



REGULATING BARRISTERS

## **Future Bar Training**

# **Consultation on the Future of Training for the Bar: Future Routes to Authorisation**

**October 2016**

## Contents

<b>Executive summary.....</b>	<b>4</b>
<b>Part I: Introduction.....</b>	<b>9</b>
<b>Part II: General principles applying to any future training system.....</b>	<b>14</b>
<b>Part III: Options appraisal.....</b>	<b>21</b>
<b>Part IV: How to respond to this consultation.....</b>	<b>46</b>

## Executive Summary

---

Do you have views about the way in which barristers should be educated and trained in the future?

The Bar Standards Board's **Future Bar Training (FBT) programme** is considering **three possible options** for the future of training for the Bar and we want to hear from as wide a range of people as possible about them.

Whichever option is implemented, it could have a significant impact on the next generation of barristers and therefore the Bar itself. We hope that there will be a great deal of interest in this consultation paper from students, from barristers and from other interested parties.

Much has been said about the current system of training for barristers. It has its supporters but it also has its critics. **This is your opportunity to help us improve that system.**

Please let us know what you think.

### Background

Before we consider the three options, this consultation paper provides some background and outlines some important principles that we have to take into account when deciding what the best approach will be for the future of training for the Bar.

The background is explained fully in Part I of the consultation paper.

In short, we launched the FBT programme in 2014. It was our response to the earlier Legal Education Training Review (LETR) which considered the education and training requirements for all types of lawyers. In parallel with our FBT consultation, the Solicitors Regulation Authority (SRA) are also conducting a consultation about their own proposals for the future training of solicitors.

Amongst other findings, the LETR encouraged the respective legal regulators to take **a more outcomes-focused, flexible and innovative approach to education and training**. These have been guiding principles throughout our FBT programme to date.

Since FBT started in 2014, we have:

- Explained [our vision for the future of training for the Bar](#) in February 2015;
- Issued a wide-ranging [consultation paper on the academic, vocational and professional stages of training](#) in July 2015. This consultation paper follows on directly from the responses we received to the 2015 consultation;
- Published our Professional Statement in October 2015. This describes the knowledge, skills and attributes that a newly qualified barrister should have when issued with a Full Practising Certificate. This was updated and enhanced in September 2016 with the publication of an updated [Professional Statement for Barristers incorporating the Threshold Standard and Competences](#); and
- [Hosted a debate](#) in July 2016 about the three options which are now presented in this consultation paper.

## The current training system

The current training system for barristers requires students to complete **three separate and sequential stages of training** before being authorised as a barrister by the BSB. The academic stage requires either a law degree or a Graduate Diploma in Law (GDL) in addition to another degree. The vocational stage consists of students taking the Bar Professional Training Course (BPTC). Lastly, students must complete pupillage, a work-based learning stage, divided into a non-practising first six months and a practising second six months.

**Part I** of this consultation paper provides more detail about **the BSB's role in the education and training** of future barristers.

## General principles applying to any future training system

**Part II** of this consultation provides further detail about the policy principles upon which we intend to make our decision about the future of training. In this section, we set out a number of these principles and seek your views on them and on whether we have correctly identified their impacts.

Drawing on the results of responses to our 2015 consultation and our regulatory objectives, we have identified a number of fundamental principles which have guided our decision making. These are shown below:

- Flexibility;
- Accessibility;
- Affordability; and
- Sustaining high standards.

In addition to these guiding principles, we have identified the following policy points, which will be common to any or all of the options for future Bar training that we consider. These are shown below:

- A general expectation that the Bar would remain a graduate profession<sup>1</sup> and normally meet the minimum degree classification of 2:2;
- Students would need to pass an aptitude test and BSB centralised assessments;
- We should reduce to a minimum our regulatory involvement in the academic legal education (ie the “Qualifying Law Degree” or “Graduate Diploma in Law”<sup>2</sup> under the current system);
- We should continue to pursue as much of a common agenda with other legal regulators, and the SRA in particular, as can be achieved in pursuit of our principles; and
- During any transitional period between our final decision on future pathways in spring 2017 and the coming into force of a new system, specific reforms to the current education and training arrangements will continue.

---

<sup>1</sup> Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training, Summary of responses; p. 3, 11, 12.

<sup>2</sup> A Graduate Diploma in Law may be used with to another degree to satisfy the requirement.

### The three proposed FBT approaches

Finally, in **Part III** of the consultation paper we describe the **three possible approaches** for the future of Bar training which we are considering. We describe how each approach would work, discuss their strengths and weaknesses and then ask you to share your views.

Our appraisal of each option is based on the feedback that we have already collated from interested parties. Many of the respective strengths and weaknesses for each approach were discussed during our recent [debate](#).

Here is an overview of the three options:

#### Option A is an “Evolutionary” approach

- This approach would retain the three sequential stages in the current system: the academic legal education (law degree or Graduate Diploma in Law), the vocational training (currently the Bar Professional Training Course) and work-based learning.
- The changes already being undertaken to improve the current system would continue. These are explained fully in this consultation paper.

#### Option B is a “managed Pathways approach

- This approach would establish a number of different training pathways alongside each other.
- This would allow providers to offer courses that are more flexible and fit with the requirements of students.
- Option B provides for several routes which the BSB might authorise, including:
  - Option B(i): Academic legal education followed by the vocational training, followed by work-based learning (as in Option A above);
  - Option B(ii): Combined academic and vocational learning followed by work-based learning;
  - Option B(iii): Academic legal education followed by combined vocational and work-based learning requirements; and
  - Option B(iv): Modular format, in which components of qualification can be acquired separately over time (may also include an apprenticeship pathway).

Option B is the BSB’s favoured option because we think that this would be the best approach for ensuring that education and training providers can develop and offer more flexible modes of study so that that students are able to train in a way that suits them best.

### Option C is the “Bar Specialist” approach

- A degree or equivalent would still be required before taking the Bar Course Aptitude Test (BCAT) to test intellectual ability.
- Students would then be required to pass a new qualifying examination – the Bar Entrance Exam (BEE). This examination would cover knowledge and understanding of academic and vocational learning. Students may prepare for this exam in any way they choose.
- A three month approved skills course would need to be taken which would be followed by a period of work-based learning. We would hope to be able to make this more flexible and believe that the short skills course could be integrated in the work-based learning.

Under all of these options students would need to meet the requirements of the Professional Statement to be authorised. Training providers would need to demonstrate that their courses provide training which would enable students to do so.

### How to respond to this consultation

We have posed a number of questions throughout this consultation paper. You do not need to answer them all.

Ultimately, we would like to know which of the options for future Bar training you think is most appropriate and the reasons why.

You can share your thoughts with us in a number of ways:

- Emailing your thoughts to us at [futurebartraining@barstandardsboard.org.uk](mailto:futurebartraining@barstandardsboard.org.uk)
- Submitting a full written response for us to consider, either via email or by post to: Hannah Wilce, The Bar Standards Board, 289 High Holborn, London, WC1V 7HZ.
- Attending one of our planned meetings around the country for us to listen to your views. Details of these events are on our [website](#).

This consultation closes on **23 December 2016**.

### Who should respond to this consultation?

We would like to hear from as many interested respondents as possible. However, we are particularly interested in hearing from:

- Students: current law students, BPTC students and anyone interested in a career at the Bar;
- Members of the legal profession: registered and unregistered barristers, solicitors or anyone who works with barristers professionally;
- Higher education and training providers: universities, BPTC providers and legal academics;
- Consumer organisations who may represent the interests of users of barristers’ services; and

## Future Bar Training: Future Routes to Authorisation

- Organisations which have an interest in promoting equality and diversity and access to the profession.

## Part I: Introduction

---

### About the BSB and what we do

1. The Bar Standards Board is the regulator of barristers in England and Wales. We are responsible for setting the education and training requirements for those who wish to practise as barristers in England and Wales.
2. Under the current system, prospective barristers train under a prescribed route involving higher education institutions and professional training providers. In many cases, there is a mixture of the two. The Inns of Court also play an important role in a barrister's career; they alone confer the title of barrister and they provide the advocacy training during the professional stage of training. If students have satisfied our requirements, we can authorise them to practise as regulated professionals.
3. We are responsible for the Code of Conduct ([the Handbook](#)) which sets out how they must work once they are qualified. We monitor how well barristers are meeting our practising requirements.
4. If they breach the Code of Conduct, we can take enforcement or disciplinary action against them. Through our activity, we protect the public interest and consumers, and help uphold the rule of law and the proper administration of justice. You can find out more about us on our [website](#).

### Strategic context and our approach as a regulator

5. Barristers are specialist legal professionals who have a particularly important role in upholding the rule of law and providing access to well-administered justice through our court system. Barristers' clients rely upon their trustworthy advice and complete integrity.
6. The standards expected of the profession depend upon a high level of intellectual ability, a firm foundation of knowledge and skills, and the confidence to use those in challenging circumstances. How people become barristers is important to society as a whole, as well as to individuals who might be relying on their services, or thinking of becoming a barrister.
7. Along with other legal services regulators, such as the Solicitors Regulation Authority<sup>3</sup> (SRA) and CILEX Regulation<sup>4</sup>, our regulatory objectives are:
  - protecting and promoting the public interest;
  - supporting the constitutional principle of the rule of law;
  - improving access to justice;
  - protecting and promoting the interests of consumers;
  - promoting competition in the provision of legal services;
  - encouraging an independent, strong, diverse and effective legal profession;
  - increasing public understanding of citizens' legal rights and duties; and

---

<sup>3</sup> The body responsible for regulating solicitors.

<sup>4</sup> The body responsible for regulating legal executives.

- promoting and maintaining adherence to the professional principles.
8. Earlier this year, we published our Strategic Plan for 2016-2019. [This Plan](#) and the accompanying annual business plans which support it, set out our strategic aims for ensuring we are best placed to respond to our regulatory objectives. These include:
- regulating in the public interest;
  - supporting barristers and those we regulate to face the future; and
  - ensuring a strong and sustainable regulator.
9. We are a risk- and evidence-based regulator. This means that our approach, including the setting of the education and training requirements, must focus on identifying potential risks which could prevent us from meeting our Regulatory Objectives.

#### The Legal and Education Training Review

10. In summer 2013, the Bar Standards Board (BSB), the SRA and ILEX Professional Standards (IPS; now called CILEX Regulation) published the [Legal Education and Training Review](#) (LETR). This was a large, independent review of the system of training legal professionals in England and Wales. It considered the role of higher education and professional training providers in delivering high quality education and training to meet the needs of the profession and society, given the important role legal services professionals play in the administration of justice.
11. The review recognised many good features in the system for training barristers. But it also looked to the future and recommended reform so that training would be better matched to barristers and clients in 2020 and beyond.

#### LSB statutory guidance

12. In responding to the LETR recommendations, the LSB published its own [statutory guidance](#) on legal education and training for relevant regulators. The guidance highlights several key requirements, including:
- education and training requirements focusing on what an individual must know, understand and be able to do at the point of authorisation;
  - providers of education and training having the flexibility to determine how to deliver training, education and experience that meets the outcomes required;
  - standards being set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements;
  - regulators successfully balancing obligations for education and training between the individual and the entity both at the point of entry and ongoing; and
  - regulators placing no inappropriate direct or indirect restrictions on the numbers entering the profession.

