Future Bar Training Consultation

Final Response (3 January 2018)

The Chancery Bar Association is one of the longest established Bar Associations and represents the interests of some 1,300 members handling the full breadth of Chancery work at all levels of seniority, both in London and throughout England and Wales. It is recognised by the Bar Council as a Specialist Bar Association. Full membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work, but there are also academic and overseas members whose teaching, research or practice consists primarily of Chancery work.

Chancery work is that which was traditionally dealt with by the Chancery Division of the High Court of Justice, but from 2 October 2017 will be dealt with by the Business and Property Courts, which sit in London and in regional centres outside London. The B&PC attracts high profile, complex and, increasingly, international disputes.

Our members offer specialist expertise in advocacy, mediation and advisory work including across the whole spectrum of company, financial and business law. As advocates members are instructed in all courts in England and Wales, as well as abroad.

1: Should the BSB have regulatory oversight of students? Please explain why or why not.

1. The BSB should not have any new or extended role in the regulatory oversight of students. While there is a need for oversight of students (for the reasons given by the BSB), we do not consider that there is any need for the existing arrangements to change. We take the view that there is no need for change because there is no suggestion in the Consultation (much less any evidence) that the existing arrangements are not effective. There is, in particular, no suggestion that there is any risk to the public. In those circumstances, any change would (almost by definition) be nothing other than change for the sake of change. No change should be made unless a case can be made, supported by evidence, that the existing arrangements are not effective.

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2: Do you think the BSB should continue to require membership of an Inn as a mandatory part of Bar training? Please explain why or why not.

2. We favour Option C. Membership of an Inn of Court should continue to be a mandatory requirement, although we are not sure that we would regard membership of an Inn to be a *"part of Bar training"*; rather it is part of being a barrister. To describe it as a part of Bar training is to confine the terms of the discussion in a way we do not consider to be justified.

3. The key benefit that flows from mandatory membership of an Inn is the promotion of collective ethical behaviour and other important norms of conduct. At a day-to-day level, standards at the Bar are maintained by a shared culture, which is likely to be difficult to measure, but is no less real and valuable for that. The Inns play a critical role. At paragraph 71 of the Consultation, the question is posed whether there might be *"something unique to the offer and environment of the Inns of Court which it may not be possible to replicate in another setting or by another type of provider?"* The answer to this question is, emphatically, that there is something unique in this respect, which we interfere with at our peril.

4. Moreover, the Inns provide an easy and efficient way for any new member to get to meet practitioners of all levels of seniority on comparatively level terms. A student might find herself sitting next to a senior Queen's Counsel and deputy High Court judge at dinner and be able to have an unpressured and unforced conversation. Such relaxed access to the highest levels is unusual within the professions. It also has important diversity implications. Someone whose father is a High Court judge will be able to meet senior barristers without difficulty. But someone without such privileged access will not. This is where the Inns have a vital role to play in bridging the gap.

5. In addition, the Inns provide valuable further opportunities and facilities which other organisations would be unable to provide effectively (or at all). For example, mentoring is offered by the Inns (e.g. Lincoln's: https://www.lincolnsinn.org.uk/index.php/education/bptc-student-information/mentoring-scheme) along with opportunities for marshalling, debating,

mooting etc.

3: If you answered 'yes' to question 2, do you think the BSB should continue to require "student membership" of an Inn or set the requirement at the point of (or just before) being called to the Bar? Please explain why or why not.

6. We think it should, for the same reasons as those given above. Membership of an Inn is particularly valuable for those from non-traditional backgrounds. Someone who joined an Inn just before their call would miss out on a great deal. It is not easy to see how they would be ready for pupillage. In our response dated 26 January 2016 to the BSB's consultation published in October 2016 on *Future Routes to Authorisation*, we urged the BSB to be alive to the possibility that fundamental reform to the way barristers are trained might have unpredictable consequences to do with the nature of the barrister produced at the end of it. We said:

