Steer towards 100% Full Cost Recovery from non-PCF fees	Steer towards fully funded by the PCF (from the profession as a whole)
Barriers to the profession	<ul style="list-style-type: none"> The financial or administrative processes relating to the service do not deter good quality people entering the profession. 	<ul style="list-style-type: none"> The financial or administrative barriers would deter good quality from entering the profession.

Two of the key aims in changing the Bar training rules relate to increasing accessibility and affordability for those entering the profession “so that the best candidates are able to train as barristers and that the Bar as a whole better reflects the communities it serves¹⁸”.

64. We believe using the PCF to subsidise elements of Bar Training taken during pupillage, i.e. Professional Ethics examinations and supervision, helps alleviate some of the high costs associated with entry into the profession. We believe this is equitable as the majority of pupillage providers have authorised practitioners whose practising fees contribute to the annual costs of pupillage supervision.

¹⁸ BSB Policy Statement on Bar Training 23/03/17

Principle 7 – Equality Objectives

Principles	Steer towards 100% Full Cost Recovery from non-PCF fees	Steer towards fully funded by the PCF (from the profession as a whole)
<ul style="list-style-type: none"> Encourage an independent, strong, diverse and effective legal profession 	<ul style="list-style-type: none"> Fees <u>do not</u> adversely impact service users with protected characteristics 	<ul style="list-style-type: none"> Financial barriers <u>discourage</u> or adversely impact service users with protected characteristics

As has been detailed above, the new Bar training rules aim to facilitate access to the Bar with a commitment to enhancing the profession’s diversity in relation to the protected characteristics.¹⁹ We believe that the recommended subsidisation of the Professional Ethics examinations and the limited fees charged to the pupillage and work-based learning providers addresses this to some degree.

Conclusion – Cost Recovery Principles

Having considered the seven principles, we suggest there are competing arguments for either recovering our costs from direct charging or subsidising from the PCF. To help us decide we have had regard to the impact of a number of other factors set out at paragraphs 17 – 32 of the main consultation.

¹⁹ There are nine protected characteristics as set out in the Equality Act 2010 being age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity. Race, religion or belief, sex and sexual orientation. Whilst socio-economic status is not specified in the Act, the BSB also considers the impact of its activities on this characteristic.