#### The Future Bar Training Programme

13. Informed by the Legal Education and Training Review and the LSB's statutory guidance above, the BSB began work to address the issues raised in the review by initiating a wide range of policy activities under one programme, Future Bar Training (FBT). The FBT programme was launched in 2014 to focus on:

- how training should be regulated to best meet the needs of professional practice;
- ensuring that regulatory requirements do not restrict access to the Bar;
- ensuring that the requirements for education and training are targeted on the desired outcomes and are proportionate; and
- maintaining the standards which must be met at the point where someone is authorised to practise.

#### Our FBT consultations

14. In February 2015, we published our [vision for the future of training for the Bar](#). In that paper, we set out our proposal for standards on entry to the profession to be set by reference to a [Professional Statement](#), which was first published in October 2015. This has now been supported by the development of the Threshold Standard and Competences, which outline the standards and competences that must be achieved for authorisation.
15. Last summer we launched a [Future Bar Training consultation](#). This consultation explored many of the issues raised by LETR and what changes might be made to improve the current system. It examined in detail the relative strengths and weaknesses of the current three-stage system as well as any possible approaches to reform and any regulatory requirements. This consultation received responses from members of the profession (individuals and representative bodies) and other stakeholders, such as those involved with legal education and training, voluntary sector organisations and members of the public.
16. A full [summary of the responses to the consultation](#) was published in February this year. This was an important step in highlighting the issues with the current system and illustrating what changes we would be considering in the future. Since this time, we have given careful consideration to the responses and have developed thinking on working models of future training and the purpose this consultation is to share these.
17. Drawing on the results of the consultation and our regulatory objectives, we have identified a number of principles which have guided policy development. These are: **improving flexibility, accessibility, affordability and sustaining high standards**. In addition to these guiding principles set out above, we have settled on the following points of policy, which we intend should be common to any or all options we consider.

- A general expectation that the Bar would remain a graduate profession and normally meet the minimum degree classification of 2:2;
- Students would need to pass an aptitude test and BSB centralised assessments;
- We should reduce to a minimum our regulatory involvement in academic legal education (ie the current Qualifying Law Degree or Graduate Diploma in Law);
- We should continue to pursue as much of a common agenda with other legal regulators, and the SRA in particular, as can be achieved in pursuit of our principles; and
- That during any transitional period between our final decision on future pathways in spring 2017 and the coming into force of a new system, specific reforms to the current education and training arrangements will continue.

### About this consultation

18. This consultation builds on last year's Future Bar Training consultation, consolidating the learning from that and exploring what future routes to training may be authorised. In Part II, we address the cross-cutting policy issues highlighted above as well as approaches to reform of the current three-stage system and regulatory requirements. In Part III, we consider three Options, assessing the relative strengths and weaknesses of each in pursuit of our stated principles and policy objectives. We explain which Option we prefer and why. Information on how you can respond to this consultation and our engagement activities can be found in Part IV.
19. The consultation does not consider the requirements we set for people who are already fully qualified as a different type of lawyer, either here or overseas, and who want to practise as barristers in England and Wales. We will address those requirements once we have decided what to do with the reform of the main training system.

### How we will use this consultation

20. Once we have heard people's views on the proposed new routes to qualification for barristers, we will evaluate those views in relation to our statutory obligations and the other aims we have identified. We expect the Board will be asked to approve final recommendations on routes to authorisation in spring 2017. We will then make the necessary changes to our rules and regulations and make practical plans for change.
21. We anticipate that the earliest a new system of education and training for barristers could begin to be implemented would be from autumn 2018 onwards.

### Who should respond to this consultation?

22. Anyone who is interested in doing so. However, we are particularly interested in hearing from:
- Students: current law students, BPTC students and anyone interested in a career at the Bar;
  - Members of the legal profession: registered and unregistered barristers, solicitors or anyone who works with barristers professionally;
  - Higher education and training: universities, BPTC providers and legal academics; and
  - Consumer organisations who may represent the interests of users of barristers' services or organisations which have an interest in promoting equality and diversity and access to the profession.
23. There are a number of different ways of engaging with the consultation process and responding – see Part IV of this document for more details.

### How has this consultation been developed?

24. The BSB is extremely grateful to the following committee and reference group members for their time, energy and expertise:

## Future Bar Training: Future Routes to Authorisation

- Education & Training Committee: the BSB's committee members (many of whom are BSB Board members) who lend expertise on policy development matters relating to education and training and practice at the Bar;
- Future Bar Training Programme Board: the BSB's internal programme board which has helped all involved in the FBT programme to deliver such a complex programme to date; and
- Future Bar Training Task Completion Group: a small collection of practising barristers, legal academics, BPTC course leaders who volunteer their time and efforts to provide external challenge and fresh perspectives on our internal thinking.

## Part II: General principles applying to any future training system

---

25. Part II of the consultation seeks to clarify the BSB's position on some of the broad policy points, which we think should apply to any future system for training to become a barrister. We have formed our views on the basis of research and evidence, including the [responses](#) given to us in our 2015 consultation.
26. We have also considered carefully the wider higher education environment, and the experience of other legal services regulators in developing their own plans for education and training in recent years. The BSB has been mindful of the relevant LSB statutory guidance and the regulatory objectives as set out in the Legal Services Act 2007 ("LSA 2007", see Part I) in forming its view about these general principles.
27. Some of these policy matters have now been settled, such as our new outcomes-focused approach (ie the Professional Statement), the role of the Bar Course Aptitude Test and the need for some centralised assessments. However, other policy matters remain live. These include, for example, whether a degree is still necessary to train for the Bar, and if it is, does degree classification still matter? If it does, are some degrees better or more appropriate for the study of law than others and how does the regulator, based on evidence and in the public interest act in a balanced and proportionate way to settle these questions.
28. We now invite respondents to tell us whether they agree with some of the principles we set out in this section, on the understanding that these are principles that would apply to any final route to qualification the BSB might approve.

### The BSB as an outcomes-focused regulator of education and training

29. The BSB is required to be a risk-based, transparent and proportionate regulator, targeting its work at the areas of most need in relation to the Regulatory Objectives.<sup>5</sup> Our focus in relation to education and training must, therefore, be on setting and maintaining standards at the point of authorisation (ie the award of a first practising certificate). To do this, the BSB has clearly defined what competences are required and what the minimum standards are to achieve the competences; these are set out in our [Professional Statement and Threshold Standard](#). This description of the knowledge, skills and attributes and the minimum standard to which those should be capable of being performed on "day one" of practice will underpin the new system of training for those we authorise. It now serves formally to assist us in maintaining standards, both of those entering practice and of providers of education and training; and to inform the design and delivery of education and training pathways, including the development of educational materials, learning outcomes and assessments.
30. We are currently developing an Authorisation Framework, which will enable us to assess whether training proposals meet the requirements set out in the Professional Statement. We may set out in guidance how each competence will be assessed (eg through centralised assessments). It will otherwise be for potential providers to demonstrate how they expect to meet the requirements we have set. For example, where the route to authorisation allows modules from the academic, vocational and/or professional

---

<sup>5</sup> See relevant statutory references (list) and BSB Risk [Outlook](#), [Index](#) and [Framework](#)

requirements to be combined, the Authorisation Framework will be critical for ensuring all components of the Professional Statement are satisfied.

31. In future, we will exercise less direct and prescriptive control over how people may prepare to achieve the required standard currently captured at the academic stage. In particular, where there are other quality assurance or consumer protection organisations or mechanisms in place - and so long as this quality assurance is not in doubt - the BSB will not duplicate their role as this would be likely to be both disproportionate and unnecessarily costly. So, for example, whilst undergraduate degree programmes may be part of a pathway towards qualification, the BSB would in future have no direct quality assurance role in relation to those programmes and would expect that role to be fulfilled by the regulatory system for higher education institutions in England and Wales. This lighter touch role for the BSB, especially in the earlier stages of education and training, was generally well supported in our 2015 consultation. It allows us to concentrate our own oversight on matters more directly concerned with our standards for authorisation to practise, whilst still addressing a wide range of risks associated with education & training.
32. The BSB will, nevertheless, aim to use targeted but proportionate regulatory tools to ensure consistency of standards and outcomes of training across a potentially wider range of routes to authorisation. Our experience in relation to, for example, centralised assessments in three subjects in the current BPTC, and to the universal test for entry (BCAT – Bar Course Aptitude Test) to that course, shows that such tools can be important regulatory controls to improve and assure consistency in standards. Such tools can also mitigate the risks of disproportionate impacts on people with protected characteristics. Our evidence shows, for example, that in the current system, the BCAT score is a better predictor of success in the vocational requirements of training than degree classification or awarding university, and reliance on the BCAT score rather than degree classification could contribute to improvements in equality and diversity in the system.
33. The BSB, therefore, proposes in principle to maintain a role in controlling assessments at specific points on the route to qualifying as a barrister, and our requirements would be explained in our Authorisation Framework. We set out in Part III more detail about what that could mean in relation to the routes we illustrate, and will be seeking respondents' views.

The role of the Inns of Court in conferring the title of 'barrister'

34. Under current legislation (LSA 2007) a barrister is defined as a person called to the Bar of England and Wales by one of the four Inns of Court. To achieve authorisation by the BSB as a barrister, a person will, as at present, need to comply with BSB requirements and be called by an Inn. The Inns can make an important contribution to promoting the professional principles, especially integrity and ethical conduct. For this reason, we have no current plans to seek changes to s207(1) of the LSA 2007 and now seek views on this approach.

**Question 1:**

***Do you agree with the BSB's proposal not to seek changes to s207(1) of the LSA 2007? If you do not agree, please state why not.***

35. In Part III we indicate at what point on a route to authorisation we would expect a person to be called to the Bar. The Inns themselves make a number of requirements of candidates being called to the Bar: for example, attendance at 12 “qualifying sessions”<sup>6</sup>. The Inns’ requirements are, in effect, part of the BSB’s regulatory arrangements. As such, the BSB must consider the extent to which the Inns’ requirements are necessary to meet the requirements of the professional statement and conform to the LSB statutory guidance, the regulatory objectives and any other statutory requirements or policy provisions of the BSB. We propose to do this through a specific review of the Inns’ requirements as we develop our final plans for the Future Bar Training programme in 2017.

Three core components of training: graduate level education, legal professional training and work-based learning

36. Currently, education and training for the Bar consists of three core components:

- an academic education (to graduate level or equivalent) in law;
- legal professional (vocational) training; and
- work-based learning (known as pupillage).

37. There was strong support for each of the three components in the 2015 consultation and we think that all three components should continue. As will be clear from Part III of this consultation, we are proposing potentially significant changes to the phasing and weighting of the different components, moving away from the prescribed consecutive three-stage approach. The following paragraphs concern policy matters relating to the academic legal education.