> *"Awarding the title* "barrister" *after a period of training that is remote from the independent practice of advocacy will not necessarily produce the same results as the current regime: the nature of what a* "barrister" *is could change. If this is the BSB's intention, or a consequence that the BSB is happy to tolerate, then the BSB should make this clear so that a proper debate may take place…It should not be assumed that a fundamental change to this stage of training will not produce a fundamental change to the quality of professionals produced at the end of it."*

7. Although the context here is different, we would reiterate these points within the context of the suggestion that membership of an Inn of Court might no longer be a mandatory requirement. For centuries, barristers have been trained in a process in which membership of an Inn is a fundamental component. It should not be assumed that removal of this

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component will not change fundamentally the nature of what a barrister is.

4: Do you think the BSB should continue to delegate responsibility for educational and fit and proper person checks to the Inns of Court? Please explain why or why not.

8. We do not think that there should be any change to the existing arrangements in the absence of any suggestion that those arrangements are ineffective. Our answer here is essentially the same as our answer to Question 1. Regulation should be evidence and risk based, and we have not seen any. We note that the Consultation only provides Option A (the BSB takes over responsibility) and Option B (the Inns continue to perform these functions *"but with improved checks and greater oversight from the BSB"*). There is no option presented where the BSB does not take on an enhanced function that it does not have at the moment, although that is the route we favour in the absence of any reasoned basis to change things.

9. We note the point at paragraph 90 of the Consultation concerning the two instances where individuals had forged certificates. While any such instance is of serious concern, there is no suggestion (much less evidence or reasoned argument) that the BSB (or any other arrangement that might be proposed) would be more effective at detecting and rooting out such dishonest behaviour, which is, by design, difficult to detect. It should be noted that this is not a problem peculiar to the Bar or a problem that can necessarily be detected efficiently by a professional regulator. The BSB will no doubt be familiar with the celebrated cases of Shahrokh Mireskandari and Alan Blacker, both of whom obtained practising certificates as solicitors on the basis of fraudulent qualifications. Those frauds were not particularly sophisticated but were not detected for years. That both individuals were regulated by the Solicitors Regulation Authority made no difference to their ability to rely on fabricated qualifications.

5: Do you think the BSB should require DBS checks as part of the fit and proper person checks? If you do, who do you think should perform this function and why?

10. We do not consider this to be necessary. It builds in a yet-further level of bureaucracy and cost into a student's path to the Bar. There is no evidence presented to suggest that the existing arrangements are unsatisfactory and no evidence to suggest that DBS checks would be the appropriate means of tackling any unspecified shortcomings. We would urge the BSB to undertake reform only where there is evidence that existing arrangements are not working and evidence that the particular reform proposed is likely to remedy the deficiency. Otherwise it is reform for the sake of it.

6: Do you agree with our proposals to improve the current checks as described? Please explain why or why not.

11. Yes. It makes sense to monitor a sample of academic qualifications as proposed in paragraph 106. Universities have staff to field these types of inquiries and experience shows that such inquiries can be answered quickly and efficiently. We also agree that the BSB should be notified (as set out in paragraphs 107 to 109) of matters that call into question a person's suitability to be called. A reduction in the level of prescription as proposed in paragraph 110 also makes good sense.

7: Do you think that the Inns or the BSB should oversee student conduct? Please explain why.

12. We consider that the Inns should continue in this role. Once again, we draw attention to the absence of any suggestion that the existing arrangements are not working. We repeat why we said in answer to Questions 1 and 5 above. The BSB should not contemplate reform in the absence of evidence and reasoning.

8: Do you think that the BSB should continue to prescribe qualifying sessions as part of the mandatory training requirements? Please explain why or why not, including (if

appropriate) which elements of the qualifying sessions are particularly useful to be undertaken prior to practice.

13. We consider that qualifying sessions should continue to be prescribed. Significant positive reform to qualifying sessions has taken place in recent years to move away from a focus on dining towards educational sessions. Both are valuable and should continue. The useful access afforded by qualifying sessions (we repeat what we said at paragraphs 3 and 4 above) is efficiently administered by qualifying sessions, which could not obviously be replicated otherwise. It is a widely-held view (and one that we agree with) that the quality of the educational qualifying sessions provided by the Inns is far higher than that provided by the BPTC suppliers.

14. We are alive, however, to the concern expressed at paragraph 140 of the Consultation that some students with less knowledge of the profession, particularly from BME and lower socio-economic backgrounds, may find the environment intimidating. In our view, this issue must be addressed. But it will not be addressed simply by getting rid of qualifying sessions. On the one hand, qualifying sessions perform a useful function in making familiar the unfamiliar; in other words, those who are not accustomed to the Bar become so by contact with it. We repeat what we said at paragraphs 3 and 4 above. Moreover, those students who find qualifying sessions intimidating are likely to have a similar (or worse) adverse reaction to pupillage interviews or appearing in court. Removing the requirement to complete qualifying sessions will just move the problem further down the road. If anything, the students who need the most support will get less of it without qualifying sessions.

9: If you answered 'yes' in question 8, should there be any changes to the existing arrangements? If so, do you prefer Option B or Option C to reform our oversight of qualifying sessions? Please explain why.

15. With the move away from slavishly focusing on dining in favour of more flexible arrangements including educational sessions and sessions outside London, change is a constant feature of the Inns' approach to qualifying sessions. New sessions are designed all

the time and everything is kept under review. We do not consider that there is any need for further prescriptive change on a top-down regulator-led basis. To that extent, the existing arrangements are adequate and there is no need for any further change of that nature.

10: If you answered 'yes' in question 8, do you think that other training providers could provide qualifying sessions? Please explain why or why not, including what elements would need to be delivered by or in association with the Inns themselves to ensure their benefits are to be retained.

16. We would reiterate our comments in our response dated 26 January 2017 to the BSB's consultation on *Future Routes to Authorisation* published in October 2016:

> *"Any further encroachment by private providers into Bar training would be undesirable in our view…In the first place, private providers are not equipped to understand real life practice at the Bar. Their contributions can be expected to resemble the BPTC, both in their content and in their extravagant cost."*

17. There is a real value in the unique role of the Inns in advancing and embedding ethical and professional norms, quite apart from any other purpose that qualifying sessions have. That function should not be overlooked and should be valued and preserved. We repeat what we said at paragraphs 3 and 4 above. Any suggestion that qualifying suggestions might be provided by someone other than the Inns misses the main point of them.

11: Do you have any alternative suggestions for how qualifying sessions might help students meet the requirements of the Professional Statement?

18. No.

12: Do you think we should allow pupillages to vary in length? Please explain why or why not.

13: If you answered 'yes' to Question 12, please tell us whether you think there should be minimum and/or maximum lengths associated with this change and what those minimum or maximum lengths should be. Please explain why.

19. No. The current system works well in our experience as a training period which enables pupils in Chancery chambers to obtain the necessary skills and knowledge in order to practise without supervision at the end of the twelve months.

20. The current system already allows for the flexibility to have shorter pupillages where, for example, pupils already have significant experience in practice from a foreign jurisdiction. In the case, however, of a pupil with no experience as a practitioner, we can see significant risk in a training period of less than twelve months. In many Chancery chambers, the complexity of the work undertaken is such that a training period of less than twelve months could pose real risks to the public. Equally, we would be concerned that a period of more than twelve months would pose the risk mentioned in paragraph 170 of the consultation paper of members of chambers utilising pupils for research tasks when by that stage they should be able to start building a practice. Although the current mandatory period is half that of a training contract, typically solicitor trainees will rotate between different seats in very different areas of law and practice. In many Chancery chambers, by contrast, the work is more narrowly focused, such that a pupil is reasonably able to practise on their own account after twelve months.

21. We believe that the current mandatory training period strikes a good balance. It also has the virtue of being easy to understand, both for those considering applying for pupillage, and to the general public. Introducing complexity into the system may well put off some applicants, and could well reinforce the view (particularly amongst those from non-traditional backgrounds) that alternative legal training, such as qualifying as a solicitor, represents a 'safer' and more predictable option.