38. We say more about work-based learning and legal professional or vocational training in Part III.

The Bar as graduate profession

39. There was strong support in our 2015 consultation for the principle that the profession of barrister was a graduate profession and that any major shift from that principle could undermine public and consumer confidence. Moreover, key attributes of graduates, as set down in UK national qualification frameworks (for example, the Quality Assurance Agency Benchmark Statement for Law), have been integrated into the Professional Statement. We are proposing, as part of any new pathway we authorise, to replace the current mandatory foundation law modules, currently prescribed in the [Joint Statement](#)<sup>7</sup>, with a general requirement that a law degree encompasses

**“the knowledge and understanding of the basic concepts and principles of public and private law within an institutional, social, theoretical and transnational context.”**

40. We think this broader approach aligns best with both the QAA standards and our own regulatory approach of reducing prescription where there is no longer the need. We also

---

<sup>6</sup> For a sample description of Qualifying Sessions, see <http://www.innertemple.org.uk/education/students/qualifying-sessions>

<sup>7</sup> The Joint Statement prescribes content and context for academic learning institutions. The BSB will no longer prescribe law modules listed in Schedule 2. Instead it will issue the statement as noted in this consultation as guidance for institutions in setting their own curriculum for law degrees.

think that this would free up higher education providers to include greater contextual knowledge and training in independent thought in academic legal education.

41. From a regulatory point of view, the BSB is primarily - though not exclusively - concerned with the outcome of education and training, and any training pathway that we approve must demonstrably meet the requirements of the Professional Statement. A degree level education will continue to be the most obvious and common way of achieving elements of this, and we expect that most candidates will want to have their level of educational attainment recognised by the award of a degree. We therefore propose to maintain the principle that barristers must be able to demonstrate graduate attributes at the point of authorisation and we would normally expect this to be evidenced by possession of a degree.
42. As can be seen in Part III, some possible future “Managed Pathways” might make it difficult to specify a degree as an *entry* requirement into training for the profession because, for instance, they might be blending a degree with vocational elements of the training. The BSB’s regulatory role relates primarily to the outcome of training, so we believe it would be consistent for us to specify a degree (or the demonstration of the relevant graduate attributes) as a requirement by the end of the chosen training pathway. Training providers offering such a route would have to have degree awarding powers, or a relationship with an institution that does, and supplement any BSB requirements to the extent required for the award to qualify as a Level 6 degree in the UK Higher Education framework. Some might choose to award a Level 7 Masters qualification – there are illustrations of this in Part III.

**Question 2:**

***Do you agree with the BSB’s proposal to maintain the principle the Bar remain a graduate profession? If not, please state why not.***

Minimum degree classification

43. We currently specify that a degree is required at Lower Second Class (2:2) as a minimum for entry to the vocational training stage. In 2015, we consulted on this requirement, and suggested that it might be raised to an Upper Second Class (2:1) degree. The responses to the consultation highlighted the current inadequacies of degree classification for the intended purpose. The risks of disproportionate impacts on protected characteristic groups through reliance upon degree classification as a proxy for intellectual capability and graduate attributes are well documented and were also raised in the 2015 consultation responses. The concerns that have been expressed about comparability of degree classification across different universities, including in responses to our 2015 consultation, give a persuasive reason to avoid such a heavy reliance on this as measure for regulatory purposes.
44. We have also recently reviewed the future of the Bar Course Aptitude Test (BCAT), and will introduce a revised (higher) pass mark for candidates starting the course in 2017<sup>8</sup>. The BCAT has proven to be a significantly better predictor of success in training on the BPTC course than other measures, including degree classification. We have

---

<sup>8</sup> Full BCAT analysis is available [here](#).

commissioned [psychometric analysis](#)<sup>9</sup> which confirms the alignment of the BCAT with a number of attributes in the Professional Statement that relate to intellectual ability. The efficacy of the BCAT substantially reduces the reliance on degree classification; these concerns were also raised by respondents to our 2015 consultation<sup>10</sup> concluding that a degree alone would satisfy the requirement for graduate attributes.

45. The BCAT does not, however, validate the full range of graduate attributes that are relevant to practice as a barrister; these have been mapped to the Professional Statement. We have concluded that there is a strong, proportionate case for retaining both requirements (ie the BCAT and a degree). Therefore, we think that it would not be proportionate to raise the minimum degree classification to 2:1.
46. We propose that the following approach would fulfil our regulatory objectives:
- candidates will be required to pass the BCAT at an appropriate point in their training; and
  - candidates will normally be expected to demonstrate graduate attributes by acquiring a degree to *complete* the training with a minimum of a 2:2.
47. Part III of this consultation gives details about what the appropriate points in any given training pathway would be for demonstrating a BCAT pass at the revised score. The name of the test might no longer be appropriate for some pathways but we think its inclusion at a specific point will assist candidates in understanding their likelihood of success in proceeding to authorisation as barristers, and will have the effect of excluding, in the public interest, those who do not have the appropriate cognitive capabilities to meet the requirements for authorisation.
48. Notwithstanding this, the BSB does have a general facility in the Code of Conduct to waive any of our requirements so that applications for waivers from the education and training requirements could in certain, exceptional, circumstances be granted. Currently, we receive very small numbers of applications per year for this kind of waiver<sup>11</sup> and we would not expect to remove this provision under any of the changes being considered. It is also important to note that some of the options discussed in this paper *may* encourage providers to design a training pathway that did not require the traditional award of a degree (the modular approach to Option B, for example). Approved paths would have to ensure that candidates demonstrated the required graduate qualities by the time a student completes their studies.

---

<sup>9</sup> BCAT research as submitted to LSB in application to raise cut score.

<sup>10</sup> Consultation on the Future of Training for the Bar: Academic, Vocational and Professional Stages of Training, Summary of responses; p. 8.

<sup>11</sup> Applications for admission as a mature non-graduate (ie to be able to undertake CPE/GDL without a degree): 9 applications received of which 6 approved; Applications for full waiver from Academic Stage (ie to be able to commence the BPTC without either degree qualifications or CPE/GDL): 2 applications received, of which 0 approved.

**Question 3:**

***Do you agree with the BSB's proposal to maintain the normal expectation of a minimum degree classification of 2:2? If not, please state why not.***

Our relationship with other legal education and training systems and regulators

49. The current legislation (principally LSA 2007) reflects historical boundaries within the legal professions as a whole and provides for a range of legal services regulators, each with its own distinct arrangements relating to the training requirements for authorisation under the statute. The 2013 LETR demonstrated nonetheless considerable common ground between regulators. Projects in relation to the setting of competence standards in discrete areas of practice, after first authorisation, have brought some regulators together to agree common standards and outcomes. Moreover, some overseas jurisdictions, especially in Commonwealth countries, allow call to the Bar of England and Wales to exempt candidates from aspects of training in relation to authorisation as legal professionals in their jurisdictions.
50. We have kept in close touch in particular with the Solicitors' Regulation Authority (SRA) following the jointly-commissioned LETR and have sought to ensure alignments in critical areas which would allow training providers to offer routes that were delivered in common for all those intending to practise in the reserved activity or title-based professions as far as reasonably possible, whilst respecting the boundaries set out in the LSA 2007, ie without in any way proposing a "fusion" of the legal profession. It is important to note here the relative sizes of these two branches of the legal profession: there are more than ten times as many practising solicitors as there are practising barristers. It is unlikely that we would be able to reduce the level of risk for students of the Bar or have any real prospect of reducing costs of training for them without being prepared to adopt this rational attitude to the possibility of common approaches.
51. We, therefore, intend to pursue as much common agenda with the SRA (and other legal services regulators where relevant) as can be achieved, as long as that agenda accords with the principles we have already set out here in Part II of this consultation document. In relation to the SRA's current consultation, we will be working to identify the points at which we will be prepared to recognise their (and other regulators') requirements as equivalent to or exempting from our own requirements.
52. We also intend to maintain close contact with the bodies which control qualification routes in other jurisdictions to ensure they are aware of our future proposals and that we understand and deal with any impacts of our plans on them where it is appropriate and proportionate to do so.

Continuing improvements to the current system pending new regulatory arrangements

53. Our work on the Future Bar Training programme over the last four years has allowed us to identify many changes and improvements to the system of education and training for barristers. Where implementing these is consistent with statutory guidance and the regulatory objectives, and/or does not require significant or formal changes to our regulatory arrangements as set out in the BSB Handbook, we have done so. For example, we have relinquished some aspects of quality assurance of undergraduate degree programmes, made improvements to centralised assessments on the BPTC,

relaxed unnecessary levels of regulatory prescription in the delivery of elements of the BPTC and started to improve our supervision and quality assurance of pupillage.

54. We recognise that the changes proposed in this consultation document are systemic and may be far-reaching, and that they will take considerable time to put in place, especially in the higher education sector. We do not envisage a new set of rules to replace Part Four of the current BSB Handbook coming into effect before September 2018, and we know that there will be a need for potentially complex transitional provisions.
55. Nevertheless, we are fully committed to continuing to make small improvements and changes which complement our overall proposals for change. We do not consider the current system of education and training for the Bar to be “on hold” pending the more extensive changes that will flow from the proposals in this consultation. We always, of course, consult with those most directly affected by minor changes and improvements.

## Part III - Options appraisal

---

56. This section evaluates the three options which we are presenting for consultation. The three Options reflect substantially different approaches to the assurance of standards, promoting equality of opportunity and meeting the needs of candidates.

57. We have set out our thinking on each of the options based on the following criteria:

- the requirements of the Professional Statement;
- our wider regulatory objectives, including to what extent a route promotes equality of access, supports the rule of law and promotes the interests of consumers;
- the LSB's statutory guidance for education and training;
- alignment with higher education qualifications and an assessment of wider higher education policies in this market;
- promotion of innovation and reducing prescriptive regulation; and
- affordability for both regulation and for students.

58. We also think that each option we consider should incorporate close involvement of the profession, to ensure that qualifications carry credibility with those who will engage newly qualified barristers: chambers and employers. This will form an important part of implementing the chosen option.

59. Whichever option(s) we adopt, our approach to authorisation will be based on the premise that candidates must meet the requirements of the Professional Statement in order to be authorised; a candidate who is successful in an approved training pathway will be deemed to have met the requirements for authorisation. This premise was supported in the 2015 consultation.

60. As described in Part II, the development of an Authorisation Framework will enable us to develop a coherent and consistent approach to judging whether requirements of the Professional Statement have been met. It will apply to all approved routes, ensuring that course design is aligned to learning outcomes. It will set out, for example, the role of the BSB in ensuring assessment standards, whether through centralised examinations or laying down parameters or assessment criteria for assessments conducted by others.

61. In all options, we will strengthen and extend the assessments that we already deliver, and strengthen our oversight of skills assessments delivered by providers or others. We have already taken important steps to strengthen our assessments, under the current system. We envisage retaining the two sittings of assessments each year for any of the options, though intend to explore some changes in timing to promote flexibility in course delivery.

62. In all options, we will reduce the level of prescription in how subject matter is taught. To ensure that competence is achieved, we will increase our reliance on external oversight of teaching quality by working with appropriate providers and agencies, and on our own assessments. Those changes have already been progressed under the current system, with the redrafting of the BPTC and Pupillage Handbooks, changes to the way external

examining works, and strengthening of the assessments. We have also made some changes to the academic legal education requirements and would propose to bring forward more, in light of evidence from the 2015 consultation.

63. In all three options, we propose (as outlined in Part II) that a strengthened work-based learning requirement remains a feature for barrister training. In each option, this system will vary but reforms currently being developed include the following:

- shifting the focus of regulatory oversight to the training organisation and allowing greater flexibility in training organisation requirements;
- alignment of learning outcomes to the Professional Statement;<sup>12</sup> and
- encouraging a diversity of training supervisors within a given period of work-based learning and/or allowing for the possibility of a student with more than one approved training organisation within the same period.