14: Which option, if any, for reforming the award of the Provisional Practising Certificate do you support? Please explain why.

22. Option D. The current system gives every pupil six months during which the focus is on learning without the pressure of having to deliver advice to deadlines or appear in court. We believe that pupils require a period in which they build up experience before practising, even with supervision. This is particularly the case in complex areas of law. The other options risk the erosion of this period of learning and the delivery of legal services which are sub-standard, because the pupil concerned has not yet built up enough knowledge and experience. There is in particular a risk under the other options that pupils will feel under pressure to practise from an early stage if their chambers advocate this, or where they are in competition with other pupils who are willing to do so. It would be difficult to mitigate this risk through regulation, without a minute focus from the BSB on the circumstances of each individual pupil.

15: Do you think the minimum pupillage award should be raised? Please explain why or why not.

23. It is likely that the vast majority, if not all, of Chancery chambers pay well in excess of the minimum pupillage award. We recognise that chambers whose practice lies in substantial amounts of legally aided work face financial pressures which Chancery chambers do not. Nevertheless, we do take the view that there is a significant case for raising the minimum pupillage award for the following reasons:

(1) There has not been an increase in the minimum award since 2011, and as the consultation paper suggests, the minimum award has since been significantly eroded by inflation.

(2) At the current level, the minimum award cannot reasonably support entry into the profession by those from lower socio-economic backgrounds who are not of independent wealth, without finance being obtained (on top of all the debt which

such pupils are likely already to have accrued). The problem is particularly pronounced for those living in London.

(3) It is not appropriate for pupils to be paid a rate which is substantially below the National Living Wage.

(4) The current minimum award is significantly lower than that recommended for trainee solicitors. Retaining such a disparity again risks applicants who would otherwise come to the Bar concluding that the solicitors profession is a safer bet.

16: If you answered 'yes' to question 15, should we use the National Living Wage or the Living Wage Foundation benchmark for the minimum award? Please explain why.

24. In principle, we support the use of the Living Wage Foundation benchmark for the minimum award. Payment below this level presents a risk that pupils who are not from wealthy backgrounds will not be able to afford pupillage and may instead choose other professions to the detriment of the pool of talent coming to the Bar. It is appropriate in any event that pupils are paid at least the Living Wage Foundation benchmark given the challenge and responsibility of the profession they are entering into. It is notable that the LWF benchmark is used for the solicitor's profession which provides a useful comparison.

25. That said, we recognise that (1) raising the minimum award may result in a decrease in the number of pupillages offered and (2) chambers offering the minimum award will often be in publicly funded areas of law and historically have higher numbers of women and BME barristers. Whilst this possible adverse side effect could be mitigated by the fact that the minimum award has not been raised since 2011, and possibly by the Pupillage Matched Funding Scheme run by the Council of the Inns of Court, we believe the BSB should have close regard to the evidence as to the likelihood of this adverse side effect occurring when setting the level of the minimum award.

17: Do you think the current exemption from the funding rules for transferring lawyers should be removed? Please explain why or why not.

26. Yes. There is a strong case for transferring qualified lawyers being paid for the time they spend in pupillage. It cannot be assumed that such pupils will have significant savings which would enable them to undergo the pupillage period without pay. Furthermore, such pupils may make even more of a contribution to chambers in terms of the experience and knowledge that they bring in carrying out research tasks, etc., than other pupils. It is not right to expect them to do this without pay. We agree with the principle that all pupils should be paid for the contribution they make during the work-based component of training.

18: Do you agree that we should introduce re-authorisation of Approved Training Organisations (ATOs)? Please explain why or why not.

19: If re-authorisation were to be introduced, how many years do you think the defined authorisation period should last (e.g. 3 or 5 years)?

27. We think that re-authorisation should be introduced, but take the view that the defined authorisation period should be 10 years.