64. The BSB currently specifies additional training requirements that must be met in the course of pupillage without the direct involvement of the pupil supervisor or training organisation: advocacy and practice management. We think that, consistent with the wider shift in emphasis toward accountability on the part of training organisations, the majority of these requirements will be expected to be incorporated within a record for students to keep track their training progress which will need to be kept. The learning outcomes during this period of training must be aligned to the Professional Statement. Training organisations will also be expected to include the planning of these, and any other formal training requirements, in their formal plans for supervising students during work-based learning<sup>13</sup>.

65. Currently, only advocacy is formally assessed in the course of the non-practising period of pupillage, and the assessment is conducted by the pupil's Inn of Court. We see no reason why this arrangement could not continue under any of the options considered below. However, in line with the approach the BSB intends to take to Inns' Qualifying Sessions (see paragraph 35), the BSB will review discretely in 2017/18 the regulatory arrangements for Inns' advocacy training and assessment to ensure they remain appropriate in the light of our new approach and align with statutory guidance and our own approaches to quality assurance and authorisation.

#### The BSB's preferred approach

66. Having given careful thought to our 2015 consultation as well as to our statutory role, we are of the view that we must improve flexibility for students and providers, accessibility to the profession and, where possible, improve affordability of training.

67. We propose, therefore, to move away from the current, single route to authorisation that is prescribed by the BSB to one in which candidates demonstrate that they meet the requirements of the Professional Statement and allows for legal education and training institutions to make proposals to the BSB for routes which will best prepare students under these circumstances.

68. At present, the only option which in the Board's view, appears to meet the challenges highlighted above in Part I and both meets our statutory requirements and satisfies our stated principles in Part II is Option B or the "Managed Pathways" approach, as

---

<sup>12</sup> A record of how learning outcomes have been satisfied will replace the current system of checklists.

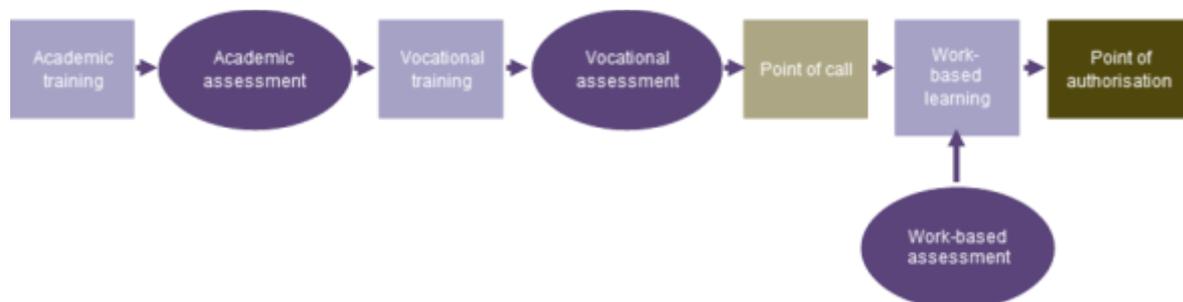
<sup>13</sup> This is currently known as a Pupillage Plan.

described and illustrated below. Although the BSB has taken a principled view in favour of this option, we will be reviewing all the evidence before the Board makes its decision early next year. Two other options are presented and evaluated below. Respondents may, of course, propose other routes, but these need to be evaluated using the same criteria we have used in assessing the options set out in this consultation. Respondents may recommend an entirely separate option or another route, which forms part of the “Managed Pathways” approach.

A reminder: the current route to authorisation

69. At present, training has three consecutive stages that must be completed by prospective barristers. The academic stage<sup>14</sup> involves an undergraduate degree in law, which takes three years to complete on a full-time basis. Alternatively, for students who already have an undergraduate degree in another subject, a one year full-time (two years part-time) Graduate Diploma in Law (GDL) may be taken. The vocational stage consists of the Bar Professional Training Course (BPTC), which gives students further mandatory and elective modules which are tailored to a career at the Bar. The emphasis at this stage is on advocacy, litigation, drafting, opinion writing and ethics. The BPTC can be completed in one year full-time or two years on a part-time basis. The work-based learning or “pupillage” as it is currently known, is the last stage which must be completed to be authorised to practise as a barrister. Generally, a pupillage is undertaken in a set of Chambers or as part of an in-house legal team, such as a firm of solicitors or the Government Legal Service. Pupillage is comprised of two parts; in the first six months, a pupil generally observes an experienced barrister, attending court, conferences and assisting with paperwork. In the second six months, a pupil will be expected to manage their own personal caseload, under supervision, and can earn fees from the cases they handle.

**Figure 1: The current route to authorisation**



70. The current system generally equips candidates well for a career at the Bar, but we have important concerns about flexibility, accessibility and the cost of completing all three stages. Training for the Bar is a commitment that carries a great deal of risk for candidates, given that there are limited pupillage opportunities available, meaning most students who successfully complete the academic and vocational stages may never work as a barrister, albeit they will be well qualified for a variety of other professional careers.

<sup>14</sup> A degree in Law (LLB) satisfies the requirement for a ‘Qualifying Law Degree’ (QLD). The Graduate Diploma in Law may be obtained as an alternative to a degree in law.

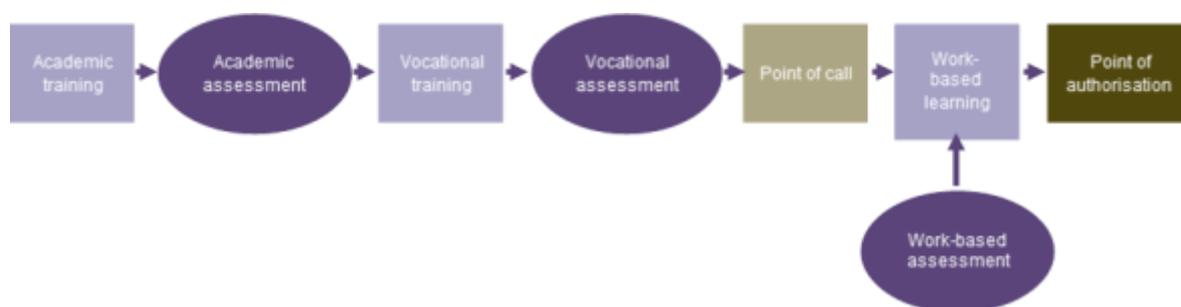
## Proposed routes to qualification

### Option A: “Evolutionary” approach

71. In this option, the structure of training retains its three-stage formulation, requiring students to fulfil academic, vocational and work-based learning requirements in sequential stages. In contrast with the current model, teaching will be less prescribed, anticipating that this freedom would result in the development by course providers of more cost-effective programmes of study that adapt to the requirements of a changing Higher Education environment. This option is described as “evolutionary” because it might be characterised as building upon and refining the current structure, as highlighted above.

72. The figure below illustrates the “evolutionary” approach to qualification, as described for Option A.

**Figure 2: “Evolutionary” approach – Option A**



### Regulatory controls

73. The regulatory controls under this option will remain similar to those of the current system, including:

- A Qualifying Law Degree (or undergraduate degree, plus the successful completion of the Graduate Diploma in Law);
- Successful “Pass” mark on the Bar Course Aptitude Test;
- Successful completion of a reformed BPTC, along with strengthened centralised assessments; and
- Successful completion of work-based learning.

### Meeting the requirements of the Professional Statement

74. With the use of the Professional Statement and Authorisation Framework, each stage (academic, vocational and professional) will need to be broken down into a set of outcomes that ensure successful students have met the Professional Statement. We believe that aligning the components to the Professional Statement can facilitate greater flexibility in the courses which are ultimately offered.

75. Care will be taken to avoid defining components as formally taught just because they are “taught” now, as some aspects of the course could reasonably be delivered by other means. If this option is adopted, it would then be for training providers to interpret the training syllabus more creatively, setting out how learning outcomes ensure students are able to meet the requirements of the Professional Statement.

76. Under Option A, a work-based learning requirement would be retained. There is, of course, debate as to the effectiveness of a discrete final period of training when knowledge acquisition takes place in advance of students being able to embed learning through practice.

**Question 4:**

**Do you agree with our analysis of this option's capability to meet the requirements of the Professional Statement? If not, please state why not.**

Supporting our regulatory objectives

77. We are concerned that Option A might not provide adequate scope to improve on the current system, and in particular that the present system is too inflexible by being so strictly sequential and costly as a result, restricting access to the profession. Given the role of the Bar in promoting the interests of consumers and access to justice, it is important that the composition of the Bar should be as representative as possible of the wider community it serves.
78. We think that the current system provides benefits in fostering a wide range of locations from which to study. We might anticipate this would be sustained under Option A. Locations include London, Birmingham, Manchester, Leeds, Newcastle, Bristol, Cardiff and Nottingham, with half of these locations offering competition for students amongst more than one provider. Ensuring legal education in a diverse range of cities is key to ensuring access to the profession for a diversity of students. Supporting the regional legal circuits also enables greater access to justice and choice for consumers as law students gain experience through hands-on casework through the various forms of pro-bono and legal clinic work.

**Question 5:**

**Do you agree with our analysis of this option's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.**

Meeting the LSB's statutory guidance on education and training

79. Many of the recommendations stemming from the LETR review have been implemented in our ongoing processes of regulatory improvement. The development of the Professional Statement has clearly established the learning required to meet the competences for authorisation.
80. Furthermore, by reducing the amount of prescription in the BPTC Handbook, providers will be freed to innovate with taught modules and syllabus requirements as long as the learning outcomes satisfy those in the Professional Statement; the development of our Authorisation Framework will help enable this alignment.
81. Apart from the shortcomings in access to the profession as highlighted above, we believe Option A meets these requirements and upholds the high standards needed for the development of future barristers.

**Question 6:**

**Do you agree with our analysis of this option's capability to meet the LSB's statutory guidance? If not, please state why not.**

Capacity to promote professional principles, especially integrity and ethical behaviour

82. The BSB requires barristers to meet the requirements of the Professional Statement, including aspects of a barrister's practice relating to integrity and ethics. The current system mandates a specific taught module on ethics during the BPTC, which is assessed centrally.
83. All practising members of the Bar are subject to the continuing professional development regulations. Compliance is an obligation of the Bar Handbook<sup>15</sup>. We do not propose to make any change to the current requirement that newly qualified barristers undertake further Continuing Professional Development (CPD)<sup>16</sup>, including at least 9 hours of advocacy training and 3 hours of ethics training. Currently, all hours must be accredited by the Bar Standards Board.
84. CPD reforms for existing practitioners is to be implemented from 2017 and, it is anticipated that the CPD requirement for newly qualified barristers will be reviewed following subsequent to the outcome of the routes now being considered.
85. There is, however, debate as to the value of an assessment in which the cue to seek an ethical issue is apparent, simply because the exam is on that topic. A number of stakeholders have suggested that ethics is best taught integrated with other subject matter modules, as was the case during the years of the Bar Vocational Course (predecessor to the BPTC). Others have suggested that LETR Recommendation 7: 'the learning outcomes at initial stages of legal services education and training (LSET) should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system and the role of lawyers in relation to those values' be implemented in developing the undergraduate curriculum.
86. In Option A, the proposal would retain the existing centralised assessment in ethics but with changes to the format of the exam from 2017.