28. It is clear from the consultation paper that many ATOs will not have gone through any accreditation/ authorisation process since at least 1 September 2006. The importance of the pupillage process to the future of the Bar, and the difficulty which pupils have in raising any concerns about their training necessitate some oversight of ATOs on an ongoing basis. This, however, has to be balanced against the fact that those running pupillage committees within chambers are already giving up significant amounts of their own free time in order to facilitate training, and the fact that the system largely delivers well for pupils given the commitment of members of pupillage committees and pupil supervisors. We think that 10 years strikes an appropriate balance between reducing unnecessary regulatory burden (particularly for small chambers) and ensuring that there is adequate oversight of ATOs on a periodic basis. Clearly, if in any case the BSB considers that an ATO requires more scrutiny of

its pupillage arrangements in between authorisations, it would be open to it to investigate.

20: Do you think the BSB should allow pupil supervisors to supervise more than one pupil? Please explain why or why not.

29. No. We think that, for Chancery and Commercial Chancery Chambers, proper, rigorous pupil supervision requires the supervisor only to have one pupil. If carried out properly, the process places a significant burden on the supervisor and busy practitioners are unlikely to have time to devote adequate resources to supervising more than one pupil properly.

30. There is a risk that, if supervisors are permitted to have more than one pupil at once, there will be pressure on them to do so and the quality of the supervision may be diluted, which, in turn, poses obvious risks in terms of the quality of barrister being 'released' into practice at the end of pupillage.

21: Should the BSB prescribe pupil supervisor training outcomes? Please explain why or why not.

31. We understand that outcomes focused regulation is one of the two principles of good regulatory practice which have been set out by the Legal Services Board in its regulatory standards framework.

32. We are also aware that there is a lack of consistency between the various courses on offer at present. This may not be causing practical problems, but that is difficult to assess, and the risk that there are some supervisors who are not receiving adequate training (and, by extension, pupils who are not receiving adequate supervision and training) ought to be reduced as much as possible.

33. An outcomes-based process may assist in achieving that. However, it is important that the outcomes are clearly drafted, ideally in collaboration with the Inns (see next paragraph). It is difficult to come to any concrete conclusions without some draft outcomes to review.

34. We note that the Consultation (at para 246) suggests that pupil supervisor training could be offered by alternative providers. We do not think that is a sensible way forward – the Inns and the Circuits are the best judges of what is appropriate course content, subject always to appropriate input from time to time by external consultants (e.g. to deal with equality and diversity issues which arise).

22: How should the BSB seek assurance that outcomes in pupil supervisor training are being delivered?

35. At present, the Inns monitor who is qualified to be a pupil supervisor by (a) obtaining appropriate references and (b) running the relevant pupil supervisor training course. We do not see any need for any change. We do not think any other body than the Inns is the right body to provide the relevant quality assurance. As set out above at Question 21, we consider that the Inns are in the best position to decide what qualities a pupil supervisor needs and how to deliver the relevant training.

36. A further advantage of the Inns being the monitors of this (rather than individual ATOs) is consistency and a level of independence from ATOs. If ATOs start self-assessing the quality of their own supervisors internally, the problems raised by the 'marking your own homework' point exist.

37. If the Inns monitor the content of the training course and keep records of trained and approved supervisors, that should be sufficient assurance for the BSB.

23: Should organisations be required to provide this assurance during the authorisation process? Please explain why or why not.

38. Please see response to Question 22 above.

24: Should the provision of pupil supervisor training be opened up to other providers (other than the Inns)? Please explain why or why not.

39. No, for the reasons set out in the responses to Questions 21 and 22 above.

25: Should regular refresher training be mandatory for all pupil supervisors? Please explain why or why not.

40. This requires striking a balance between, on the one hand, ensuring that pupils receive adequate supervision and training and that pupil supervisors know what it means to provide adequate supervision and training and keep abreast of developments, and, on the other hand, ensuring that there is only a proportionate administrative and time burden on individuals who are pupil supervisors. We can see sense in making sure there is some 'refresher' training run by the Inns at sensible intervals (say, every 5 years) and think that such 'refresher' training should focus on developments in training outcomes, course content etc. that have occurred in recent years, rather than going over old ground on the basics.

26: If you answered 'yes' in Question 25, how often should it be undertaken (eg every 2, 3 or 5 years)?