**Question 7:**

**Do you agree with how ethics is taught and assessed under Option A? If not, please state why not.**

Addressing cost - cost of regulation

87. We can have greater confidence in the cost implications of this option than any other, because it is minimally disruptive to the current system. There is a strong argument for such a cautious approach, given the complexity of the policy issues and market, the cost constraints upon the BSB and cost sensitivity for candidates.

<sup>15</sup> Part 4, section C, The CPD Rules

<sup>16</sup> This is known as the "New Practitioners' Programme".

88. The BSB currently applies a policy of full economic cost recovery for its oversight of the BPTC training market (c £800k per annum in 15/16). We recover these costs from students on the BPTC via a per capita charge to the providers, who pass it on to students in their own fees. We also recover a significant proportion of the cost of handling waivers from our standard qualification requirements directly from applicants.
89. We anticipate that the following developments under Option A will have an impact on cost, which ultimately transfers to the candidate:
- *strengthening centralised assessment*: the planned changes to the current centralised examinations are expected to increase costs for the BSB by about £80,000 on a current budget of about £400k. The removal of requirements for course providers to contribute to the delivery of the examinations is not expected to yield immediate cost savings on their part, but will increase flexibility in the deployment of teaching staff over time permitting other types of cost saving.
  - *removal of prescription* (eg in relation to class size): we think there is scope for course providers to deliver the training more efficiently and without affecting quality, with greater freedom to organise teaching groups according to need – including the integration of teaching in some areas with students from other programmes.
  - *strengthening oversight of local assessment*: a shift of focus from quality assuring the delivery of training, to the closer oversight of local assessment, is not expected to have a significant impact on cost. The current system of external examination has been reviewed, with plans now being put in place to strengthen the system by more effective deployment of a smaller number of experts, and a greater focus on their training. These changes are expected to be cost neutral in their effect.
  - *removal of elective modules*: we are currently thinking about what effect, if any, the removal of prescription in elective modules on the BPTC may have both on cost for students and the impact on alignment with Higher Education awards. Removal of this requirement may have an effect on the structure of vocational training, with the *potential* for cost reduction in our oversight and quality assurance, and for students in fees charged.

#### Addressing cost – for students

90. Under Option A, the familiar three-stage system is retained, meaning that a student must complete an undergraduate degree before studying on the BPTC and then completing a period of work-based learning. The cost of completing a degree is currently set by the UK Government up to £9,000 per year for a UK/EU student's degree programme (usually three years), whether the subject is law or not. If the degree is not in law, a GDL is required, at an additional cost of around £10,000 for the one-year conversion course.
91. The current BPTC is delivered at a fee to students of between £13,500 at a regional provider to £19,000 in central London: a substantial charge for a one-year professional training programme and a matter of acute concern to a number of those who responded to our 2015 consultation and who attended our FBT debate in June 2016.
92. Currently, pupillage providers offer a minimum funding guarantee of £12,000 for trainees, but we have heard consistently that this funding does not always cover the necessary

cost, especially for those undertaking training in London. That said, other Chambers or employers, mostly commercial, offer an award in excess of the minimum, but the possibility of doing so is more difficult for chambers primarily undertaking publicly funded work.

93. For the 2012 cohort of degree students, the average debt on graduation has been estimated to be £44,000.<sup>17</sup> There are mixed views about the debt burden on graduates, given the special terms of the loan agreement and the write-off arrangements for those earning little over their careers. But perception of the debt burden must be a significant consideration, insofar as it affects choice and perceptions of affordability.
94. Our proposals for strengthened centralised assessments have meant an increase in cost. However, we think this additional cost will be offset against other areas where we will be less prescriptive.
95. Furthermore, we acknowledge that introducing greater freedom for training providers might lead to the emergence of more stratification and perhaps a prestige market for training. In other words, we are concerned that more selective and intensive training courses may become established and preferred by chambers and employers, which are affordable by only a few. We think this risk can be addressed to some extent in the criteria that we establish for accrediting training organisations. But there is a tension between introducing such requirements and promoting innovation and flexibility, and therefore a balance to be struck.
96. From 2016/17, we are becoming less prescriptive about class sizes for teaching on the BPTC, although certain parameters remain. It is unlikely that this on its own will have a significant impact, if any, on fees charged to students but the change may enable us to better consider the impact of further change in the future
97. The international student population must also be considered. In the past four years, international students (non UK or EU domiciled students) made up around 37% of all BPTC students. Many of these students will return to their home jurisdictions but if there is dramatic change in the number of international students in the market for Bar training, this may have knock-on effect such as higher per student costs as the critical mass needed to keep costs down may be undermined. Nevertheless, the “Evolutionary” model (Option A) would offer students a standardised product that is recognisable at home and internationally.
98. Public funding support for training has been, and will continue to be an important consideration for providers and students, driven by government imperatives to boost the economy and to promote social inclusion. Currently, we think there is little opportunity for training programmes to be designed that exploit developments in public funding. Option A retains the strict sequence of training, and we think this is least likely to provide opportunities to draw on developments in public funding.
99. The Inns of Court are an important source of funding for students working towards a career at the Bar. Each of the four Inns maintain their own scholarships schemes to help students towards the costs of training for the Bar. These schemes – depending on award – may be used to offset the costs of vocational training and/or the work-based learning periods of training. For the academic year 2011-2012, the four Inns combined have

---

<sup>17</sup> [Payback time? Student debt and loan repayments: what will the 2012 reforms mean for graduates?](#), IFS April 2014

contributed £4.7 million in awards to students. In 2015 alone, it was reported that Lincoln's Inn provided 200 scholarships in total worth over £1.5 million to GDL and BPTC students.<sup>18</sup> The Inns have also recently introduced a pupillage funding "matching" scheme to assist Chambers who would like to offer more training places but find the expense of doing so prohibitive.

100. Although valuable to the students in receipt of scholarships, there is little public visibility as to how the money is dispersed and the needs or demographic breakdown of the students awarded.

**Question 8:**

***Do you agree with the cost analysis we have set out above for Option A? If not, please state why not.***

Alignment with higher education qualifications and other impacts on higher education

101. Option A would closely align with the compatibility of the BPTC with a Postgraduate Diploma level qualification (120 credits), as it is currently. Training providers may offer the postgraduate diploma as an associated academic award, which may be helpful for students as it is more widely recognised - outside the legal profession - than the BPTC. For a student wanting to convert this qualification into an LLM and obtain a master's level qualification, they have to take a further 60 credits, normally in the form of a dissertation. However, the removal of compulsory elective modules on the BPTC may have an impact on associated academic awards offered by providers.
102. Alignment with other higher education qualifications can be an important factor for many students receiving student loans to pay for course fees and for international student visa applications. If any new BPTC course were shortened in duration, for example, we will monitor this risk, across all the options we are considering, and assess any impact it may have on the market.
103. As mentioned above, Option A represents the continuity option. We think there would be relatively little impact on the legal education and training market if it is adopted.

**Question 9:**

***Do you agree with the higher education implications we have set out above for Option A? If not, please state why not.***

Equality & diversity

104. Despite improvements in outcome-based competences for learning, Option A provides a low degree of improved accessibility to training due to the high cost and rigid training structure. It is unlikely that planned changes will radically increase the participation and success of under-represented groups especially those from less advantaged socio-economic backgrounds and those with caring responsibilities.

---

<sup>18</sup> <http://www.chambersstudent.co.uk/the-bar/the-inns-of-court-compared>

105. The Bar continues to attract those seeking a change in careers. However, we know that the rigid sequence of training is a barrier for mature students and those with caring responsibilities.
106. The current system is now nearly gender balanced in admissions to study on the BPTC but a lower proportion of women are ultimately entering pupillage and being authorised.<sup>19</sup>
107. Students from black and minority ethnic (BAME) backgrounds are both less likely to do well on many aspects of the training than white students and less likely than white students to reach authorisation.<sup>20</sup>
108. We are concerned that Option A has a limited scope for improving these important issues.

**Question 10:**

**Do you agree with the equality and diversity implications we have set out above for Option A? If not, please state why not.**

**Option A: the “Evolutionary” approach in summary:**

- Sequential training: Academic legal education of learning followed by vocational learning, followed by work-based learning.
- BSB strengthens assessments to test application of foundation knowledge and skills.
- New flexibility in course specification and pupillage to foster innovation and cost savings for training providers and candidates alike.

**Option B: “Managed Pathways” approach**

109. This option identifies a number of routes or “Managed Pathways” to qualification which can be seen as examples of routes which we may define. This option also allows education and training providers to develop and offer flexible modes of study and empowers students to train in a way that best suits their circumstances and learning preferences.
110. To a significant extent, this is a matter of deciding what “rules of combination” of the components in the system we will approve. It could be argued that the existence of the Northumbria MLaw (described below) shows we have flexibility already. However, this course is only approved by exception and the structure of regulation is currently somewhat hostile to such an arrangement and the current rules cannot be described as fostering such innovation.
111. The current regulations stipulate that candidates must meet the academic, vocational and professional requirements in a strictly sequential order. Whichever option is adopted, we foresee that the revised regulations should stipulate that candidates must meet the requirements of the Professional Statement, by a route and with a training provider

---

<sup>19</sup> BPTC Key Statistics, May 2016.

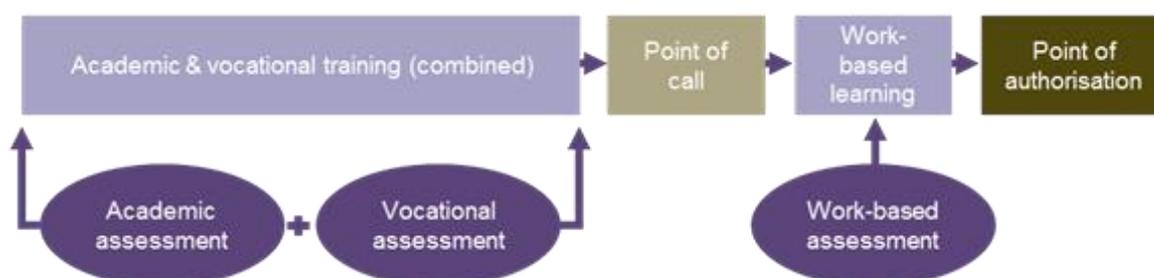
<sup>20</sup> Ibid.

approved by the BSB. That formulation will be essential for the “Managed Pathways” route. We would invite potential training providers to submit proposals to us for new training routes – these proposals could be from existing or new providers and this may attract new providers to the market. If Option B is approved, we may issue a tender from providers on pathways which meet our requirements.

Possible “pathways” under Option B

112. The Managed Pathways approach suggests that a number routes may be approved, as long as they meet our requirements. One example could include something very similar to the current sequence of the academic and vocational requirements, followed by work-based learning (as described in Option A). For the purposes of this section, we assume that Option A could equally be accommodated as one possibility within Option B (so we will also refer to this as **Option B(i)**) as that route would continue to be permitted under this option if an appropriate programme were proposed.
113. In addition to the route described above under Option A/**Option B(i)**, we envisage three other possible routes as part of the “Managed Pathways” approach, but more may emerge. We will be encouraging providers to come forward with proposals and so what we set out below should be considered as illustrations. This approach will, necessarily, need to be carefully managed over time and will depend on market demand, evidence of success and any other wider UK policy or legislation that affects Higher Education and professional training. For example, the availability of government-backed student loans may have a substantial effect on the viability of particular routes.
114. Under the Option B routes, we do not expect to test legal knowledge at an entry point to the training, though we would expect training providers to do so as appropriate to the particular route. However, we anticipate a need to test the application of learning outcomes in particular, through the higher level examinations that we set – derivatives of the current centralised examinations.
115. One other option would entail a **combined law degree and vocational training** (similar to the option currently available at the University of Northumbria MLaw qualification); this option will be referred to as Option B(ii). Figure 3 below helps to illustrate how this pathway works.