41. See above at Question 25. The 5 year interval ties in with rQ52.5 of the BSB Handbook which allows the BSB to remove a barrister's name from the register of approved supervisors if they have not acted as a supervisor for the previous 5 years.

27: Should delivery of mandatory courses for pupils be opened up to other training providers? Please explain why or why not, specifically considering the risks and benefits.

Advocacy

42. We think that the Inns should remain responsible for any advocacy training courses that are mandatory for pupils. The Inns have the facilities and personnel to provide such training of high quality (bearing in mind the volunteers within the Inns from amongst barristers and the

judiciary). They are also acutely aware of the stage pupils have reached by reason of their advocacy training (or lack thereof) on the BPTC and are therefore best placed to fill in any gaps.

43. The risk of opening this up more broadly is that the courses will be designed and potentially taught by people from outside the profession who do not necessarily have a good sense of what an advocate should be. Further, the external course providers notoriously charge extremely high fees (compare the current BPTC costs). In short: there is a risk of lower standards for more money, the antithesis of what the BSB is trying to achieve.

Forensic accountancy

44. We are aware that the mandatory forensic accountancy course is offered by BPP Professional Education only at the moment. We consider that the provision of such a course by an external provider makes sense as an approach because it requires expertise from non-barristers. We do not see any objection to opening that up to further external course providers to increase competition, value for money and quality. We consider that that approach is also sensible for any other mandatory courses which require expertise from non-barristers.

Practice Management

45. In relation to practice management, we would suggest that this continues to be run by the Inns because it will be barristers and clerks, together with, for example, staff from the Inns' education departments, who will be most in touch with what is necessary and appropriate course content. However, we would suggest that the Inns give consideration to whether there are external providers who could provide valuable assistance in such courses, for example regarding some of the mental health issues which have been raised in recent years.

28: Do you find the language and terminology used in the Authorisation Framework sufficiently clear and accessible? If not, please provide examples of how and where this could be improved.

46. As a general comment, whilst we understand the philosophy behind an outcomes based approach, we think it is sometimes hard to discern from the high-level principles described in the Authorisation Framework what potential Authorised Education and Training Organisations are actually expected to do to comply with the principles in practice. Members of the Chancery Bar Association will come into contact with the Authorisation Framework almost exclusively in their capacity as members of Chambers providing pupillage. In that context, it is not always apparent how the four principles, whilst laudable in themselves, can be translated into changes in practice.

47. By way of example, for many Chancery Chambers, the principle of Affordability is unlikely to require any substantial changes, because most already offer pupillage awards at a level well above the current minimum requirement. But the principle of Flexibility will be much more puzzling. The choice of "*how, what, when and where*" pupils learn (para 21.3) is necessarily limited once pupils arrive in a set of Chambers. Pupils make their choice in relation to such matters when they decide which Chambers to apply to in the first place. The flexibility is not provided by each set of Chambers individually, but by "competition" between sets, over which each set has very little control. It is important to bear in mind that, unlike other providers, sets of Chambers are not primarily training institutions; they are in the business of providing legal services, and the nature of their business makes it difficult to offer choice about the "*pace, place and mode of delivery*" of pupillage (which is not to say, of course, that the provision of pupillage does not require regulation).

48. We note the suggestion in paragraph 25 that the BSB "*may set out separately an illustration of how the Authorisation Framework will be applied in respect of an Authorised Education and Training Organisation seeking to provide only the work-based component in a traditional chambers and pupillage context.*" For the reasons expressed above, we would welcome such an illustration, which needs careful thought and research. We wonder whether a single

"illustration" will be enough. There are substantial differences between, to take an extreme comparison, a Chancery Chambers in London and a Criminal Chambers in Leeds: it is difficult to see how one size can fit all in this area.

49. Subject to that general, and important, caveat, we think the language and terminology of the Authorisation Framework is, for the most part, clear and accessible. The passages we suggest might benefit from some reconsideration are as follows:

(1) Paragraphs 14 and 25 say that the Authorisation Framework will be "*applied proportionately*". This sounds positive, but its meaning is unclear. How, for example, can the principle of High Standards be applied proportionately? Surely standards should be uniformly high for all providers and all prospective barristers?