**Figure 3: “Managed Pathways” approach Option B(ii)**



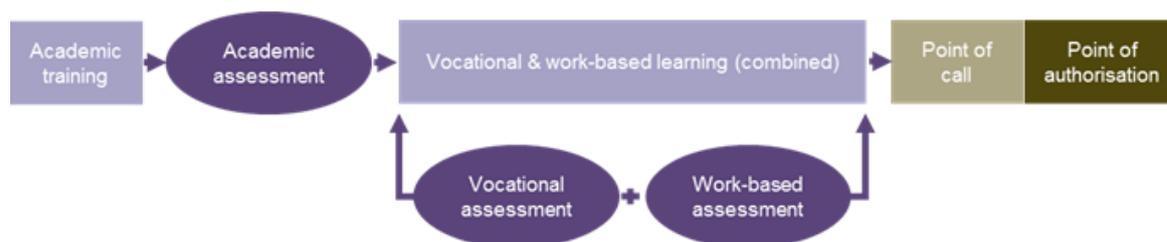
116. We have more understanding of Option B(ii) than some of the other routes, simply because it is currently being run at the University of Northumbria. This example may help to illustrate how Option B(ii) might operate. In the case of the University of Northumbria, students are enrolled on the MLaw programme from the outset but follow the standard

LLB curriculum for years one and two, after which they may progress onto the MLaw BPTC (or LPC) track. Alternatively, students may revert to the standard LLB course for the third year of studies.

117. Additional requirements by the BSB for the BPTC are applied at this point (including the BCAT). In Years 3 and 4 undergraduate subjects are combined with those from the stand alone BPTC. A research dissertation is included. Students graduate with an integrated Masters degree that combines the Qualifying Law Degree and exemption from the Bar Professional Training Course.

118. A second possible route would see a **vocational training programme that is integrated with work-based learning - Option B(iii)**. At the debate we held on 7 July 2016, this option was championed by the Chancery Bar Association, who in particular seek to address the perceived inability of the BPTC adequately to prepare students for pupillage. By combining the vocational training and work-based learning requirements, students will be able to learn ‘on the job’, as is the case in a number of other professions, such as accountancy.

**Figure 4: “Managed Pathways” approach Option B(iii)**

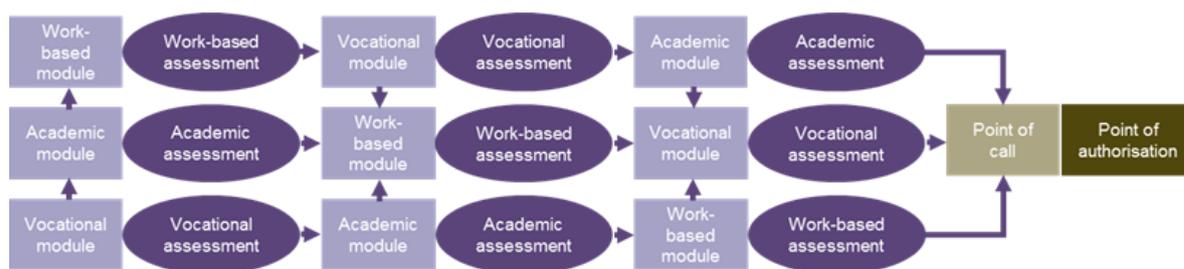


119. To use the Chancery Bar proposal as an example, rather than having two one-year stages of learning and practice, the combined course would be a two-year programme with mandatory study-leave built in. Exams would be taken at months nine (as a way-stage) and 18 (for authorisation). Pupils would learn through a mixture of vocational training modules and practical, hands-on learning outcomes; further advocacy skills would be honed through observation by attending court with practising barristers before they are able to appear in court themselves. ‘Soft skills’ such as client handling could be learned by experience, rather than taught. All skills would be developed through experience, prior to examinations.

120. Lastly, we would also consider a programme with a **modular approach – Option B(iv)**. This would enable a candidates to commit to their training, one step at a time.

**Figure 4: “Managed Pathways” approach Option B(iv)**

## Future Bar Training: Future Routes to Authorisation



121. The modular approach to training is anticipated to be attractive to the employed Bar and Government departments taking on trainees. It is also likely to be a popular choice for students who have evidence of already having completed some aspects of training or mature students who value being able to complete the training around other commitments. It is likely also to be more convenient for those students that require more flexibility within available training and work opportunities.

122. We think these pathways have the potential to be credible and compatible with the wider framework of postgraduate and other qualifications in the UK. However, these and other potential routes would remain under review.

123. We now set out an assessment of the various pathways and their individual impacts according to the same criteria used to assess Option A.

### Meeting the requirements of the Professional Statement

124. For Option B routes, there is a greater degree of flexibility for providers to use the Professional Statement to focus learning in a way which combines legal knowledge and practical application of the knowledge. As mentioned above, the development of the Authorisation Framework will aid providers in making judgments about how learning should be structured to achieve the outcomes required.

125. We have discussed in Part II our thoughts on the academic requirements more broadly. However, we think the flexible approach inherent in all the Option B variants will strengthen providers' ability to teach to the outcomes sought in the Professional Statement.

126. In Option B(iv), a modular approach will be taken; this route stands in greatest contrast to the other options considered under the "Managed Pathways" option. We think that this option would provide the greatest opportunity for breaking down the competences to develop the most appropriate learning outcomes and can be delivered across a number of settings. For example, HM Revenue and Customs (HMRC) has taken this approach when developing the apprenticeship model for solicitors. This option is particularly good for developing a student's ability to problem-solve, reinforcing the learning process through practical a work-based learning environment.

127. There was overwhelming support in last year's consultation for vocational training as a vital part of training to be a barrister, and the range of Option B routes present different ways in which respondents suggested it might be achieved

128. Of the three options under consideration for future routes to authorisation, the "Managed Pathways" option depends upon a greater degree of flexibility in work-based learning, permitting for example its integration with the vocational requirement in Options B(iii) and B(iv). Options B(i) and B(ii) will not necessarily require any substantive change

to work-based learning, beyond changes we will introduce in any event to map the training to the Professional Statement (although we would consider any proposals for more innovative approaches to the work-based learning requirement).

129. We recognise that many chambers have limited capacity for developing their own bespoke solutions, and rely upon the traditional structure for a variety of reasons. We, therefore, will leave the design and delivery of work-based learning to the approved training providers. However, some Chambers or employers may see the opportunity for innovation, including for example through working in consortium with each other.

**Question 11:**

**Do you agree with our analysis of Option B's ability to meet the requirements of the Professional Statement? If not, please state why not.**

Regulatory controls

130. As discussed above, we foresee that the revised rules should stipulate that candidates must meet the requirements of the Professional Statement, by a route and with a training provider approved by the BSB. That formulation will be essential for the "Managed Pathways" route.
131. Practical application of the new rules would see the controls being similar to those for Option A in that students must still satisfy all current requirements of local and centralised assessments and successfully pass the BCAT, though not in the same rigid sequence. As with Option A, the BSB will strengthen its assessment of the outcomes from work-based learning to provide greater assurance at the point of authorisation in the Managed Pathways option.
132. We envisage the training provider/institution taking responsibility for admissions and progression between different academic and vocational learning periods, where those are combined. However, the BSB would have to validate subject knowledge currently tested in the LLB with questions in the centralised examinations that (more explicitly than today) test the application of subject matter knowledge (ie not solely recall of subject matter). It is not anticipated that this testing would be comprehensive – we think that would be disproportionate. The BCAT requirements would also still apply.
133. Option B(iii) presents similar issues to those raised above, though the difference is that it would entail institutional educational and training providers working with approved work-based learning organisations to ensure outcomes of the Professional Statement are met. The academic requirement would remain somewhat in isolation and admissions to a combined vocational and work-based placement left to those institutions. This route is not currently possible under current Rules but we think that the reforms should allow for such flexibility.
134. For Option B(iv), course components are broken down into individual, self-contained modules, which can be taken in any way that is best for both the student and the provider. In order for a modular approach to be permitted, the BSB must be assured that the market will sustain delivery of each of the required modules (ie we will not risk learners facing the possibility of being able to complete only part of the training requirement). This may be overcome by providers being required to offer every module so that students are able to transfer as easily as they can today. Recognition by the BSB

of the equivalence of modules from the other legal regulatory systems might also mitigate this risk. Or, specific training routes could be authorised on a case-by-case basis, on application from providers.

### *Meeting our regulatory objectives*

135. Promoting access to justice and the rule of law are vital to our approach, whichever option we choose. One of our key drivers for reform is to create wider access to the profession. The justice system, after all, must be made up of those it serves.
136. We think the variety in the routes available under the “Managed Pathways” approach offers the greatest degree of flexibility and will improve access to the profession from students and those whose particular financial or other circumstances, such as carers and mature students, have prevented them from progressing to a career at the Bar.
137. For students who want to become a barrister, this means there will be a number of ways in which training can be undertaken. For providers, the relaxation of the Rules means that they can learn from student experiences to shape course design, provided learning outcomes are rooted in the requirements of the Professional Statement.
138. One of the key pressure points in the current system is access to work-based learning opportunities. Some may argue that by changing the system, the number of places being offered will be reduced. We think that the combined vocational and work-based route - Option B(iii) - and the modular route – Option B(iv) – create a distinct opportunity for more organisations to offer work-based learning in innovative ways. Indeed, a representative from the Government Legal Service (GLS) spoke on behalf of this route at our FBT debate earlier this year.
139. Moreover, by enabling more organisations to train barristers, there may be an expansion in legal clinics or advice centres opening, which could help serve those who need access to trained professionals but without the financial or other means to instruct a barrister on their own.

#### **Question 12:**

**Do you agree with our analysis of Option B’s ability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.**

### Meeting the LSB’s statutory guidance on education and training

140. We think the “Managed Pathways” approach is best placed to meet the statutory guidance, particularly as it provides the most flexibility, both for students and providers. We believe that this option looks most likely to accommodate the requirements made by the LSB in relation to:
- focusing on education and training outcomes, at the point of entry and beyond;
  - providing flexibility for students and providers;
  - finding the right balance between regulatory controls and over-prescription; and

- what can be fulfilled through ongoing competency requirements.