(2) The expression "*clinical legal education*" (para 21.5, second bullet) is jargon without any clear meaning. The footnote says it means "*for example, hands-on legal experience*". Does it mean anything more than hands-on experience? And, if not, why not simply use the expression "*hands-on experience*" which is still a metaphor, but a more accessible one than the medical analogy?

(3) A similar criticism can be made of the expression "*the whole student life-cycle approach*" (para 22.2 and 32.3). We appreciate this is a reference to principles and practices promoted by OFFA. Nevertheless, we doubt how many of our members will be familiar with those principles and whether, therefore, it would be more helpful to refer to the substance of the principles, rather than the jargon.

(4) Another example of jargon making it difficult to discern the intended meaning is paragraph 44.7, which refers to "*mapping of the Competencies covered in component(s) and/or pathway to the Professional Statement …*" We think there must be a clearer way to express the idea behind this sentence (and we are not sure precisely what the idea is). It is particularly important in relation to "Mandatory" requirements, such as this one, that the reader is able to understand what is meant

without having to puzzle it out.

29: Referring to the relevant sections of the draft Authorisation Framework, are the definitions of flexibility, accessibility, affordability and high standards sufficiently clear? If not, how could they be improved?

Flexibility (para 21)

50. As we have said in relation to the previous question, the principle of Flexibility is clear in the abstract, but a difficulty arises in understanding how it is intended to apply to a set of (Chancery) Chambers in practice. This principle is more obviously applicable to providers of the academic and vocational stages of training. Either this should be acknowledged in the definition section of the Authorisation Framework, or else the way in which the principle of Flexibility is intended to apply to Chambers should be clarified in the text.

Accessibility (para 22)

51. We wholeheartedly endorse the commitment to increasing social mobility and diversity. We agree that there is an urgent need to remove barriers to entry for those who are currently under-represented within the profession. But the number of places for newly qualified barristers within sets of Chambers is limited as a result of market factors: there is only so much work available for new tenants and only so much capacity within Chambers for growth. There is, therefore, an unavoidable tension between the objective expressed in paragraph 23.1 of increasing the prospects of success of those embarking on Bar training, and the commitment in paragraph 22.1 to placing no limits on the numbers undertaking Bar training. The more individuals who undertake the training, the greater the number who are likely to be disappointed at the end of the process.

52. We note that the LSB statutory guidance quoted in paragraph 22.1 requires that regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession. The word "inappropriate" seems to us to be significant. It is not the same as saying there

should be no limits on those undertaking training (which is what the third bullet point in the same paragraph says). In our view the definition of accessibility should explain how wide and fair access can be assured to the ablest candidates for the Bar (regardless of any protected characteristics), whilst those with skills and aptitudes better suited to other professions and enterprises are not encouraged to spend their limited resources pursuing something which is unlikely to be achievable.

53. As a more minor point, we note the comment in the fourth bullet point in paragraph 22.1 that Authorised Education and Training Organisations should adapt to ensure prospective barristers are "employable". This is capable of being misunderstood in a context where a large number of barristers (and particularly those who become members of Chambers) are not employees. We suggest the phrase "able to find work" as an alternative which potentially covers employment and self-employed work.

Affordability (para 23)

54. For the reasons explained above, affordability is unlikely to be an issue in relation to pupillage in the majority of Chancery sets of Chambers, since most offer pupillage awards well in excess of the required minimum (and that will still be the case, even if the minimum is increased in the way the consultation envisages).

55. We have explained above our reservations about placing no limits whatever on the numbers undertaking training and the necessary contradiction between that policy and the objective of improving the risk/benefit ratio for prospective barristers. We agree, of course, with the principles of reducing the cost of training and providing value for money, but that will not increase the number of places available for newly qualified barristers, which is market-driven.