**Question 13:**

**Do you agree with our analysis of Option B's ability to meet the LSB's statutory guidance? If not, please state why not.**

Capacity to promote professional principles, especially integrity and ethical behaviour

141. There have been complaints from BPTC students that some providers do not devote sufficient attention to the teaching of professional ethics; this is borne out, at least in part, by variable performance in the centralised examinations, notably in 2015. Further attention may need to be paid to the development of good practice in the teaching of ethics, which may be applied to the routes providers intend to offer.
142. Option B provides the greatest scope for improving the way ethics is taught. Under the various pathways, providers will be empowered to deploy greater flexibility in their own approach. For example, ethical considerations may be brought into any number of legal problems a student might encounter and in a wider variety of contexts, some of which is explored at paragraph 85.
143. Despite the greater flexibility offered in teaching ethics, we think that there is – in the short term at least - a case for continued assessment of ethics by way of a discrete, centralised examination.
144. The greater flexibility offered by Option B may enable providers and the institutions of the profession such as the Inns of Court, Circuits, the Bar Council and Specialist Bar Associations, to develop new ways of interacting with those training for the Bar, encouraging exposure to role models and peer learning which are essential aspects of professional development of ethical behaviour and integrity.

**Question 14:**

**Do you agree with our view of how professional ethics is taught and assessed, and how ethical behaviour and professional integrity are fostered, under Option B? If not, please state why not.**

Addressing cost – cost of regulation

145. We think that costs of regulation will closely reflect those of the “Evolutionary” model. In all options, the implementation of agreed changes to the centralised examinations from 2017 is considered essential to their independence and reliability. These changes are planned at a total additional cost of £80,000 per annum (attributed to external marking of Professional Ethics).
146. The MLaw programme at Northumbria provides very helpful evidence of the potential cost implications of this model. This course integrates well (from the BSB point of view) with the standard BPTC at the same university, and imposes no additional cost burden upon the BSB.
147. A limited degree of exam redesign is expected, to accommodate the assessment of knowledge and skills expected to have been acquired at the academic stage, but using the structure of assessments that have already been implemented. A starting

assumption might be that we would be employing the Single Best Answer design, which is cost efficient both to design and to implement.

Addressing cost – for students

148. We are concerned about the current high cost of the BPTC. It is difficult to anticipate fees to candidates under each of the Option B routes, but we expect that the BSB's active approval of new and innovative pathways (that potentially offer lower cost routes to qualification) will introduce new price competition in the market.
149. In the combined academic and vocational route – Option B(ii) – currently being offered by Northumbria University, the costs saving to students is not insignificant, as all four years are charged at the same rate as the undergraduate programme (£9,000). Of course rates in London will vary but this route shows students that alternatives exist and can be reproduced elsewhere. Another key feature is the cost of student loans. Until only recently, the MLaw at Northumbria was the only BPTC course which was eligible for lower cost student loans. It is now possible for students studying for BPTC which is part of an LLM to obtain a postgraduate student loan.
150. Most students, particularly those from disadvantaged backgrounds, will seek student loans to pay the cost of their education, with generous repayment terms for undergraduate study and much higher costs for professional training, such as the BPTC. This route would enable all four years to be packaged together, saving students on higher interest payments after graduation.
151. We expect that a proposition which integrates vocational and work-based learning will offer the opportunity for candidates in some circumstances, and particularly for those fulfilling their pupillage in employed practice, to offset some of the cost of training with earnings.
152. The modular route is perhaps the best example of how student costs can be reduced. The legal apprenticeship offers candidates education and training as part of their job, plus a salary to help with living costs. Once qualifications are obtained, salaries could be expected to rise, as in any sector.

**Question 15:**

***Do you agree with the cost implications we have set out above for Option B? If not, please state why not.***

Alignment with higher education qualifications and other impacts on higher education

153. We have shown, above, some of the routes in Option B lend themselves to combining professional training with a master's level award. Moreover, Option B provides a very high degree of flexibility, taking greatest advantage of the prevailing structure for funding. We think there may be continued government interest in support for linking degree qualification with employment skills, such as the Northumbria University MLaw offers.
154. Degree Apprenticeships are now given significant financial incentive for employers, which may be exploited under Option B, which may make the modular approach more popular. But the particular strength of Option B is its adaptability, irrespective of current Government policy on funding.

**Question 16:**

**Do you agree with the higher education implications we have set out above for Option B? If not, please state why not.**

Impacts on the market

155. Although we are unable to predict what will happen, we do know that the market for education and training for the Bar is relatively small. There are approximately 1,500 new BPTC students every year; this is around one-tenth the size of the annual Legal Practice Course cohort for prospective solicitors.
156. The current system now offers Bar training courses on all the major circuits, offering student the choice to study in London, Manchester, Leeds, Birmingham, Bristol, Cardiff, Newcastle and Nottingham; some cities offer a choice of more than one provider.
157. One risk is that by offering new routes, others may fall away. This may be a consequence of the market adjusting to more flexible and popular approaches. However, there may be unintended consequences arising from this change. For example, the cost implications for implementing the new routes for providers may mean that training centres become more London centric. We think that, with careful planning with providers, this risk may be sufficiently mitigated.
158. With new routes being allowed, new providers may emerge. Depending on the perceived status of any new provider, there is the potential to have a “gold standard” provider or route which might attract the best candidates, creating a two-tiered system. New providers, of course, would be required meet the same standards as those currently providing training and would need to be approved by the BSB.
159. Another risk is for the supply of work-based learning. There are roughly 400 pupillages under the current model being advertised annually. Some argue that by putting more responsibility on the training providers (Chambers or others), they will simply cease to make offers of pupillage and that work-based learning opportunities will reduce.
160. We think that making the work-based learning rules more flexible will enable new training providers and partnerships to emerge. Others, of course, will (as noted above) make provision similar to their current offer.
161. It is likely to take some time for new routes to become ready to accept students. Even if all stakeholders were in agreement about the new routes being developed, higher education institutions would still need at least a year to adjust to the changes, whilst others may require longer. We will work with the providers to ensure that transitional arrangements for current students are made and will endeavour to help any provider enter the market as quickly as is appropriate.
162. We think that these risks must be considered and managed prior to authorising new any routes or new training providers.

**Question 17:**

**Do you agree with the market risk analysis we have set out above for Option B? If not, please state why not.**

### Equality & diversity

163. We think that Option B provides the greatest potential to increase access to the profession, particularly from women, students from disadvantaged backgrounds, mature students and carers. Having the flexibility of option routes would also accommodate students with varying learning styles.
164. It is difficult to predict whether or not this option will necessarily improve access to the profession from BAME groups. However, we can expect that by improving the flexibility and range of options to accommodate more students, Option B offers the greatest potential to enable innovation and improvement in this area.
165. We think that this route will improve the prospects for disabled students wanting to study for the Bar. The flexibility in attendance and location may make a positive difference. Improving flexibility here would also mean that students whose circumstances change may not need to abandon their studies but rather chose another means of study.
166. The modular option has the potential to include an apprenticeship-type route which may reduce students' debt burden and enable employers to take greater control over many aspects of their apprentices' training, ensuring they have the requisite experience.
167. As noted above, the risk of opening up new routes may mean some others may cease to be provided. The main risk here is that the current system has a good geographical spread and any change to this may disenfranchise students in the various regions across England and Wales.

#### **Question 18:**

**Do you agree with the equality and diversity implications we have set out above for Option B? If not, please state why not.**

#### **The "Managed Pathways" model in summary:**

- A number of pathways may be approved at one time;
- Vocational training providers are given greater responsibility for admissions;
- BSB strengthens assessment to test application of knowledge and skills; and
- New flexibility in course specification and work-based learning to foster innovation and cost savings for training providers and candidates alike.

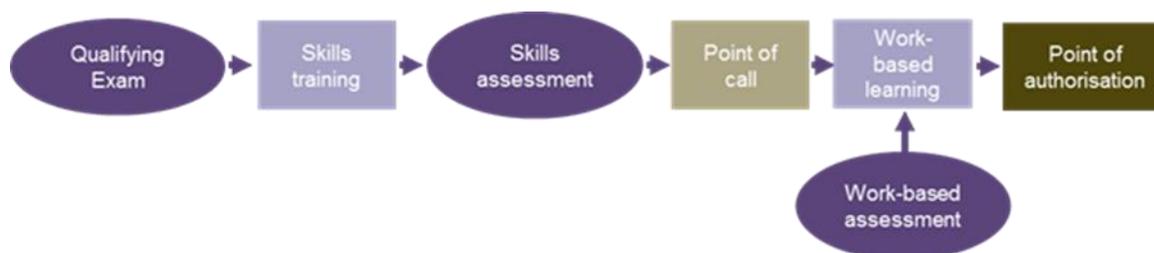
#### **Option C: "Bar Specialist" approach**

168. Option C establishes a qualifying examination – the Bar Entrance Exam (BEE) – open to eligible candidates, which would test knowledge and understanding of legal procedure in the context of sound legal knowledge.
169. This approach removes the BSB's direct interest in academic legal training but acknowledges that the graduate attributes required would not be satisfied without a degree, whether in law or otherwise. As in the previous two options, a degree, normally with a minimum award of 2:2 would normally be required. The key difference in this option is that candidates may prepare for the examination in any way they choose,

including but not restricted to a law degree or Graduate Diploma in Law combined with another degree.

170. On passing the entrance examination, candidates would be required to undertake a three-month approved training course in place of the current BPTC. This course would focus on developing the foundation skills for advocacy and work-based learning, which will follow the successful completion of this course.

**Figure 5: “Bar Specialist” approach Option C**



171. We have said from the outset that we intended to build upon the strengths of the existing system, and this has the benefit of giving us more confidence in implementing change, because we can take a step by step approach, avoiding disruption of the substance of training where it is not necessary - and also more confidence on cost. The “Bar Specialist” option is more difficult to reconcile with that approach, given the significant departure from the existing model that it would represent. Nevertheless, the changes we are already making are helping us to understand the practical implications of this route.

#### Meeting the requirements of the Professional Statement

172. We have made it clear that meeting the requirements of the Professional Statement must be the criterion by which prospective barristers must be judged ready for authorisation. We are consulting on Option C as it offers a unique perspective on Bar training and ought to be considered alongside the other options.
173. Option C sets a significant challenge for the BSB in formulating a qualifying examination that covers the knowledge requirements of the Qualifying Law Degree, which will be complex and costly to deliver. Option C is the option that most closely aligns with the approach the SRA is now consulting on. If Option C is adopted, there may be an opportunity to share cost and very significantly reduce the burden upon the BSB. However, considerable thought needs to be given to what kind of exam(s) this should be and what it should attempt to assess.
174. Our proposals for the academic learning requirements loosen the knowledge requirements rather than increase them because it cannot be said that all entrants to the Bar “must” know every subject in the detail required by unseen multiple-choice exams. Regulatory principles require that there is no more regulation than is necessary, and it is hard to see how it can be necessary to require a more detailed knowledge of many subjects in future than is required now. Even if the BSB developed its own qualifying exams to replace the qualifying law degree assessments it is doubtful that these

problems could be overcome. And they could certainly not be overcome at an acceptable cost on the BSB's small revenue base.

175. The "Bar Specialist" approach would require a step change to segregate the knowledge and skills components of the current programme completely and to establish a new market of advocacy training providers.

**Question 19:**

**Do you agree with our analysis of this option's ability to meet the requirements of the Professional Statement? If not, please state why not.**

Meeting our regulatory objectives

176. We are aware that concerns have been raised about the danger to the consumer if students have limited formal vocational training prior to work-based learning. The key concern is that the limited contact time many students will have, on the three month short skills course, and that this will not properly equip students for both the professional requirement of training and for practice.
177. We believe that the risk to the consumer is mitigated because students will still be required to complete a year of work-based learning, during which pupils will be required to use the skills and knowledge learned during the short skills course and applying the legal knowledge obtained to pass the BEE. If students have not properly demonstrated that they can put the knowledge and skills into practice, they will not be authorised to practise independently after pupillage.
178. This route (depending in its cost) could allow for increased access to the profession, particularly from those who currently find cost prohibitive, largely because of the reduction in prescription about how students could train for the BEE. We also anticipate that students who may find a structured course difficult to attend (eg mature students, those with caring responsibilities or disabilities) would now find it easier to engage with the shortened skills training. The reduced duration of the course could mean less time out of gainful employment. These things taken together could increase diversity in the profession.

**Question 20:**

**Do you agree with our analysis of this option's capability to meet our regulatory objectives in general, and access to the profession, supporting the rule of law and promoting the interests of consumers in particular? If not, please state why not.**

Meeting the LSB's statutory guidance on education and training

179. We think the "Bar Specialist" approach would meet the statutory guidance, particularly as it promotes innovation through an open market in training and not requiring too much of training providers through prescriptive regulation.
180. This Option, as noted above, has the potential to promote increased access to the profession.

**Question 21:**

**Do you agree with our analysis of Option C's ability to meet the LSB's statutory guidance? If not, please state why not.**

Capacity to promote professional principles, especially integrity and ethical behaviour

181. Professional Ethics would be assessed as part of the entrance examination. Students would have to demonstrate that their professional ethics knowledge and skills meet the requirements of the Professional Statement. We envisage that the application of professional ethics would feature as part of the short skills course.
182. However, the apparently significantly reduced potential for exposure to other practitioners as role models and for experiential learning may reduce the opportunities for the development of an understanding of the importance of integrity and an understanding of the ethical considerations as a barrister.

**Question 22:**

**Do you agree or disagree with our understanding of how Option C promotes the professional principles, ethical behaviour and integrity? If not, please state why not.**

Addressing cost – cost of regulation

183. We anticipate there would be very significant up-front, development costs associated with designing and rolling out the BEE. It would not normally be appropriate for early cohorts of students to bear the full development costs of the new examination and substantial development funds would, therefore, need to be raised from practising certificate fees from current practitioners as the BSB has no reserves which could be used for this purpose. It might be possible to consider a commercial partnership in order to secure the necessary investment funds, but the BSB has little experience of this way of operating.
184. With an open market for training provision, we would expect to carry similar cost burdens of contract management, quality assurance and policy development as we do now.
185. We anticipate a minimum annual additional cost of running examination systems of £200,000 or more, after initial setup. This cost arises as a consequence of:
- extending the centralised examinations to cover subject matter associated with a law degree;
  - increased commitments to assuring reliability and consistency of forms of assessment; and
  - handling of a significantly increased volume of candidates.
186. Greater commitment to data scrutiny and analysis, to address the enhanced risks associated with an examination that is more widely accessible, verifying the identity of candidates etc. may also drive up costs.

187. A substantial proportion of that additional cost may be offset by cooperation with the SRA, should our respective policies on foundation legal knowledge and assessment prove compatible.

Addressing cost – for students

188. Option C anticipates the removal of any requirement for the teaching of “knowledge subjects” of the current BPTC. In this option, providers of the skills course could recruit from a pool of candidates that have passed the qualifying exam. On the face of it, Option C, provides an opportunity for significant reduction in the cost of formal training as far as students are concerned. There is, however, a risk associated with a premium market emerging that prepares students for a qualifying exam in this option, over which we would have little opportunity for regulatory oversight. But equally there is no evidence that such a problem would necessarily emerge.

189. The benefit in reduced cost of removing prescribed teaching for the subjects that are amenable to self-directed study is significant, but we think it is not as significant as some might assume. We anticipate that the short course identified in Option C might still entail three months study, focused upon skills and, therefore, requiring highly interactive training that can only be delivered in small groups. Such a course might attract a fee of as much as £12,000 at a London location, a reduction of some £7,000 from the current, 9-month BPTC.

**Question 23:**

**Do you agree with the cost implications we have set out above for Option C? If not, please state why not.**

Alignment with higher education qualifications and other impacts on higher education

190. The specialist skills training provision would be initiated through open tender, and could accommodate new entrants that met the BSB’s requirements. The course is not expected to sit comfortably within the wider framework of postgraduate qualifications in UK Higher Education, however, we could expect a greater take-up to arise from Bar-specialist providers and privately-owned organisations that specialise in business and professional skills training.

191. If Option C is adopted, we think it is possible that the education and training market for the Bar will shrink dramatically, supporting only a small number of providers, which might be exclusively London-based. This is because we envisage:

- the proposition being unattractive to publicly funded universities;
- shrinkage of the market, and significant decline of the overseas market, as candidates need to pass the (near) equivalent of the centralised examinations to enter the training (a third fail the course at present, principally on these grounds); and
- private providers are structured to deliver professional training of this type.

192. As for wider impacts, we envisage two markets emerging for training if this model is adopted:

- support for qualifying exam candidates, with the emergence of self-designated “qualifying degrees” and other non-validated training; and
- a market for the specialist training that is overseen by the BSB.

193. Despite the risks outlined above, we think it likely that the market for a degree route to qualification will persist and perhaps dominate, with candidates capitalising on the opportunity to experience Higher Education on favourable financial terms, taking advantage of the teaching to prepare them for the qualifying examination and securing a valuable qualification along the way. Providers may emerge who build their degree programmes around the BEE. We think that Chambers and other employers will still prefer high-achieving graduates, precisely for the reasons we discuss in Part II of this consultation.

**Question 24:**

**Do you agree with our analysis of Option C’s impact on the higher education training market for the Bar? If not, please state why not.**

Equality & diversity

194. Any potential for reducing the costs for students should allow for greater diversity on the course and greater accessibility. There may be an issue arising with those from a higher socio-economic level being able to pay for better training for the entrance examination, but as it is a standardised test, and if students were permitted to take it as many times as they want, this risk is mitigated to an extent. The lack of requirement for specific training for the entrance examination could increase accessibility for mature students, those with caring obligations or disabilities who may find attendance on a structured course more difficult.

195. Despite the openness of Option C to be a potential “leveller”, there is a risk that further unintended barriers may be introduced by this Option, or existing ones exacerbated. We know, from our BPTC Key Statistics (published for the first time last year) that those from BAME backgrounds were less likely to pass centrally assessed examinations. With one entrance exam, this risk may persist or worsen so we would have to pay close attention to the equality impacts of any change. This Option may not overcome the risk that the university a candidate attends remains a basis for recruitment.

196. We anticipate that this option would be appealing for international students looking to qualify for the Bar, either to practise here or in their home jurisdiction.

**Question 25:**

**Do you agree with the equality and diversity implications we have set out above for Option C? If not, please state why not.**

**The “Bar specialist” model in summary:**

- a degree with a minimum award of 2:2;
- intellectual ability will be assessed partly by way of the Bar Course Aptitude Test;
- a centrally-administered qualifying exam, covering knowledge and understanding components of academic and vocational learning;
- a course of specialist skills-based study, anticipated to be approximately twelve weeks’ duration; and
- a more flexible form of pupillage, which might accommodate integration of the specialist course.

Final considerations

197. After considering the options which we are now consulting on, we would like to hear your views. Questions 1-25 ask specific questions about the principles and policy points we have used to guide our thinking on potential future routes to authorisation.

**Question 26:**

**After having given consideration to the three options above, please tell us which option is most appropriate and why you think this is the case.**

198. Although we have set out, in some detail, the routes we believe to be the most viable, we would be interested in hearing if there are other routes which we should consider.

**If you have any proposals for another route(s) to authorisation, please use this question number to give us a preliminary evaluation of your proposed model against the criteria used above in order for us to be able to give the proposal serious consideration.**

199. We would like to thank you for taking the time to respond to this important consultation.

## Part IV: How to respond to this consultation

---

200. The deadline for this consultation is **23 December 2016**. You do not need to wait until the deadline to respond to this consultation.
201. A response does not need to be a comprehensive written document, although it can be if you wish. It can also be short form answers to the very specific 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 the questions we have posed specifically, rather than, for example, simply reciting your particular view on something to do with training for the Bar. We will of course never exclude consideration of a response, whatever its form or content.
202. We have set out in this consultation that the BSB has a preference for Option B, the “Managed Pathways” approach. However, we want to hear your views on all of the options and are taking into account all responses regardless of which option is currently preferred by the BSB.
203. You do not have to respond to this consultation in writing. If you would like someone from the BSB to meet with 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.
204. We will be contacting stakeholders and organisations who may have an interest in this consultation and asking if we can talk to them about it. If you would like us to talk to you or your organisation about this, please get in touch.
205. If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know. Please let us know if there is anything else we can do to facilitate feedback other than via written responses.
206. 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.
207. Please send your response, or otherwise get in touch, as follows:

Email: [futurebartraining@barstandardsboard.org.uk](mailto:futurebartraining@barstandardsboard.org.uk)

Tel: 020 7092 6808

Hannah Wilce

The Bar Standards Board

289 High Holborn

London WC1V 7HZ

### Engagement activities

208. The BSB will conduct a range of engagement activities from October to December 2016. The purpose of these activities is to:
- gather the views of a wide range of stakeholders on the three proposed training options to inform the BSB's decision in 2017; and
  - explain that the current route to qualification for the Bar will be changing to one or more of the three proposed options from 2018.
209. Engagement events will be held in multiple locations throughout England and Wales with a range of key stakeholder groups. These events will be held to facilitate discussions to explore the advantages and disadvantages of the different options. Each event will contain a range of stakeholders to encourage different views to be heard and allow participants to think critically about the options.
210. We will also organise some specific engagement activities targeted at stakeholder groups such as pupils, students and consumers, who may find it more difficult to express their views at meetings containing a mix of stakeholders.
211. For more information about these focus groups around England and Wales please see the Future Bar Training page on our [website](#). If you would like to attend any of these focus groups please email [futurebartraining@barstandardsboard.org.uk](mailto:futurebartraining@barstandardsboard.org.uk) or contact us as above.

### Next steps following the end of the consultation

212. The consultation will close on 23 December 2016. Once the consultation has closed we will collate and analyse the responses. These will then be used by the Bar Standards Board to determine which of the three options should be adopted and further developed. Once an option has been chosen this will be announced and we will proceed to write the new qualifications rules required to implement this option. There will be a specific consultation on the proposed new rules, to ensure these have been drafted to enact our policy intent. These rule changes will then be reviewed by the LSB and if approved will be implemented from 2018. There will also be transitional provisions in the Rules and we will consider with our stakeholders how best to move from the current system to our new approach.
213. We have already begun making changes to training at the Bar to implement the recommendations of the LETR and the requirements of the LSB. For example, the following changes have already been implemented:
- from January 2017 the new CPD requirements will be introduced for all practising barristers;
  - in September 2015 the BSB introduced our Professional Statement setting out the knowledge skills and attributes that all barristers must possess to be a practising and competent barrister; and
  - in September 2016 the BSB published the Threshold Standard and competences, which supports the Professional Statement.
214. We are also amending the training handbooks for the vocational and professional requirements of training to reduce unnecessary prescription and ensure they are clear,

## Future Bar Training: Future Routes to Authorisation

accessible and aligned to the Professional Statement. For further information about the Future Bar Training programme please see our [website](#).