High Standards (para 24)

56. It is easy to agree with the objective of ensuring high standards. It is, however, a principle

which admits of no easy definition: quality is relatively easy to recognise in practice but difficult to explain in general terms. The content of paragraph 24 is not a definition as such, but we cannot see a way of improving it, if the intention is to keep this part of the Authorisation Framework at a high level, without descending into the detail.

30: Do you think we have identified the correct mandatory indicators for flexibility, accessibility, affordability and high standards? If not, what do you think should be added or removed and why?

Flexibility

57. We repeat our general comments above: the mandatory indicators in relation to flexibility seem, in many cases, more appropriate for providers of the academic and vocational components than for sets of Chambers, whose primary function is not the provision of education but of legal services. For example, it is unrealistic to expect a set of Chambers to develop "*a strategic approach to the planning and delivery of the component(s) and/or the training pathways provided that will enhance flexibility for prospective barristers*" (para 26.1).

58. That is not, of course, to say that Chambers cannot accommodate a level of flexibility in the way they provide training to pupils, but the place, pace and mode of learning is largely dictated by the kind of work carried out by the Chambers in question. Thus, the potential to offer training on a part-time basis (para 28.2) or to offer a variety of approaches (para 28.3) is inevitably limited in the context of pupillage in a set of Chambers. On the other hand, the provision of clear information and flexibility to accommodate equality and diversity (paras 28.4 to 28.6) are obviously desirable objectives (if rather vague when expressed at such a high-level).

59. We suggest, therefore, that only some of the mandatory indicators of flexibility should be applied to providers of pupillage (as opposed to the academic and vocational components

of training). Flexibility is inherent in the choice between sets of Chambers, or other pupillage providers, but cannot be offered to the same extent within a particular set, whose characteristics are determined by the work its members generally do. We note that, for example, paragraph 32.3 relating to Accessibility is described as applicable only to providers of the academic and vocational components and we consider that a similar limitation should be applied to some of the paragraphs relating to Flexibility (e.g. paras 26.1, 26.2, 28.2, 28.3 28.5 and 30.2).

Accessibility

60. We largely agree with the proposed mandatory indicators in relation to Accessibility. There is obviously a limit to how much time and resources a set of Chambers can devote to outreach activities in schools and the wider community (para 32.4, first bullet) and we suggest that this particular indicator might better be placed in the "Recommended" category, rather than "Mandatory". We also observe that the level of human, physical and technological resources which can be provided to pupils by a working set of Chambers requires realistic and practical assessment (para 34.2). But provided the indicators are applied in a common-sense fashion, we think they encapsulate important principles of equality and diversity.

Affordability

61. As we have noted above, Chancery Chambers generally provide pupillage awards which exceed the recommended minimum. In those circumstances, the criterion of value for money in relation to pupillage makes little sense from the pupil's point of view (para 38.2), although we wholeheartedly support it in relation to courses for which the prospective barrister is required to pay. Subject to that, we agree with the mandatory indicators in relation to Affordability.

High Standards

62. It is obvious that high standards must be maintained. Other than observing that many of the indicators are expressed at a high level of generality, we agree with them.

31: Do you agree with our proposals for recognising transferring qualified lawyers? Please explain why or why not.

63. Yes. Transferring qualified lawyers must be considered on a case by case basis. If lawyers can demonstrate that they have equivalent qualifications and experience to a barrister, there should be no need for them to undergo further assessment and qualification. It is obviously sensible to limit any requirement for further assessment and qualification to those areas in which there are gaps in their existing qualifications or experience. We see no difficulty about employing a flexible approach: the number of transferring qualified lawyers is (we imagine) relatively low and, if there is any doubt about suitability, further assessment and qualification can be required.

32: Do you think there is anything which we have omitted and that we should take into account when considering transitional arrangements?

64. No. It is vital that all affected organisations are given enough time to make the necessary adjustments and we raise for consideration whether starting the new system with effect from the academic year 2019-2020 might be too soon, bearing in mind the planning required.

Andrew Twigger Q.C.
Joseph Curl
Rosanna Foskett
William East
3 January 2018